

**SELF-REGULATION OF THE PRESS IN SOUTH AFRICA:  
ANALYSIS OF SELECTED CASES**

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I, **ODETTE JOHAAR**, in accordance with Rule G4.6.3, hereby declare

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- This treatise is the result of my own original research and that this work has not previously been submitted for assessment to another university.
- This research contained in this treatise is being submitted in partial fulfilment of the requirements for the degree Magister Artium in Applied Media Studies in the Faculty of Arts at the Nelson Mandela Metropolitan University in Port Elizabeth, South Africa.
- All sources used or referred to in this treatise have been documented and recognised.

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## **ABSTRACT**

The aim of this study is to present information to members of the South African press, academics in the field of journalism as well as individuals of the South African public who have a keen interest in printed communication in South Africa. The information presented discusses the practice of self-regulation in the South African press, through a study of the Press Council of South Africa (PCSA), the Press Ombudsman and the Press Appeals Panel that is a non-governmental organisation to regulate the press in South Africa.

This study will include an analysis of the functions of the Press Ombudsman, the PCSA, the Press Appeals Panel, as well as the role of the constitution of the PSCA and the South African Press Code, which the PCSA uses as a guideline for publications that subscribe to it. Furthermore, a study into the complaints procedure and the determination of the outcome will be done in addition to the sanctions imposed on publications and journalists in breach of the Press Code as well as the acknowledgement given to individuals who have lodged a complaint to the Press Ombudsman, and the article or publication they have complained against had been in breach of the press code.

In addition, this study will analyse the outcomes of selected complaints submitted to the PCSA as well as an analysis of submissions made to the PCSA task team and the Press Freedom Commission, an independent commission that was set up to research the regulations of the press.

It was found that the PCSA strengthened the system of regulation with the help of the public. It is apparent that the organisation took into account many of the points raised in public submissions. Although the system is self-regulatory it is important to take note that it values and upholds the views of the public.

Although though the sanctioning of wayward newspapers was not severe, it had become more defined in the amended code. A point of concern that did not improve over time is the time frame that the Press Ombudsman's Office took to resolve the disputes. The delays caused in some disputes were caused by loop holes in the press code and complaints procedure as well as defiant journalists.

The PCSA is currently being restructured. As a society changes, the press industry needs to adapt to its needs. This means that the press code will have to constantly be developed to suit society's rapidly changing needs. The PCSA has attempted to meet those needs by constantly changing to ensure that the regulatory structure remains relevant.



## **CHAPTER 1: INTRODUCTION TO RESEARCH TOPIC**

### **1.1 Introduction**

The press is one of the oldest tools used for mass communication in South Africa. It began with the *Cape Town Gazette and African Advertiser*, the country's first publication published over two hundred years ago in 1800 (Print Media South Africa, 2011; Jackson, 1993: 16). As an official government publication, the *Cape Town Gazette and African Advertiser* contained mostly notices, but also included some news pieces. More than two hundred years later over 700 publications are published in South Africa (Print Media South Africa: 2011).

### **1.2 The function of the Press**

The press is a critical component of the society in which it exists. This is mainly due to the "influential role newspapers are assumed to play in the political life of modern societies" (Jackson 1993:5). With regard to classical liberal theory, "the freedom to publish in a free market ensures that the press reflects a wide range of opinions and interests in society" (Curran and Seaton 2003:346). This freedom allows information to flow between those in positions of authority and members of the public. This flow ensures that members of the public are able to make informed decisions and opinions and that those in authority remain aware of the interests and concerns of the public (Litchenberg 1990:110).

In democratic societies, freedom of the press is pertinent "to individual autonomy and self-expression. It is an indispensable element in democracy and the attainment of truth" (Litchenberg 1990:102). As such, the press is important as an agent for "the development of democracy ... in the life of all civilised people" (Windmeyer 1950:77).

#### **1.2.1 The function of the press in South Africa**

In South Africa, "a significant characteristic of the press is the clear predominance of English language newspapers" (Hachten *et al.* 1984:xi) and their role during the apartheid era. The English press played an essential political role when it "kept alive democratic values [...] and curbed the worst excesses of apartheid governments"

(Berger 1995:7) as it reflected the “Anglo-American tradition of press freedom, [and] calls for an informational and critical role” (Hachten *et al.* 1984:*xi-xii*).

In fact, “the English press regarded itself as the unofficial ‘opposition’” (Hachten *et al.* 1984:*xii*) to the government, as it attempted to ensure that the abuse of resources by those in power was revealed. It was this political role, seen particularly in the alternative press during apartheid, that “provide[d] an alternative voice to the racist and inadequate coverage of black activities [found] in the mainstream press” (Ibelema *et al.* 2004:318).

This phenomenon of the press as an opposition to those in power is not limited to the history of South Africa, but can be seen in other countries such as Britain, where the radical press played a part in their working class movement (Curran and Seaton 2003:15).

### **1.3 Statistics of the press industry**

The South African Advertising Research Foundation (SAARF) conducts surveys and measures data from the audiences of media in the country. This includes, but is not limited to, collecting data from the audiences of newspapers and magazines.

The SAARF, All Media and Products Survey (SAARF AMPS) measures the audiences of South African newspapers and magazines, as well as other media products. The information gathered by SAARF AMPS includes the average issue readership of publications instead of the number of issues circulated for publications (Chronis: n.d).

In the Media Consumption Information report from SAARF AMPS 2008, a steady growth in the readers of both newspapers and magazines was found. The report showed that during this period, 59.9% of the adult population in South Africa read newspapers and magazines (SAARF AMPS 2008A:1). The report uses the universal definition of an adult as being fifteen years old or older (SAARF AMPS December 2011 2012:1).

In 2009 SAARF made imperative changes to the methodology used for measuring the data collected from SAARF AMPS. This was to ensure a 95% statistical certainty in the survey’s results. Due to this change in methodology from

Computer Assisted Personal Interviewing (CAPI) to Double Screen – Computer Assisted Personal Interviewing (DS-CAPI), SAARF AMPS data collected prior to 2009 cannot be compared to the data collected in recent years. Nevertheless, even with the changes in the methodology, it can be found that there is an indication of growth in readership in some of the sectors in the press.

According to SAARF AMPS December 2011, more than 17 million adult South Africans read newspapers between January 2011 and June 2011. This figure includes newspapers that were published daily, weekly, monthly, bi-weekly, quarterly, alternately and subscriber publications. These publications are predominantly published in English and Afrikaans, with a few published in indigenous languages (African National Congress 2010:5).

Although some publication sectors have declined in the average issue readership, from January 2009 to December 2011, the overall average issue readership of newspapers and magazines has grown.

Table 1 Percentage of the Average Issue Readership (AIR) of adult South Africans for the Press.

	<b>SAARF AMPS January 2009 to December 2009</b>	<b>SAARF AMPS January 2010 to December 2010</b>	<b>SAARF AMPS January 2011 to December 2011</b>
Newspapers Overall	47.2%	47.5%	48.9%
Daily Newspapers	28.6%	29.4%	30.8%
Weekly Newspapers	35.0%	33.4%	34.1%
Bi-weekly Newspapers	2.5%	2.3%	2.8%
Monthly Newspapers	0.8%	0.6%	0.6%
Magazines Overall	50%	50.5%	50.5%
Weekly Magazines	25.7%	26.8 %	25.5%
Fortnightly Magazines	14.9%	12.1%	11.7%
Monthly Magazines	37.6%	36.8%	37.8%
Alternate Magazines	11.2%	11%	6.8%
Quarterly Magazines	2.4%	3.2%	2.7%
Subscriber Magazines	9.7%	10%	12.3%

Newspapers and Magazines Overall	63.1%	64.6%	65.8%
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Statistics cited in SAARF AMPS January to December 2009, July 2009 to July 2010 Average Readership of Newspapers and Magazines, SAARF AMPS January to June 2010, 6 Month Report, SAARF AMPS January to December 2010 and SAARF AMPS Average Readership of Newspapers and Magazines January to December 2011.

In a period of two years, the average issue readership of magazines and newspapers has grown by 2.7%. This indicates a growth of more than 2 million people.

Table 2 Average Issue Readership of Press in South Africa.

	<b>2009</b>	<b>2010</b>	<b>2011</b>
Total Newspaper AIR	15 324 000	16 150 000	17 072 000
Total Magazine AIR	16 237 000	17 175 000	17 624 000
Total Newspaper and Magazine AIR	20 508 000	21 984 000	22 998 000

Statistics cited in SAARF AMPS January to December 2009, July 2009 to July 2010 Average Readership of Newspapers and Magazines, SAARF AMPS January to June 2010, 6 Month Report, SAARF AMPS January to December 2010 and SAARF AMPS Average Readership of Newspapers and Magazines January to December 2011.

#### **1.4 Press Regulation**

Tremendous pressure is placed on the press to report news in a manner that is fair, truthful and impartial. It has been argued that journalists can only fulfil this expectation through a free press and that this cannot be achieved when the State maintains control and imposes censorship. In most cases, an uncensored press is able “to act as a watchdog over the government and thereby render the government more responsible and responsive [towards its public]” (Kovach and Rosenstiel 2001 cited in Whitten-Woodring 2009:595).

Press regulatory systems have been in effect for nearly a hundred years. The first press council was founded in 1916 in Sweden (Press Freedom Commission 2012:11). These systems set and promote high standards of journalism within its jurisdiction.

Press regulatory systems also serve as a platform for readers to lodge complaints against publications for published news articles that they interpret as unethical, untruthful, misleading or biased. Many countries around the world have various forms of press regulatory organisations and codes that govern their press industry. These systems include the Australian Press Council, the Press Complaints Commission in England, the Nigerian Press Council and South Africa's own Press Ombudsman and PCSA. Of the leading economically developed countries, only France and the United States of America do not have self-regulatory organisations for their press (Pritchard 1991; Poirier 2011). In the case of the USA, this excludes the state of Minnesota, which has its own regulatory council.

Self-regulation of the press and the media is promoted as an ideal system, in South Africa and internationally. In 2002, a statement by the African Union expressed that self-regulation is the ideal way to promote high standards in the media (Press Council of South Africa 2011:22).

Out of the top sixteen countries considered to have the greatest degree of press freedom in the world, it is found that fifteen of these countries have self-regulatory systems in place (Reporters without Borders 2012:14). Denmark is the only country in the top sixteen of the World Press Freedom Index in 2012 that has their press regulated by their government. The Danish Press Council was once self-regulated but it collapsed due to financial issues. Although the Minister of Justice appoints the members of the Danish council, the council claims to be independent of governmental influence (Lech 2011).

In 2010, South Africa was placed at 38<sup>th</sup> on the World Press Freedom Index and dropped four positions to 42<sup>nd</sup> in 2012 (Reporters without Borders 2011; Reporters Without Borders 2012:15).

According to the PCSA review report, press freedom is not exclusive to journalists and members of the media, but is a part of the freedom of expression

which is stated in South Africa's Bill of Rights (Press Council of South Africa 2011:23). Thus, press freedom belongs also to the South African public. Some authorities will attempt to control the press in order to maintain "totalitarian and repressive regimes" (Reporters without borders 2012:1). This suggests that a lack of press freedom can be linked to the violation of the Constitutional rights of South Africans.

Regulatory systems are essential in democratic states such as our own. As South Africa has over 700 print publications a regulatory system is necessary in order to ensure that the press remains accountable for its actions as well as maintain and strive for journalistic excellence (Print Media South Africa, 2011). Although there are many small independent publishing companies in South Africa, the majority of the publications in the country are owned by four companies (Media Club South Africa, n.d). These publishers are Media24, Independent News and Media, Caxton and CTP Group, and Avusa, which is previously known as Johnnic Communications.

This presents a situation in which the country's press could become dominated and controlled by these publishing giants. Information that is published by these newspapers has the potential to be monopolised as they could be influenced by the ideology and values of the shareholders of these companies. Arguably, this is "because without self-regulation they [may become] devoted to monopolistic capitalism" (Bleyer, cited in Smith 2002:391-392). This is further elaborated on later in this Chapter, with regard to Rupert Murdoch's influence on the British media.

Self-regulation of the South African press occurs both at an industry level and company level. Some publishers and publications have channels within their organisations to deal with complaints. One of these channels is for the public to write directly to the editor of a publication. This can be done in order to indicate inaccuracies in articles, and can be beneficial in some cases, but this method cannot be used to lodge complaints.

Some publications, such as the Mail and Guardian, have their own ombudsmen. Avusa has its own public editor and Media24 and Independent News and Media have their own ombudsmen. Readers of their publications may either lodge a complaint with the publication or publisher's ombudsman or with the SA Press Ombudsman's Office. Publishers and publications with internal ombudsmen,

have their own rules and regulations, which may differ from those of the Press Council of South Africa.

However, self-regulation by publications and publishers is not sufficient. Not all publications and publishers have internal channels and there is “an assumption that it is not enough to have self-regulation by each individual journalist or media house” (Berger 2009:3). This is because the codes of internal self-regulatory mechanisms vary between organisations.

Although an exact number is not given, nearly all of the publications in South Africa subscribe to the PCSA’s Press Code of Conduct (2011:21). In addition, since the establishment of the council, only two member publications had attempted to “undermine the rulings of the Press Ombudsman’s Office” (2011:21).

### **1.5 The monopolisation of the press in history**

Although it is not an easy task, monopolisation and control of the press in a society is possible and has occurred in history. This can be revealed through an analysis of the Australian-American media magnate, Rupert Murdoch. Murdoch was able to gain control over a vast amount of the British press and media and in turn, monopolise it in order to serve his own interests. Murdoch also owns companies in the United States of America, Australia and other countries.

In the history of the media, never has a single person held the magnitude of influence on the industry as Murdoch (Tuccille 1989:xiv). In 2010, the American magazine *Forbes* listed Murdoch as the 13<sup>th</sup> Most Powerful Person and 117<sup>th</sup> Wealthiest Person in the World (Forbes, 2010).

Murdoch, looking out for his own financial interests, was the primary individual responsible for the realignment of the British press to support the Labour Party in the 1970s. In Britain, by 1974, “many [newspaper] titles were bundled together in small newspaper groups” (Curran and Seaton 2003:76). Through purchasing these groups, individuals such as Murdoch were able to acquire a great deal of newspaper titles at once. After this period, it was estimated that “three publishers controlled two out of [every] three national papers sold in Britain” (Curran and Seaton 2003:76).

Murdoch's companies owned *The Sun*, *The Times* and *The Sunday Times*, which are three of the largest national publications in Britain. He had been transparent with his editors that he would interfere in their editorial work. This interference resulted in his newspapers becoming increasingly right winged due to his business relationship with the former leader of the Labour Party, Tony Blair. Years later, Murdoch renounced ties with the Labour Party when the relationship was no longer financially viable for his businesses (Curran and Seaton 2003:75-76).

## **1.6 Motivation and significance of study**

During 2010 the freedom of the South African press came under fire. The South African government presented a proposal for a revised Protection of Information Bill (POIB), which allows the bodies of the state to protect classified information of government offices (Weinber, M 2010). Around the same time, a proposal came from the ruling political party, the African National Congress (ANC), to introduce a Media Appeals Tribunal (MAT) that would "introduce formal censorship to print media limiting the role of the media in ensuring transparent and accountable government" (Weinberg 2010).

In their proposal, the ANC attacked the Press Ombudsman's Office and PCSA for being ineffectual (PFC 2012:13). The proposal also argued that the waiver, which was used in the previous complaints procedure, was unconstitutional. This was because it took away the Constitutional rights of those who used the Press Ombudman's Office, to not take the matter to court if they disagreed on the final rulings from the Press Ombudman's Office (PCSA 2011:49). In addition, the proposal suggested that systems with the purpose of allowing the disadvantaged to air their views should be used (ANC, 2010:11). The proposal also suggested that because there is no statutory regulation of the press, there was a need to strengthen the country's self-regulation in terms of public interest (ANC 2010:12).

The introduction of these proposals were heavily criticised and questioned. The opposition to these proposals was lead by the South African National Editors Forum (Moonie, 2010).

The proposal for the Media Appeals Tribunal was questioned because there are already two official routes available to lodge a complaint against a publication in



South Africa. A complaint via the Press Ombudsman is the first route. The website of the Press Council promotes this as the most time- and cost-effective route. This route is ideal for “someone whose main concern is to rectify a story” (PCSA 2011:25). The second is the legal route via a court case, which is more costly and constitutes a lengthier process. If the legal route is taken and the publication is found to be guilty of the charges against it, they may be required to pay a fine or compensate the complainant. However, the courts do not have set standards for the press. There is no set procedure or regulations used in order to resolve disputes that are processed via the legal route.

When the membership of the PCSA representatives began to approach its end, the council set up a task team. The aim of this task team was to review the structures of the system, including the press code, complaints procedure and its Constitution. In addition, the review was also considered as the council’s way to subdue the threat of the Media Appeals Tribunal. This is because they believed that “the only way to avoid government regulation is to move faster than the government” (Hunt 1975:45).

According to the Press Ombudsman, Joe Thloloe, the press council had “tightened the press code in order to stop irresponsible journalism” (SAPA 2011). On 10 October 2011 the new press code and constitution came into effect. The amended press code released by the PCSA will be analysed in depth in Chapter Four of this treatise.

It has been argued that the controversial Protection of Information Bill, which is also known as the secrecy bill, would threaten the careers of many journalists, threaten media freedom in the country and violate human rights (Mail and Guardian Reporter, 2012). In addition, this could affect the South African public by possibly reducing transparency in the government. (Stolley, 2010; Chauke and Mbabela 2010). Lack of transparency and information would ultimately influence the political decisions of the voting population and has the potential to negatively impact upon the democracy of the country.

On Tuesday 22 November 2011, the secrecy bill came before the National Assembly in the South African Parliament. The National Press Club called upon members of the press and the South African public to wear black in protest of the bill

on the Tuesday, aptly naming it “Black Tuesday.” This was a reference to 19 October 1977 when the apartheid government banned two local publications (SW Radio 2011). Despite the large protest, the ANC-dominated parliament passed the bill with 229 votes in favour and 107 votes against it (Laing 2011; SW Radio).

The bill is not yet finalised, and as such, is not yet part of the law. After it was passed in Parliament, the committee of the National Council of Provinces viewed the bill and held public hearings on it. Since then, two of the provisions that had been contested in the bill have been amended. However, it is still possible for these amendments to be removed before the drafted bill is viewed by the National Council of Provinces again (Hlongwane 2012).

Considering that two systems are already in place, one could question whether there are gaps or loopholes that the proposed Media Appeals Tribunal would fill. One could also ask how the revised Protection of Information Bill would affect the function of the press council, and whether the current routes are sufficient in regulating the press to uphold high journalistic standards.

### **1.7 Problem statement**

To what extent does self-regulation of the press through the Press Council of South Africa (PCSA), Press Appeals Panel and Press Ombudsman, promote ethical journalistic practice?

### **1.8 Research aim**

This study aims to investigate the practice of self-regulation of the press in South Africa. It aims to analyse the Press Ombudsman’s Office and the documentation of the PCSA and how the council operates. This treatise will:

- Consider how the press code has developed through a comparison between the newly revised and old press code.
- View public perceptions of the PCSA through the analysis of submissions from the public to the PCSA during the organisation’s review period

- View public perceptions of the PCSA through the analysis of submissions from the public to the Press Freedom Commission during the commission's review period
- Study the complaints procedure through the analysis of complaints submitted to the Press Ombudsman's office.

### **1.9 Research objectives**

- To consider how the newly revised press code promotes ethical journalism even more than the previous code
- To gain an understanding of the complaints procedure through the analysis of complaints submitted to the Press Ombudsman's Office
- To determine public awareness and perceptions of the Press Ombudsman and PCSA through analysing the public submissions made to the PCSA.

### **1.10 Research design and methods**

The stance taken in this treatise is that of an interpretivist approach. The method of this treatise is primarily qualitative as it includes analysing data collected from documentation of the PCSA Constitution, as well as case studies of complaints submitted to the Press Ombudsman's Office that have been finalised. These will be analysed alongside submissions to the Press Ombudsman during the organisation's review period of its Constitution and code.

The research design and methods will be discussed in detail in Chapter Three of this treatise.

### **1.11 Delimitations of the study**

The context of the press is constantly evolving. This is due to the new channels through which publications can communicate to their audiences. Many newspaper publications, such as The Herald and The Cape Argus have print editions as well as online editions. As a result, the traditional literature on this field, such as Siebert, Peterson and Schramm's *Four theories of the press*, is often considered to be outdated, even though they are useful as an introduction to the theories of the press.

This study was delimited to the following:

- The Press Ombudsman's Office, the PCSA and the Press Appeals Panel
- The documentation of the PCSA, which is the Press Code of Conduct, Complaints Procedure and Constitution
- Finalised complaints submitted to the Press Ombudsman's Office
- Submissions from the South African public made to the PCSA during the organisation's review period
- Submissions from the South African public made to the Press Freedom Commission.

The data for this research was gathered via literature on the topic at hand. In addition, information was also gathered online via online resources such as journals, databases and news agencies.

### **1.12 Definition of Terms**

To avoid potential misunderstanding, the following terms related to the topic will be defined:

#### **1.12.1 The Press**

Within the context of this treatise, the press refers to printed media, "because the printed are older and have gathered about them more of the theory and philosophy of mass communication" (Siebert *et al.* 1976:1). In addition, press is used more often to describe newspapers (Windeyer 1950:77), which is applicable to the context of this research.

#### **1.12.2 Press Ombudsman**

The general term Ombudsman is an authorised person who acts on behalf of another person, or body of persons who might have a disadvantage, in dealing with problems with public authorities (Gadlin 2007:38; Roy 2000:2). The Press Ombudsman is the authorised person who deals with complaints and other matters that regard the press.

### **1.12.3 Self-regulation**

Self-regulation that occurs within an industry is when the members, of the self-regulatory body, are or were active in the industry, set and enforce the terms of conduct, rules and standards in the industry, instead of members of the government or independent individuals (Gupta *et al.* 1983:417). It is an attempt to raise industry standards and accountability, particularly to the public (Virginia 2001:2).

### **1.12.4 The different Components of the South African Press' Self-regulation system**

This section intends to clarify any confusion with the regards to the three different components of the system of self-regulation of the press in South Africa. The Press Ombudsman's Office, the PCSA and the Press Appeals Panel are three different components that make up this system.

#### **1.12.4.1 The Press Ombudsman's Office**

The main purpose of the Press Ombudsman and his office is to settle complaints from members of the public against publications, independently. As such, the Press Ombudsman is the authority to which complaints against South African publications are addressed, whilst operating under a specific code of practice (Ziegenfuss *et al.* 2011:40). The code of practice under which the South African Press Ombudsman operates, was established by the Press Council of South Africa.

The Ombudsman first attempts to mediate a settlement between the complainant and publication. If the mediation is unsuccessful, a hearing with a public and press member of the Press Appeals Panel is held. It is not necessary for the complainant or a representative of the publication to attend this hearing, as the Press Ombudsman and the panel members will deliberate the outcome.

#### **1.12.4.2 The Press Council of South Africa**

The Press Council of South Africa is the custodian of the South African Press Code of Conduct. The organisation consists of twelve representatives. Six representatives are required to be active members of the press and the other six are members of the public.

The first section of the organisation's Constitution explains their aims and objectives. This includes the promotion of the Press Ombudsman and Press Appeals Panel, enforcing the Press Code of Conduct and mediating complaints against publications.

The council is not involved in the mediation and arbitration process; these tasks are assigned to the Press Ombudsman's Office and Press Appeals Panel (PCSA Review 2011:39).

#### **1.12.4.3 The Press Appeals Panel**

The Press Appeals Panel has eight public representatives and eight representatives from the press. In cases where the Press Ombudsman is unable to mediate the case between the complainant and publication, a hearing with a public and a press representative from the panel is held in order to adjudicate the matter.

If either party is unhappy with the outcome of the hearing, they may apply for leave to appeal. The Chairperson of the Press Appeals Panel and two representatives, one public and one press, will consult on the final ruling of the case.

### **1.13 Definition of Acronyms**

Many of the organisations referred to in this treatise are more commonly known by their acronyms. Therefore, to avoid potential confusion and misunderstanding, the following acronyms are defined:

#### **1.13.1 Black Management Forum (BMF)**

The BMF is a non-racial thought leadership organisation in South Africa.

#### **1.13.2 Media Monitoring Africa (MMA)**

MMA describes itself as an independent monitoring organisation that protects human rights and freedom through the media on the African continent.

#### **1.13.3 Print Media South Africa (PMSA)**

Formerly known as the Print Media Association, this is an organisation that brings together the different facets of the print media industry in South Africa. Members of

PMSA subscribe to the jurisdiction of the PCSA. There are three sectors to the PMSA, these are:

- **NASA** – The Newspaper Association of South Africa
- **MPASA** – The Magazine Publishers Association of South Africa
- **AIP** – Association of Independent Publishers

#### **1.13.4 The Press Board of Reference (PBR)**

The PBR signalled the beginning of self-censorship and self-regulation of the press in South Africa in 1962.

#### **1.13.5 Press Council of South Africa (PCSA)**

The PCSA is the current self-regulating body for newspapers and magazines in South Africa.

#### **1.13.6 Press Freedom Commission (PFC)**

The PFC is an independent commission intended to research the regulations of the press. The commission reported their final recommendations to the public and press in March 2012.

#### **1.13.7 Protection of Information Bill (POIB)**

The controversial bill was passed by the Members of Parliament in South Africa on 22 November 2011. It was debated by the National Council of Provinces and is currently being redrafted before appearing in Parliament again.

The bill, which is also known as the secrecy bill, makes it illegal for journalists and members of the South African public to publish or have in their possession classified government information.

#### **1.13.8 South African Advertising Research Forum (SAARF)**

The SAARF is a non-profit organisation that researches media audience and product consumption in the country across different mediums.

#### **1.13.8.1 South African Advertising Research Forum All Media Products Survey (SAARF AMPS)**

SAARF AMPS researches, analyses and reports data on the use of mass media amongst the adult population in South Africa.

#### **1.13.9 South African National Editors Forum (Sanef)**

Sanef is a non-profit organisation whose members are editors, senior journalists and journalism trainers. The organisation has a high standing amongst the press and promotes freedom of expression and excellence in journalism.

#### **1.13.10 South African Union of Journalists (SAUJ)**

The organisation was a union for journalists in South Africa that formed part of the founding bodies of the PCSA. It was disbanded in 2007.

### **1.14 Conclusion**

In conclusion, the press is a pertinent component of democratic countries such as South Africa. Due to the size and infiltration of the press in the country, the press can function as a tool and platform for both the South African public and government. The average adult readership of newspapers in South Africa is showing signs of growth, signalling that the press is gaining more influence in the country.

There is strong evidence that self-regulation can be linked to freedom of the press, as most of the countries that have high degrees of press freedom have self-regulatory systems. In addition, it can be suggested that the freedom of expression that is found in the Bill of Rights is inclusive of press freedom to all South African citizens. This therefore implies that a lack of a free press violates the Constitutional rights of the country's citizens. Lack of press freedom, violates citizens freedom of speech which is "entrenched as a core value in the Bill of Rights to ensure the country does not slip back to repression and controlled flow of information" (Press Council of South Africa 2011:21).

It is known that the ownership of publications can influence the content published (Curran and Seaton 2003:76). This was seen through studies of Rupert Murdoch's ownership of publications in the British press and media. As four



publishing houses own most of the publications in South Africa, questions on how the content in the press and the manner it is produced can be considered. This suggests careful consideration of how influential one or all of these large publishing houses are on the manner in which the industry is being self-regulated.

The PCSA regulates the press in the country and the Press Ombudsman is considered as a time- and cost-effective channel to submit complaints against publications. The legal route is another channel that can be used, but is more costly and takes longer to settle. That being said, the proposal of the Media Appeals Tribunal questions whether these channels are effective.

This chapter looked at the importance of press regulation and the following chapter will look at the available literature that relates to the research topic at hand. This includes an introduction to theories of the press and the press in the South African context.

## CHAPTER 2: A THEORETICAL AND HISTORICAL APPROACH TO THE PRESS

### 2.1 Introduction

In South Africa, the press has struggled for freedom since its establishment. Now that the press has achieved an arguably higher degree of freedom since apartheid, this freedom does not come without responsibility.

This chapter begins with an introduction to the press through an analysis of the theories that surround the press. It begins with Siebert, Peterson and Schramm's *Four Theories of the Press: The Authoritarian, Libertarian, Social Responsibility and Soviet Communist concepts of what the press should be and do* (1963), which gives a clear and concise understanding of the press and its multiple functions through the course of history.

It goes on to explore the study of Christians, Glasser, McQuail, Nordenstreng, and White's *Normative Theories of the Media: Journalism in Democratic Societies* (2009) which steps beyond the theories discussed in *Four Theories of the Press* (Siebert *et al.* 1963) by discussing the roles of the press in a democratic society.

This chapter then goes on to discuss the functions of the press, as considered in classical liberal theory. The next part of this chapter discusses how the press was regulated in South Africa during apartheid. This will be shown through instilled laws that curbed press freedom, the penalty of breaking these laws, as well as attempts to control the content published.

In addition to exploring how apartheid censored and forced regulations on the South African press, the Commission of Inquiry into the Mass Media, also known as the Steyn Commission, will be considered. This inquiry discovered three dominant concepts of the press in South Africa. These concepts were the English press, the Afrikaans press and the Black press.

After the abolishment of the apartheid government, press freedom had increased significantly in South Africa. However, this came with a certain degree of responsibility and regulation. The reformation of multiple press organisations

occurred, including that of the Press Council of South Africa, the Press Appeals Panel and the Press Ombudsman's Office.

Lastly, this Chapter will discuss the different forms of regulation, and how some of those forms have been used in the South African press.

## **2.2 Four theories: An introduction to the press**

Siebert, Peterson and Schramm (1963) radicalised theories on the press in their book *Four Theories of the Press: The Authoritarian, Libertarian, Social Responsibility and Soviet Communist concepts of what the press should be and do* (1963). The book impacted the study of press freedom greatly and is widely taught in journalism courses (Ostini and Fung 2002; Nerone *et al.* 1995).

### **2.2.1 Authoritarian theory**

The Authoritarian theory was presented in the late Renaissance era and is the oldest of these theories. There was a dominant hierarchal structure that functioned during this era as it was thought that the truth was centred near those who were in power and “the press functioned from the top down” (Siebert *et al.* 1963:2), by serving the purposes of those in charge. The press was used by those in positions of power, and as such, the press only passed on information which those that held control thought the masses should know.

### **2.2.2 Libertarian theory**

This came after the Authoritarian theory, which was developed during the eighteenth and nineteenth centuries. The Libertarian theory inverted the function of the press that was found in the Authoritarian theory. In this theory, the press was considered as a mechanism that acted as “the basis of [information through] which the people can check on [their] government and make their minds [up] as to policy” (Siebert *et al.* 1963:3). Many countries, excluding some under Communist control, had “based their social and political organisations on the theories of liberalism,” (Siebert *et al.* 1963:4 39).

This theory operated under the assumption “that press freedom is a property right exercised by publishers on behalf of society” (Curran and Seaton 2003:346).

### **2.2.3 Social Responsibility theory**

Changes and new conditions in the 20th century demanded “of the mass media, a new and different kind of social responsibility” (Siebert *et al.* 1963:4). Both Libertarian and Social Responsibility theories had the same basic principle, which was freedom. The ownership of the freedom differed between these theories.

In Social Responsibility theory the freedom is for the people with a “radical reconstruction of the relationship between individuals and communities, [and] a new emphasis on the latter” (Nerone *et al.* 1995:77), making it an outgrowth of the Libertarian theory which had enforced social responsibility on the media. Accordingly, audiences began to seek a diversity of information in their societies (Nerone *et al.* 1995:81).

### **2.2.4 Soviet Communist theory**

This theory was couched in Marxist determinism and “operate[d] as a tool of the ruling power ... as did the older authoritarianism” (Siebert *et al.* 1963:5). In this instance, the press was under the tight control of the government.

## **2.3 Normative theories of the press**

Normative theories of the press can be described as “a general theory of communication ethics” (Christians *et al.* 2009:86). These theories were developed after *Four Theories of the Press* (1963).

Normative theories deconstructed the aforementioned four theories. This was because, although the four theories introduce the typology of different systems of the press, their foundations lie in ideology and are therefore considered as limited. Unlike the four theories, the normative theories were not based on set ideas but traditions. These theories were the Corporatist Tradition, the Libertarian Tradition, the Social Responsibility Tradition and the Citizen Participation Tradition.

### **2.3.1 The Corporatist Tradition**

This tradition originated from small states in the Mediterranean over 250 years ago. This politically centralized tradition had a “cosmic worldview of organic harmony” (Christians *et al.* 2009:212).

### **2.3.2 The Libertarian Tradition**

The Libertarian tradition emerged in the Middle Ages and reoccurred in the Renaissance period as it “elevate[d] the principle of expression to the highest point” (Christians *et al.* 2009:23). This tradition was based on a free media market where the press operated under the claim of serving everyone’s interests, and yet had no social responsibility.

### **2.3.3 The Social Responsibility Tradition**

This tradition developed from the Libertarian tradition with freedom as its basis. The change that this tradition had was that the press acknowledged the rights of the people that it served. In the Libertarian tradition, the strengths had been clearly noted; however the lack of accountability to the public from the press had a negative result. The strength of the Social Responsibility tradition relies on the “ability to find a balance between freedom and control, self-regulation and public regulation” (Christians *et al.* 2009:24).

### **2.3.4 The Citizen Participation Tradition**

The radical and alternative press seen in the early nineteenth century through labour movements were the precursors of the Citizen Participation tradition. This tradition was “opposed to the more centralized authoritarian control of the media,” as in this case “the media belong[ed] to the people” (Christians *et al.* 2009:25). Thus, there was no separation between the people and the press.

## **2.4 Roles of the press**

In all societies, particularly in democratic states, the press have pertinent roles to fulfil. These include, but are not limited to the monitorial, facilitative, radical and collaborative roles.

### **2.4.1 Monitorial Role**

This is the most widely recognised role of the press, and arguably the most important (Christians *et al.* 2009: 30, 125; Whitten-Woodring 2009:601). In terms of this role, the press is a watchdog that defends civil society “against predatory intrusion by the

state” and does so “on behalf of assorted publics and [is] against the abuse of power” (Berger 1995:1; 55).

Through this role, the press provides information to the public that it deems important so that the public have the choice to objectively establish their own opinions on matters of interest and concern in their society. This is of particular importance during election periods. As such, the press supervises the actions of the government on behalf of the public. This is to ensure that any irregularities and cases of corruption in government are exposed and that members of the public can make objective decisions during election periods. This role highlights the connection between freedom of the press and the public’s right to access information (Masuura 2005:8).

The public judges newspapers with every issue that they publish, while the criticism of politicians takes place at longer intervals. This occurs mostly during election periods and with matters of national interest. In this case, it can be said that the relationship between the press and the public is closer than the relationship between the public and their elected representatives (Curran and Seaton 2003:346).

This close relationship is attributed to the constant contact and communication between the press and the public. The press communicates through the publications and the public responds through letters to editors and journalists on published pieces. Although publications limit the number of published letters to the editor, journalists within those publications are still able to access the unpublished letters. Some publications that have online and printed editions place more letters and opinion pieces on their websites than in their printed edition. This works because the printed edition has space limitations that do not exist in the online edition. As such, the public and those in authority are in contact far less than the press and the public.

One of the most important features of the monitorial role is for the press to expose and monitor information on behalf of the public (Christians *et al.* 2009:135). During the South African apartheid era “it was the [English] press ... which kept alive democratic values ... and curbed the worst excesses of the apartheid government” (Berger 1995:7). The English press did this through continuously exposing the ruthless apartheid government and providing information about the unrest and

unhappiness in black settlements. This signals the importance of the monitorial role of the press.

#### **2.4.2 Facilitative role**

This role of the press draws on elements of social responsibility through political and social processes. In this aspect, the press and media are identified as an imperative element to “improve the quality of public life” (Christians *et al.* 2009:31; 126).

A free press engages “a crucial role in providing information that facilitates political competition and accountability (Whitten-Woodring 2009:596). This creates deliberation as the main feature of the facilitative role (Christians *et al.* 2009:126).

#### **2.4.3 Radical role**

The press provides a platform for both the government and the public. In doing so, the press fulfils a radical role.

The radical role of the press does not “subordinate either to professional norms or market considerations” but exposes the abuse of power, and constructs and raises public awareness of “wrongdoing, inequality, and the potential for change” (Christians *et al.* 2009:126).

#### **2.4.4 Collaborative role**

The task of the collaborative role of the press is to collaborate with the government in the reporting of important information. The press fulfils this task by casting “intense pressure toward[s] economic and social development” (Christians *et al.* 2009:127).

The collaborative role often occurs in unavoidable situations such as natural disasters and national crises. In cases such as these, those in charge control the information released to the press. Thus, the main feature of this role is to mobilise the public (Christians *et al.* 2009:135).

### **2.5 Key Functions of the Press**

In Classical Liberal theory, the press are required to fulfil four key functions (Curran and Seaton 2003:346).

### **2.5.1 Informative function**

The first key function of the press is to provide the public with pertinent information that is relevant to public interest. Whilst presenting information, the press is required to maintain a high degree of objectivity (Curran and Seaton 2003:346; Windeyer 1950:80).

### **2.5.2 Government scrutiny**

It is vital for the press to scrutinise the government on behalf of the public it represents (Curran and Seaton 2003:346). They are required to report on news with unbiased commentary (Windeyer 1950:79).

The press scrutinises the government in order to disclose the abuse of power by those in authority as well as to prevent further abuse. Echoing this function is former South African president, Nelson Mandela who said, “a free press will be the vigilant watchdog ... against the temptation to abuse power” (Mandela 1992 cited in Berger 1995:16).

### **2.5.3 Staging public debate**

The press acts as a public platform. The purpose of this platform is for readers of publications to convey their opinions, concerns and ideas on topics at hand (Windeyer1950:80).

Many publications have allotted space in their issues for a section often referred to as ‘Letters to the Editor’. In The Herald, this section is known as ‘Your Views’ and in The Times as ‘Opinion and Letters’. However, this platform has space restrictions.

In sections such as these, readers are able to write directly to the publication’s editor and publicly voice their concerns. They are also able to comment on published articles, topics at hand and publicise their grievances. This not only serves as a platform for readers to communicate with the editor and journalists, but also with other readers. This is done when readers comment on previously published comments submitted by other readers. Although this allows some form of communication, the dialogue between readers remains limited and fragmented, as



the readers have to wait for the next issue for a reply. The flow of communication is also dependent on whether the editor decides to place the reply in the issue.

Readers can express their views to publications through various channels. Depending on the publication, readers can submit their comments via emails, faxes, letters as well as text messages.

Recently, many publications have moved to publishing news pieces online in addition to their traditional print copies. The amount of reader comments and opinion pieces that can be published in print editions are limited due to space restrictions. There are no space restrictions online, which allows for more commentary. In addition, readers can comment directly on articles, where as in print editions reader comments appear in issues published after the original article. This creates a smooth flow in dialogue between the readers. Thus, online platforms allow readers to only read the original article and to understand the context of the dialogue between other readers in the comment section.

The comment section on websites is not the only platform on which a publication's readers can interact with one another. They can also interact via the dedicated social networks such as Facebook and Twitter. The Herald, Cape Argus, The New York times and the Washington Post are among many South African and International publications that use Facebook and Twitter.

#### **2.5.4 Express public opinion**

The press "must respond to the concerns of their readers if they are to stay in business" and remain profitable (Curran and Seaton 2003:346).

The press must provide information to the public without which it would be unable to operate. The press should directly address the needs of the public as it is required to address interest topics that are relevant at the time of publication and express the opinions and grievances of the public.

### **2.6 South African Press History**

The history of the South African press and the environment of the media have been greatly affected by the political and socio-economic landscapes of the country (Press Council of South Africa 2011:11). Economic factors that affected the media

environment include the discovery of gold in the Transvaal in the mid 1800's. This discovery led to job creation and boomed the newspaper industry. Social factors include the Anglo-Boer War, which displayed the deep division between the English and Afrikaans populations, as reflected in the press. Political factors include the apartheid regime that drastically imposed on the freedom of the press (Hachten *et al.* 1984:22; 32; 49).

### **2.6.1 The Press during Apartheid**

The press is affected by the political and other conditions of the society in which it exists (Press Council of South Africa 2011:11). The history of the South African press shows how it was affected during apartheid through “economic and political racial segregation” (Ibelema *et al.* 2004:317). In addition to this, the apartheid government had the press “subjected to two kinds of government controls: coercive and manipulative (Hachten *et al.* 1984:vii).

In order to control and suppress the press, the apartheid government used manipulation techniques alongside laws that restricted the freedom of the press. There is a two-way relationship between democracy and media or press freedom. Media freedom, and in this case press freedom, is maintainable only in “strong democracies [while that democracy needs media freedom in order to exist]” (Reporters without Borders 2012:1). The laws passed during the apartheid regime curbed many rights of the people in South Africa to such an extent that “defying the system could quite literally mean death to a publication” (Jackson 1993:126).

The apartheid government felt threatened by the political role that the press played. The government was threatened most by the English press. As a result, the English press was blamed for aggravating many of the government's problems. This included the government blaming the English press, “for fomenting the [June 1976 student] riots and exacerbating an already dangerous situation” (Hachten *et al.* 1984:4). Black students who protested against the use of “Afrikaans as a language of instruction in Soweto schools” (Switzer 2000:18) initiated the riots, which had been covered by the English press extensively. The coverage of the riots brought the country and apartheid government under international scrutiny.

In order to clear its image, the government appointed the Cillie Commission to inquire the causes and issues raised in the riots. In its findings, the Cillie Commission declared that the press had not played a role in the student unrest (Hachten *et al.* 1984:4).

### **2.6.2 South African laws that infringed Press Freedom and Press Regulation**

The apartheid government had over twenty-five laws, which imposed on the freedom of the press in the country (Ginwala 1972:2). These laws directly and indirectly affected how editors could run their publications.

Some of these laws fell under the guise of being in the interest of national security. The pass law, created to control and restrict the movement of black people in urban areas was one of the indirect laws affecting black journalists, as it prevented them from reporting in certain areas (Ginwala 1972:2; Smith 1992:2).

Laws that affected publications and journalists directly and more drastically are stated below.

#### **2.6.2.1 The Defence Act (Act 44 of 1957)**

This Act imposed a complete ban on public dissemination of all information and knowledge regarding the defence matters of the Defence Force (Jackson 1993:111). It prevented “the publication from passing information relating to the composition, movements, or dispositions of the Defence Force” (Dugard 1978:183).

National security could be considered as a justification for The Defence Act of 1957. However, when this Act was used alongside the Protection of Information Act of 1982, it was used to restrict and control reports on other matters that related to defence and security (Oosthuizen 2002:87).

Failure to comply with this Act may have resulted in a fine or imprisonment.

#### **2.6.2.2 The Police Act (Act 7 of 1958)**

According to this Act, it was a criminal offence to publish untrue information regarding the police. This may seem a justifiable act but, the “bias [was] in favour of the official interpretation of events” (Jackson 1993:112). Noteworthy is the fact that The National Party used the South African Police to uphold the apartheid regime. As

such, the official interpretation may not always be a truthful and unbiased interpretation of events.

Journalists who were defiant of the South African Police's official statements could have their reporting construed as untrue and as a result be in contravention of this Act. Defiance of this Act could result in either a fine or imprisonment.

#### **2.6.2.3 The Prisons Act (Act 8 of 1959)**

In terms of the Prisons Act of 1958, it was illegal to publish information about the country's prisons that was untrue and unauthorised. This Act made it a punishable offence (Davenport 1987:404; Jackson 1993:114).

The Newspaper Press Union had an agreement with the South African Police. According to this agreement, journalists had to confirm their facts in reports of prisons and were "not to publish information about crimes or national security obtained from any source other than the police" (Oosthuizen 2002:86-87).

#### **2.6.2.4 The Publications Act (Act 42 of 1974)**

Under this Act, the government created an advisory board called The Directorate of Publications. The board was responsible for reviewing publications and establishing whether they were 'undesirable'.

The board considered the following as undesirable:

- Publications that were deemed blasphemous
- Publications that were offensive to public morals
- Publications that harmed the relations in sections of the population
- Publications that brought the population into contempt
- Publications that were prejudicial to the welfare of the State

If the board found a publication to be any of the above, the publication could be found 'undesirable' and become prohibited (Oosthuizen 2002:88).

The Newspaper Press Union and their publications were excluded from this Act (Dugard 1978:195; Jackson 1993:119). However, the Act drastically affected the

alternative press. Publications of the alternative press were not members of the Newspaper Press Union. The distribution or possession of publications that were considered 'undesirable' was a criminal offense (Dugard 1978:196).

#### **2.6.2.5 The Petroleum Products Act (Act 120 of 1977)**

South Africa has a dependency on imported petroleum, and as such, protection of information on this commodity was imperative for the government. Newspapers were unable to publish information involving oil (Jackson 1993:117).

#### **2.6.2.6 The Criminal Procedure Act (Act 51 of 1977)**

With this Act in place, journalists were not able to protect their confidential sources in articles. They were forced to reveal their sources of information or face a potential subpoena, which could lead to imprisonment of up to five years (Jackson 1993:117; 118).

#### **2.6.2.7 The National Key Points Act (Act 102 of 1977)**

Under this Act, it was illegal to publish information regarding a key point. The Minister of Defence could declare any place or area as a key point. This was problematic because the locations of key points were not disclosed.

This Act was problematic for both journalists and the legal system. It was impossible for journalists to know if the areas they reported on were key points. It was further problematic for the courts to find journalists guilty if they did report on a key point. This is because journalists could only be found guilty if it was proven that they had known the area was a key point prior to publication (Jackson 1993:17).

#### **2.6.2.8 The Advocate-General Act (Act 118 of 1979)**

The Advocate-General Act of 1979 saw the appointment of the first public Ombudsman, known as the Advocate-General. This Act was created after the Information Scandal, in which the misuse of State funds had been exposed (Jackson 1993:115 and Roy 2000:299). The office of the Advocate-General was created primarily to adhere to a government that is orderly and public administration that is honest. This was done by dealing with state officials who abused their authority in office (Montesh 2009:194; 198; Roy 2000:299).

The office of the Advocate-General was heavily criticised, as it was created hastily and without thorough research and investigation (Montesh 2009:298; Roy 2000:299). The position of the Advocate-General was further criticised for being created to serve the needs and ends of the government and not the public (Roy 2000:299).

As it served the government's needs, the Act greatly hampered the press from access to information that regarded public administration. This led it to being called the "gagging act" by journalists due to its apparent nature to "eliminate the watchdog function of the press" (Hachten *et al.* 1984:13).

#### **2.6.2.9 The Internal Security Act (Act 74 of 1982)**

According to the Official Statement from the office of the Prime Minister P.W. Botha, this Act was created "[t]o provide for the security of the State and the maintenance of law and order; and to provide for matters connected there-with" (Government Gazette, Act 74 of 1982).

This Act blocked, threatened or controlled nearly all forms of political expression including those found in the press. This is due to the Act prohibiting terrorism, propagating the principles of communism and spreading it. The descriptions on what the State considered as terrorism were so vague, that "journalists ran the risk of violating the Act just by reporting on a terrorism incident" (Oosthuizen 2002:5).

Individuals, who were found to be in non-compliance of this Act, were detained without trial, and organisations that were defiant of the Act were banned. The most drastic action against the press was taken in accordance with the Internal Security Act of 1982. Several organisations were banned and action was taken against members of both the press and public (Hachten *et al.* 1984:5-6). Organisations that were banned included two important black newspapers and the Union of Black Journalists (Davis 2003:14).

#### **2.6.2.10 The Protection of Information Act (Act 84 of 1982)**

The purpose of this Act was “to provide for the protection from disclosure of certain information; and to provide for matters connected therewith” (Government Gazette, Act 84 of 1982).

The Protection of Information Act merged several older Acts from the 1950s onward. This Act allowed the government to “prohibit organisations as well as ban individuals” (Oosthuizen 2002:85).

#### **2.6.2.11 The Registration of Newspapers Amendment Act (Act 94 of 1982)**

Although the Registration of Newspapers Amendment Act of 1982 did not directly affect the content of newspapers, it appeared as the biggest threat to the press. This Act required that in order for newspapers to publish they had to become registered. The Steyn Commission recommended this Act.

The government could withhold the registration of a newspaper. The registration of a newspaper could have been withheld or denied, if they were not cautious about the content that they published. Newspapers that were denied registration or could not renew their registration could not publish (Davenport 1987:567; Jackson 1993:122).

### **2.6.3 Rights of the South African press infringed**

Although the State often passed Acts that were under the guise of the press being free, the aforementioned Acts as well as others, denied South Africans from having a free press. This is due to censorship of the press, the State not having constitutional provisions that protected the press and having laws that restricted reporting on certain matters (Whitten-Woodring 2009:398).

According to John Groban (in Jackson 1993:106) the following rights of the freedom of the press were curbed during the apartheid era:

- The foundational rights to establish and publish a newspaper
- Practicing rights for those practicing as journalists
- Editorial autonomy rights to decide what information to publish
- Access rights to allow freedom of access to information

As these rights of the press were curbed, the violations of human rights were hidden. This is because the press had been legally prevented from covering almost all topics of interest that involved the fight for freedom against the apartheid government (Switzer 2000:32).

Not only were the rights of the press curbed, but also those of the South African public. Oosthuizen (2009:93) states that the Acts passed during Apartheid had the following implications for the public:

- The State's pressure on journalists had lead to self-censorship, or they risked not having their articles published or be reprimanded by the State for breaking a law. This negatively affected the informative role of the press because readers had often not received objective and transparent information.
- There was an exclusion of large parts of the South African reality in the press.
- Authoritarian figures could use their discretion in applying laws.
- The public was unable to make informed decisions on important matters regarding the State.

Whilst it may seem that many rights of the press were upheld, it is only because the apartheid government wanted to maintain a facade of democracy in the country (Clay *et al.* 1957:21).

## **2.7 The Steyn Commission**

### **2.7.1 The Commission of Inquiry into the Mass Media**

Prime Minister P.W. Botha set up the "Commission of Inquiry into the Mass Media" in 1980. The Commission was established as an instrument in the State's attempt to control the press in South Africa. This was done to control the oppositional English Press (Hachten 1984:76). It was used as a mechanism that could "defer legislation, to legitimise restrictive measures and to test public consensus (Tomaselli *et al.* 1982:11). The Commissioners "regarded the [reported] flow of information as hierarchical and that the interests of the State trumped the interests of the media (Switzer 1981:41).



Justice M.T. Steyn headed the Commission of Inquiry into the Mass Media which gives it the name it is more commonly known by: The Steyn Commission. It consisted of five members.

The official reason given was that the controversial commission was established to discover, analyse and report on:

"whether the conduct of, and the handling of matters by the mass media meet the needs and interests of the South African community and the demands of the times, and, if not, how they can be improved." (Steyn Commission in Hachten *et al.* 1984:77; Myburgh 2010)

The Commissioners predominantly focused on publications that did not promote the interests of the State, particularly publications that were aimed at black readers. They were also particularly concerned with the role that the press had "in the reporting of police and military news" (Switzer 1981:41-43).

## **2.7.2 Recommendations of the Steyn Commission**

The Commissioners concluded the inquiry by reporting that the press should meet the requirements stated in their mandate (Myburgh 2012). In their review, they accused the press of going against the interests of the State by assisting the nation's enemies (Hachten *et al.* 1984:79). The Commission's recommendations followed two main lines as well as three additional functions that the South African Press had to fulfil if it were to remain free.

### **2.7.2.1 The Journalists Bill**

The Commissioners proposed that all journalists had to be registered, listed and governed by a general council. This council would have forced a code of conduct on journalists and subject them to statutory regulation.

The code that the Commissioners suggested was extremely vague. Due to this, the requirements of the code would have been open for interpretation by the members of the council (Hachten *et al.* 1984:83-83). According to this code, newspapers that employed unregistered journalists risked being fined, and journalists on the roll could be reprimanded, fined or be suspended or removed from

the roll if they did not follow the rules of the code (Myburgh 2010). Therefore, it can be considered that the Commission proposed that the press industry be regulated by the government and any misconduct by journalists and publications could be considered as a criminal offense, and thus punishable by law.

### **2.7.2.2 Shareholders in the Press**

The Commissioners encouraged a wide spread of shareholders in the press. They recommended that no individual was to own more than one percent of the shares of a public newspaper and that a private company could not own more than ten percent of the shares (Hachten *et al.* 1984:82-83; Myburgh 2010). A wide spread of shareholders would prevent one person or company from having a great influence over the contents of publications.

### **2.7.2.3 Additional Functions of the Press**

The Commissioners recommended that the press take on three functions in addition to the key functions that the press already had. These functions were being informative, scrutinising the government, staging public debate and expressing public opinion. It was recommended that the press take on these functions if they wanted to maintain the pseudo-freedom and independence that they had (Switzer 1981:44).

These functions are:

1. That the press was to censor the publication of the activities of the State's enemies.
2. The press was to promote a positive image of the State's security and defence agencies.
3. The press was to encourage a positive public opinion on the Total Strategy, which was a mechanism that the State used to suppress international interest in the anti-apartheid campaign that the State blamed for its troubles (Oelofse *et al.* 2004:1).

### **2.7.2.4 Non-fulfilment of recommendations**

Most of the recommendations of the Steyn Commission had not been followed. Reasons for this included:

- The Newspaper Press Union was obliged to establish the South African Media Council in 1983.
- International influence on the State particularly from the administration of the American President Ronald Reagan.
- Many pro-government, Afrikaans newspapers opposed the recommendations and supported the oppositional newspapers (Hachten *et al.* 1984:84-85; Oosthuizen 2002:94).

### **2.7.3 Concepts of the South Africa Press**

Through its inquiry, the Steyn Commission studied the different concepts found in the press in South Africa in depth. The dominant attribute that separated the different concepts of the press in South Africa was race, which was followed by language (Switzer *et al.* 1979:vii). This has influenced how the Steyn Commission broke the South African press into three different concepts: the English, Afrikaner and Black Concepts of the Press.

#### **2.7.3.1 The English Concept of the Press**

Western Concepts of the press and press freedom had strongly influenced the English newspapers in South Africa. This was due to their belief that the public was entitled to know the happenings inside their government, and that it was the duty of the press to convey this information to the public (Hachten *et al.* 1984:95). Most of these newspapers were owned and financed by English mining capital (Press Freedom Commission 2012:12). As such, the English newspapers often reflected Anglo-American views of press freedom (Hachten *et al.* 1984:93).

The English press was considered the unofficial opposition of the State during apartheid. Prior to his election as Prime Minister, J.G Strydom blamed “the English press for inciting the ‘natives’ against the law of the land” and it was for this reason that he called them the biggest enemy of South Africa (Oosthuizen 2002:92).

#### **2.7.3.2 The Afrikaner Concept of the Press**

The Afrikaner newspapers were consonant with the ideology of the National Party during and prior to the apartheid regime. These newspapers viewed it as their duty to assist the national agenda and support the government (Hachten *et al.* 1984:93).

Afrikaans newspapers were owned and financed by the government and Afrikaans-speaking capital (Press Freedom Commission 2012:12).

During apartheid, Afrikaans newspapers often carried reports that were racist and never critiqued the actions of the State. The Afrikaans newspapers were also reluctant to carry articles that commented on police crimes (Pienaar 1992:12).

### **2.7.3.3 The Black Concept of the Press**

The origination of the black press was closely linked to the establishment of mission stations (Fourie 2001:49). During apartheid, the black press was not necessarily owned or edited by black people, but catered for black readers (Switzer *et al.* 1979:vii). These papers struggled to survive due to financial difficulties that were not experienced by the English and Afrikaans press (Press Freedom Commission 2012:12). Therefore, in addition to the political environment of the country, the economic environment also has a major effect on the media (Whitten-Woodring 2009:599).

Since the inception of black newspapers, these publications represented the aspirations of the Black people and were later closely associated with the political movement against apartheid (Ginwala 1972:.4). Black members of the press had “published newspapers to serve their own communities” (Hachten *et al.* 1984:.98).

## **2.8 An Overview of the Self-Censorship of the South African Press**

### **2.8.1 Beginnings of the Press Council**

The year 1962 signalled the official beginning of self-censorship of the press in South Africa. This was through the establishment of a press council, which was initially known as the Press Board of Reference (PBR). The government threat to control and censor the press lead to the establishment of the PBR. The Afrikaans press and the Argus group supported the establishment of the board.

Although the organisation was set up to be a self-regulatory body, many considered the PBR as an organisation that promoted a form of self-censorship. This was due to the immense pressure that the government placed on the organisation (Hachten *et al.* 1984:50). It was set up by the Newspaper Press Union and used as a

mechanism of nongovernmental control to discipline members of the press who breached the PBR's code of conduct (Independent Newspapers 1997).

The creation of the board prevented government control of the press, it "had no formal government recognition, which prevented the boards from imposing sanctions on journalists, editors and publications" (Martin 1997; Hachten *et al.* 1984:50). Subscription to the board was voluntary and their signatories were exempt from the Publications Control Act (Martin 1997; Independent Newspapers 1997). Even though the board was considered as a form of self-censorship, this exemption was considered as an advantage to join the PBR.

According to the PBR's code, articles were to be accurate, honest and free from malice. This was founded in the press codes of other countries. However, it also included that journalists were to reveal the identities of their confidential sources and had a "special reference that comment should take into account the complex racial problems of South Africa" (Oosthuizen 2002:71). This further reflected on the government's need to control the press.

The board only had a few serious complaints. Due to the lack of complaints, the PBR received more pressure from the government, as it felt that the board was not stern enough, and called for the board to reprimand wayward publications more harshly (Independent Newspapers 1997). Even with the presence of a regulatory body, the government still felt that the press did not behave well and introduced more legislation to control the press (Vernon 2000:116). Some of this legislation was mentioned in section 2.6.2 of this chapter,

The PBR had more pressure placed upon it in the 1970s. This was due to Prime Minister Balthazar Johannes Vorster's threats to close newspapers that incited hatred (Oosthuizen 2002:93). The PBR, which had been restructured as the Press Council, was forced to amend its constitution and code of conduct.

The Press Council was replaced in the 1980s by the SA Media Council. The SA Media Council was established through the recommendations of the Steyn Commission and regulated both print and broadcast media (Oosthuizen 2002:119). The recommendations of the Steyn Commission was in the apartheid

government's favour, and it was due to this that the SA Media Council was seen as having little credibility (Press Freedom Commission 2012:12).

### **2.8.2 The Press Ombudsman's Office and the present form of self-regulation of the press in South Africa**

In 1997, the system of regulation in South Africa changed again. The Press Ombudsman office was established as a way to effectively deal with complaints. With the move away from a council, the Press Ombudsman office created a new press code (Kumwenda 2011:120; Press Freedom Commission 2012:12). The founding body of the Press Ombudsman Office was known as the Founding Bodies Committee and it consisted of:

- Sanef
- The Forum of Editors of Community Newspapers, which is now known as the Forum of Community Journalists
- The South African Union of Journalists
- The Media Workers Association of South Africa
- The Newspaper Association of South Africa
- The Magazine Publishers Association of South Africa.

Each of the organisations appointed one or two members on the Founding Bodies Committee to establish a Press Ombudsman and Appeals Panel. They also administered the Press Ombudsman's Office (Oosthuizen 2002:154; 155). The first Press Ombudsman appointed was Edwin Linington.

The structure of the self-regulatory system changed once again in 2007. The Press Council of South Africa was established alongside the Press Ombudsman's Office (Press Freedom Commission 2012:12). This system is not only in place for members of the public to lodge complaints against publications but also to promote and raise journalistic standards in the industry.

Joe Thloloe was appointed as the new Press Ombudsman alongside the new appointments in the Press Appeals Panel and the newly formed Press Council of

South Africa. The system remained as a self-regulatory mechanism. The PCSA established the new Constitution, Press Code of Conduct and complaints procedure. The new system also has greater public participation with public members serving on both the PCSA and the Press Appeals Panel.

No publication is compelled by law to subscribe to the Constitution of the PCSA. Thus, membership to the council is on a voluntary basis. More than 700 publications in South Africa subscribe to the Constitution of the PCSA (PCSA n.d.). Currently the jurisdiction of the PCSA does not include publications published online (Press Council of South Africa 2011:7).

Even with a code of ethics in place, “journalism in a democracy also means greater government accountability and hence greater access to information for the press” (Berger 1995:21). Due to the voluntary basis of membership, press councils are infamous as their codes are “not always being enforced and often simply act as loose guidelines for professionals” (Clifford *et al.* 2009:69). Even though the PCSA promotes journalistic excellence, the system is in place to deal with complaints and cannot prevent complaints from happening (Press Council of South Africa 2011:33).

There are cases where public members attempt to lodge complaints by the Press Ombudsman against non-member publications. In such instances, the Press Ombudsman approaches the publication to inquire whether it will accept the jurisdiction of the PCSA. If the publication accepts the terms, the regular process of the Complaints Procedure will be followed. In cases where the publication refuses, the Press Ombudsman will advise the complainant accordingly (Press Council of South Africa 2010). There are only two reported cases of non-member publications refusing to adhere to the jurisdiction of the PCSA (Press Council of South Africa 2011:21).

The PCSA appointed a task team to review and evaluate the system of self-regulation in the country. Members of the public were encouraged to make submissions with their recommendations and concerns to the task team during the review period. Submissions could be written or oral. The task team received 53 submissions during their review period, which was from August 2010 till February 2011 (Press Council of South Africa 2011:13). The Press Freedom Commission (PFC), which Sanef and PMSA set up, also received submissions made by the

public during a particular period. The PFC was set up independently in order to review the system of self-regulation and in their final report, give recommendations to the PCSA. During the PFC review period, the commission received 230 submissions (Press Freedom Commission 2012:113-117). They accepted submissions from their inception in July 2011 and its original deadline was set in October 2011 and it was later changed to 15 December 2011, but accepted submissions until February 2012.

This was nearly four times the amount received by the PCSA. The reasoning behind the vast difference in submissions is unknown. Nevertheless, the submission rate is extremely low, considering that the average issue readership of newspaper and magazines in South Africa is 22 998 000 people (SAARF AMPS 2011).

According to the PFC report, the current structure of the press is “independent and free from government and industry interference and control” (Press Freedom Commission 2012:23). An amended press code and constitution was released after the release of the results of the review period of the PCSA. It came into effect on 15 October 2011.

The Press Ombudsman, Press Appeals Panel and PCSA and its jurisdiction will be further analysed in Chapter Four of this treatise.

## **2.9 Types of regulation**

Regulatory bodies can operate at either company level or industry level. For the purpose of this treatise regulation that operates at industry level will be discussed.

Regulatory bodies or councils establish rules and regulations to govern and control conduct within an industry (Wotruba 1997:39). Industries can use one of many forms of regulation. The South African history of the press has shown how it has been regulated in many forms and how the press and the government have used it.



### **2.9.1 Statutory Regulation**

This form of regulation is when the State creates one or many laws pertaining to industry standards (Press Council of South Africa 2011:17). Alternatively, the state establishes the board or council that regulates the industry in question. Not following the standards could be considered as breaking the law, which could result in a monetary fine. Statutory Regulation often receives objections because of fears that it may lead to repressive regulation (Stern 1971:48).

The threats of statutory regulation lead to the creation of the Press Board of Reference in 1962. Nevertheless, even with the PBR in place, Acts such as the Registration of Newspapers Amendment Act (1982) and The Protection of Information Act (1982) were established, not to set a high standard of journalism in the country, but to control the press. Violating the conditions of these Acts were punishable offences. Fears of statutory regulation also lead to the PCSA amending its press code.

Statutory regulation is also known as Government Regulation. The Media Appeals Tribunal proposed by the ANC supports this form of regulation for the press.

### **2.9.2 Co-regulation**

Co-regulation occurs when the industry and the State work together to establish a board or council to create the industry standards (Press Freedom Commission 2012:107).

### **2.9.3 Independent co-regulation**

Independent co-regulation occurs when the industry and members of the public create the industry standards and regulations. The public membership is dominant in this form and there is no involvement from the State (Press Freedom Commission 2012:7). The Commissioners of the PFC, recommends this form of regulation for the South African press (Press Freedom Commission 2012:67).

### **2.9.4 Independent Regulation**

In this form of regulation, neither the State nor the industry is involved. The regulatory council consists of members of the public and is independent from both

the industry and government (Press Council of South Africa 2011:18; Press Freedom Commission 2012:107).

The disadvantage of Independent regulation is that the regulators do not always have the insight, expertise and knowledge of the industry they are regulating (Press Council of South Africa 2011:26). Independent regulation is also known as Public Regulation.

### **2.9.5 Self-regulation**

This form of regulation is when the industry creates a regulatory council to regulate itself. The rules and standards of the industry are set and enforced by members of the industry (Gupta *et al.* 1983:417).

An advantage of a self-regulatory system is that it is cost effective for members of the public to lodge a complaint as it costs less than filing a lawsuit (Franklin *et al.* 2005:240). In addition to this, industries that have self-regulatory systems have a standard to adhere to for production processes (Stern 1971:50).

In order for an industry to be self-regulated, the asymmetry in power distribution between larger and smaller organisations must not be too big, or concerns of larger organisations having too much control may be raised (Gupta *et al.* 1983:422). In addition, some theorists believe that self-regulation should not exist on a voluntary basis, but be enforceable and industry-wide (Stern 1971:49).

In many cases, the threat of statutory regulation coexists alongside industry self-regulation (Gupta *et al.* 1983:417). This was shown above in the history of the press in South Africa.

Although the South African press advertises itself as self-regulated, the structure of the Press Ombudsman's Office, PCSA and Press Appeals Panel is not true to the form of self-regulation. This is due to the strong presence of public representation on both the PCSA and Press Appeals Panel (Press Council of South Africa 2011:26). The system of self-regulation in South Africa is very similar to independent co-regulation. However, unlike in independent co-regulation where the public has the dominance, in the PCSA the press has the dominant membership.

## **2.10 Conclusion**

This literature review had two purposes. The first was that a clear and concise understanding of the theories used in studies of the press is discussed. This is to understand the roles and functions of the press in society. Understanding the theories of the press shows how the industry operates. It also showed the influence and power that the press has over the society in which it exists.

The functions and the roles of the press also indicated the importance of having a free press. This background information, allows an understanding of why the press should be regulated in a manner that is not restrictive, while simultaneously holding members of the press accountable to the public. This is because the press has a profound impact on the socio-political and economical environments in which it operates.

The second purpose of this literature review was to provide insight on how the apartheid government has influenced the past and current practices of the press. The apartheid government imposed unethical laws with harsh penalties on the press in the country. This not only affected the freedom of expression for members of the press, but also greatly affected the human rights of South Africans who were suppressed during apartheid and fought for their freedom. This shows that a lack of freedom of the press can lead to the violation of human rights.

The apartheid government placed tremendous pressure on the press's self-regulatory system when it first began in 1962. Since then, regulation of the press in the country evolved multiple times. Once again, the system of self-regulation in the country is under immense pressure from the country's leading party, the ANC. These attempts have been compared to the laws that were implemented during the apartheid regime. The PCSA has come to a point where press regulation has to re-evaluate its position in society in order to maintain press freedom in the country or have the press succumb to statutory regulation.

This chapter has laid the foundation for this treatise and the following chapter will provide an analysis of the methodology and the texts chosen for analysis.

## **CHAPTER 3: RESEARCH DESIGN AND METHODS**

### **3.1 Introduction**

The following chapter describes the research design and methods that are used in this treatise. The stance that is taken is that of an interpretivist approach. The primary method of data collection for this treatise is qualitative.

The following data will be analysed in this treatise:

- The previous, and recently amended press code of the PCSA
- Findings of the task team review appointed by the PCSA
- The findings of the PFC
- Analysis of submissions to the PCSA's task team during the review period
- Analysis of submissions to the PFC
- Case study of Mr Mkhusele Khusta Jack's complaint against The Herald
- Case study of Mr Jimmy Manyi's complaint against City Press
- Case study of MUSA Capital's complaint against City Press
- Case study of Nelson Mandela Bay Municipality's complaint against The Herald.

### **3.2 Research Framework**

This section will introduce the research framework of this treatise.

#### **3.2.1 Research Question**

Does the current practice of self-regulation of the press in South Africa through the mechanism of the Press Council of South Africa, the Press Appeals Panel and the Press Ombudsman, promote ethical journalistic practice?

#### **3.2.2. Aims and Objectives of the treatise**

This section introduces the aims and objectives of this treatise.

### **3.2.2.1 Research Aims**

The first aim of this treatise is to analyse the previous, and recently amended, press code complaints procedure and Constitution of the PCSA. This is to observe how these mechanisms of self-regulation have developed.

The second aim is to investigate public perceptions of the Press Ombudsman, PCSA and Press Appeals Panel. This will be done through selected submissions made to the PCSA and PFC during their review periods.

Lastly, this treatise aims to investigate how the complaints procedure works through the analysis of the selected case studies.

### **3.2.2.2 Research Objectives**

The research objectives of this treatise are:

- To compare the newly amended press code with the previous press code
- To determine awareness and perception through the study of selected submissions to the PCSA and PFC
- To analyse the complaints procedure through the use of case studies.

## **3.3 Literature analysed in this treatise**

For the purpose of this treatise the following texts will be used:

- Selected case studies on complaints dealt with by the PCSA using its previous amended Constitution and press code as well as the amended documentation
- Submissions by individuals and organisations to the PCSA's task team and the PFC during their respective review periods
- The press code that was in use until October 2011 and the amended press code that is in use from October 2011 to December 2012.

### **3.3.1 Sources of the literature used**

All of the literature that is analysed in this treatise has been sourced from public platforms. The previous press code, complaints procedure and Constitution of the PCSA were available to the public on their website, [www.presscouncil.org.za](http://www.presscouncil.org.za) until they were replaced with amended versions. These versions are still available to the public on the website. The copies of the original submissions made to the PCSA's task team are also available on their website.

The PFC has placed the public submissions they have received during their review period on their website, [www.pressfreedomcomm.org](http://www.pressfreedomcomm.org). However, in August 2012 it was found that the domain name was no longer registered to the PFC.

### **3.4 Case Studies: Complaints submitted to the PCSA**

Complaints submitted to the PCSA that will be analysed are those of Mr MK Jack versus the EP Herald and Mr J Manyi versus City Press. These complaints were submitted when the PCSA used the previous press code and Constitution.

The complaints that were submitted to the PCSA after the amended documentation came into effect are those of MUSA Capital versus City Press and Nelson Mandela Bay Municipality versus The Herald.

#### **3.4.1 Mr MK Jack vs The Herald**

Mr Mkhuseleli Jack submitted a complaint to the Press Ombudsman regarding the article *Big guns built shoddy homes*, which was published in The Herald on November 11, 2009.

Mr Jack's complaints were that the article was in his opinion, defamatory towards him. According to Mr Jack there was no evidence directly linking him to the badly built houses. He also claimed that the article was published without proper investigation. In response to the article Mr Jack stated the following in his defence:

- Mr Jack took on the construction work for the houses more than a decade prior to the publication of the article
- The article incorrectly stated that he was a subcontractor of the houses

- He had not received a single complaint about the houses he had built
- The entire process was guided by building professionals and was certified by professionals (Retief, 2010b)

#### **3.4.2 Mr J Manyi vs City Press**

The president of the Black Management Forum (BMF), Jimmy Manyi submitted complaints on two articles that were published in the City Press. The articles, *Manyi survives the week* (October 10, 2010) and *BMF task team on Manyi comes under fire* (October 24, 2010) were both written by Mpho Sibanyoni.

The main complaint for both of Mr Manyi's submissions was that the information published was untrue. According to Mr Manyi, there was no task team reviewing him, the headline of the first article was misleading and that the statement in the article that he declined to comment on was untrue (Retief, 2010a).

#### **3.4.3 Musa Capital vs City Press**

The organisation, Musa Capital submitted a complaint to the Press Ombudsman's office about the article *Fight for mine cash-Administrator says Bakubung should sue financial advisers*, which was published in the City Press newspaper on 11 September 2011.

Musa Capital submitted their complaints to the office of the Press Ombudsman, stating the following as reasons for their complaint:

- Inaccurate representation of a report, that has not been officially tabled by the community
- Deliberate damage to the organisation's reputation
- The article is not accurate or fair (Retief, 2012a)

#### **3.4.4 Nelson Mandela Bay Municipality vs The Herald**

Media Management Officer of the Nelson Mandela Bay Municipality, Kupido Baron, submitted a complaint to the Press Ombudsman's office about an article and cartoon published in The Herald. The article in question was published on 16 April 2012 and titled *No horsing about as farmer combats high petrol prices*. The cartoon relating to this article was published the following day.

Mr Baron submitted the complaints on the following basis:

- The commentary by the farmer was racist
- The cartoon was meant to cause the Nelson Mandela Bay Municipality harm (Retief, 2012b).

### 3.4.5 Selection of cases

The selection of the newspapers used for this study is imperative and reflects the varied landscape of the press in South Africa.

Table 3: Comparison between The Herald and City Press

	<b>The Herald</b>	<b>City Press</b>
Prominence	The Herald is the oldest newspaper in South Africa.	City Press is the fourth most read newspaper in the country.
Region	The Herald serves Nelson Mandela Bay and the surrounding areas.	The City Press is a national newspaper.
Published	The Herald is published daily during the week.	City Press is published on Sundays.
Publishers	Avusa Media	Media 24

Information for this table was gathered from the Media 24 website (Media 24, n.d) and The Herald website (The Herald, n.d).

These two newspapers were chosen because they represent different parts of the press. The Herald publishes local, national and international news and has the “biggest daily readership of all offerings in the Port Elizabeth metropolis” (Avusa Media, n.d). City Press publishes news from the African continent and the rest of the world with a separate section for Sports, Business and Careers respectively (Media 24, n.d).



The following information, which has been obtained from the PCSA website, provides further reasoning behind the choice for the cases:

Table 4: Comparison between Mr Jack vs The Herald and Mr Manyi vs City Press

	<b>Mr MK Jack vs The Herald</b>	<b>Mr J Manyi vs City Press</b>
Complainant	Mr Jack is a high profile South African businessperson.	Mr Manyi is a high profile businessperson and BMF president.
Ruling made by	Deputy Ombudsman Johan Retief	Deputy Ombudsman Johan Retief
Outcome	<p>The Herald was found in breach of Articles 1.1, 1.3 and 1.4.</p> <p>Mr Jack's claim of poor investigation was dismissed.</p>	<p>City Press was found in breach of Articles 1.1 and 1.5.</p> <p>Five of Mr Manyi's complaints were dismissed.</p> <p>Prior to the ruling, City Press had published an apology to Mr Manyi for incorrectly referring to a draft document in the first story.</p>
Sanctions (if applicable)	The Herald was to publish a summary of the finding, alongside an apology to Mr Jack.	The City Press was reprimanded and directed to publish a summary of the finding, alongside an apology to Mr Manyi.

Information gathered from *Jack vs The Herald* (Retief, 2010b) and *Manyi vs City Press* (Retief, 2010a)

The complainants are similar because they are both high profile businesspersons and the rulings on their cases were made by the Deputy Ombudsman.

The main difference in the outcomes of their cases is that only one of Mr Jack's complaints had been dismissed, where as Retief dismissed five of Mr Manyi's complaints.

Table 5: Comparison between Musa Capital vs City Press and Nelson Mandela Bay Municipality vs The Herald

	<b>Musa Capital vs City Press</b>	<b>NMBM vs The Herald</b>
Complainant	Musa Capital is an investment specialist company in Africa.	The Nelson Mandela Bay Municipality, one of eight municipalities in South Africa.
Ruling made by	Deputy Ombudsman Johan Retief and Press Appeals Panel members Neville Woudberg and Ethel Manyaka	Deputy Ombudsman Johan Retief.
Outcome	City Press was found in breach of Art. 1.1, 1.2, Art. 5.1 and 5.3 of the press code.  Three other complaints were dismissed.	The complaint was completely dismissed as The Herald was not found in breach of the press code.
Sanctions (if applicable)	City Press was to publish an apology to Musa Capital with a summary of	Not applicable.

	the finding.	
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Information gathered from *Musa Capital vs City Press* (Retief, 2012a) and *Nelson Mandela Bay Municipality vs The Herald* (Retief, 2012b).

### **3.5 Case studies: Submissions to the PCSA**

For the purpose of this treatise, selected submissions to the PCSA's task team during its review period in 2011 will be analysed. Members of the South African public as well as stakeholders were invited to submit suggestions and concerns to the task team of the PCSA during its review process.

#### **3.5.1 The Review Process**

In 2010 the PCSA set up a task team to review the press code and processes as the current office was nearing the end of its five year term. The purpose of the task team was to review:

- The South African Press Code of Conduct
- The Constitution of the Press Council
- The Complaints Procedure
- To review the running of the current system of the PCSA
- To review practices around the world
- To invite suggestions from the South African public and other stakeholders.

The task team was to report back to the PCSA with recommendations for change in the Code, Constitution and the running of the Council.

#### **3.5.2 Source of submissions to the PCSA**

The task team invited the public to give suggestions for a revised code through the use of adverts on radio, television, online, in print, as well as in news stories and columns. The task team received 58 written and oral submissions from the public. These submissions were sent by individuals, academics and well respected organisations.

### **3.5.3 Submissions chosen from the PCSA review**

For the purpose of this treatise, six of the submissions made to the PCSA will be analysed. These submissions are from the following organisations and individuals:

- The Law Society of South Africa (LSSA)
- The Freedom Front Plus (FFP)
- Media Monitoring Africa (MMA)
- Scripture Union (SU)
- Reg Rumney
- Julie Reid

#### **3.5.3.1 The Law Society of South Africa**

This submission was made from the office of the Co-Chairpersons of the Law Society of South Africa, Mac Boqwana and Peter Horn, acting on the behalf of the Law Society of South Africa (herein referred to as LSSA).

The LSSA represents 20 000 attorneys and 5 000 candidate attorneys in South Africa. On 21 October 2010, the LSSA submitted a suggestion to the PCSA to voice the organisation's concerns about the threat to the freedom of the press and access to information.

The main concerns of the LSSA are:

- The external regulation of the press through a government appointed tribunal, resulting in government oversight over the media.
- Criminally sanctioning or fining journalists for publishing inaccurate stories.

#### **3.5.3.2 The Freedom Front Plus**

The Freedom Front Plus (herein referred to as FFP) is a right-wing political party that protects and promotes Afrikaner interests. Advocate Anton Alberts, who is the Member of Parliament for the FFP, submitted the suggestion on behalf of the organisation.

As an organisation, FFP suggests that the press should be made more responsible in order to prevent the government from continuing with the proposed Media Appeals Tribunal. For this purpose, their submission focuses predominantly on the press code, in particular the reporting of news that is inaccurate, untrue or prejudicial.

### **3.5.3.3 Media Monitoring Africa**

Media Monitoring Africa's Director, William Bird made the submission on behalf of the organisation. The main concerns of the MMA are as follows:

- Raising public awareness of the Press Ombudsman, PCSA and its code and constitution.
- To fill the gaps in the press code so that it will be of international standards.
- Tackling the challenges in the complaints procedure.
- Increasing independence of the Press Council
- Exploring the legal issues surrounding the waiver

In order to demonstrate the effectiveness of the Press Council, Media Monitoring Africa intends on carrying out independent research into the submissions made by the PCSA's task team

### **3.5.3.4 Scripture Union**

Scripture Union (SU) is an international and inter-denominational Christian movement. Sikelelwa Dlanga submitted the suggestion on behalf of the South African branch of the organisation. Accordingly, Dlanga sent the submission on behalf of and with the consent of some South African churches.

Their submission's main concerns are reporting on children, pornography, blasphemy as well as media freedom and true freedom through responsible reporting.

### **3.5.3.5 Reg Rumney**

Reg Rumney is a well respected journalist, who has been active in the industry for over two decades. He focuses on the fields of business, finance and economics. He is also the Director of the Centre for Economics and Journalism in Africa at Rhodes University and the Executive Director of The Business Map Foundation, a not-for-profit organisation that focuses on the economic transformation of South Africa.

Rumney's submission to the task team is in the form of an essay, 'A Media Appeals Tribunal: Proposals, Perceptions and Practicalities'. The purpose of his paper is to add to the debate on press freedom and regulation in the light of the proposed Media Appeals Tribunal.

### **3.5.3.6 Julie Reid**

Julie Reid is a respected South African media analyst and academic from the Department of Communication Science at the University of South Africa (UNISA).

Her submission is in the form of an opinion piece that she wrote for the online newspaper The Daily Maverick. She had submitted the column, which was published before the task team asked for public submissions, as it had covered her opinions on the Press Code and the operations of the Press Council, as well as suggestions on how it should be changed.

Reid states two main concerns in her submission to the task team. Her first concern is that the Press Code does not allow for third party complaints. The Press Code only allows members of the public who are directly affected by an article to submit complaints. Reid's second concern is that PCSA should increase public awareness about the organisation and the complaints procedure.

### **3.5.4 Selection of Submissions**

The selection of each submission was made with the intent to analyse submissions that were diverse in background context, and main concerns.

Table 6: Selection of submissions for suggestions to the PCSA

<b>LSSA</b>	<b>FFP</b>	<b>MMA</b>	<b>SU</b>	<b>Reg Rumney</b>	<b>Julie Reid</b>
Legal representative	Political representative	Media monitoring	Religious representative	Journalist and academic	Media analyst and academic
<b>MAIN CONCERNS</b>					
Fears of government interference in the media.	Press code's stance on reporting that is inaccurate, untrue and prejudicial.	Public awareness about the PCSA.	Children, pornography and blasphemy.	Debate on press freedom in light of the MAT.	Not allowing third party complaints.
Criminally sanctioning or fining journalists.		PCSA and code to fill international standards.	Media freedom and true freedom.		Public awareness about the PCSA.

Information in table gathered from Comments by the Law Society of South Africa (Boqwana and Horn, 2010), Proposal for revised code (Alberts, 2011), Strengthening the self regulator system in South Africa (Bird, 2010), The Christian response to the Press Ombudsman hearings (Dlanga, 2011), A Media Appeals Tribunal: Proposals, Perceptions and Practicalities (Rumney, 2010) and Written Submission to the South African Press Council for the Process of Review of the Press Council, Press Code and Constitution of the Press Council of South Africa (Reid, 2011).

### **3.6. Case studies: Submissions to the PFC**

For the purpose of this treatise, selected public submissions to the PFC during the commission's review period in 2011 will be analysed. The Commission invited members of the public as well as organisations to submit their concerns and suggestions concerning the self-regulatory system in South Africa.

#### **3.6.1 The Review Process**

The PFC was set up by Sanef and PMSA as a result of the review published in August 2011 by the PCSA on its self-regulatory processes (Press Freedom Commission 2012:5). The PFC is independent and was established in order to study the system of self-regulation of the press in the country as well as to conduct research to assist in creating the most effective regulatory system for the industry (Press Freedom Commission, 2012:5).

The primary objective of the commission was to ensure quality journalism and press freedom that enhances "our democracy which is founded on human dignity" (Press Freedom Commission 2012:7).

#### **3.6.2 Source of submissions to the PFC**

The PFC also used advertisements on radio, television, online as well as newspapers. The Commission invited the public to submit their own suggestions. They received 230 submissions. These submissions were sent by individuals, academics and well respected organisations.

#### **3.6.3 Submissions chosen from PFC report**

For the purpose of this treatise, six of the submissions made to the PFC will be analysed. These submissions are from the following organisations and individuals:

- Musa Capital
- South African Council of Churches (SACC)
- University of Stellenbosch: Journalism Department
- Children's Rights Centre (CRC)



- National Union of Mineworkers (NUM)
- Trudie Blackenberg

### **3.6.3.1 Musa Capital**

Musa Capital was chosen as the company had submitted multiple complaints to the Press Ombudsman's Office. The publications that the company submitted complaints against were The Citizen, Sunday World, CitiBusiness and more recently, City Press.

Director of Musa Capital, Will Jimerson, sent the submission on behalf of the organisation. The main concerns of Musa Capital are:

- That the system is flawed.
- The system is not as time efficient as it claims, due to the lengthy process it took to resolve their complaints. The first took six and a half months and the second took ten months.
- Journalists had no urgency when responding to the Press Ombudsman.

### **3.6.3.2 The South African Council of Churches**

The South African Council of Churches (herein referred to as SACC) is composed of twenty-six denominations that work on the moral reconstruction of South Africa by focusing on the issues of those who are spiritually, socially and economically marginalised.

The main concerns of the organisations are based on the wellbeing of their members and marginalised communities.

### **3.6.3.3 University of Stellenbosch: Journalism Department**

This submission was made by senior members of the Journalism Department at the University of Stellenbosch. In their submission, they supported the system of self-regulation of the press. Their main concerns are:

- The deterioration of the relationship between the State and the media.

- That the PFC is searching for a universal form of press freedom, instead of focusing on the South African context.
- That the Media Appeals Tribunal is an attempt to misuse the media.

#### **3.6.3.4 The Children's Rights Centre**

The Children's Rights Centre is a network of organisations that promote children's rights and are against child abuse. The concerns of the organisation are:

- Accessible systems which allow the public to gain information should be created.
- Whistle blowers must be protected

#### **3.6.3.5 The National Union of Mineworkers**

The National Union of Mineworkers is a union that protects the health and safety issues of mineworkers. They also assist in protecting the rights of mineworkers in their work place. The National Union of Mineworkers has close ties to the ANC and also advocates the Media Appeals Tribunal. The union also included a complaint they sent to the editor of The Sowetan newspaper after it published a story on the union. Their main concerns are:

- A legislative vacuum prevents sections of the media from being held accountable
- The Press Ombudsman lacks the power to impose penalties to those found guilty of breaking the code.

#### **3.6.3.6 Trudie Blanckenberg**

Miss Blackenberg wrote her submission as a member of the South African public. Concerns that she raised in her submission are:

- That the media industry and government dominate the environment for press freedom
- That even though the PCSA made changes to improve the system of self-regulation, the emphasis on print media ownership remains the same

### **3.7 The South African Press Code of Conduct**

The latest amended press code of conduct came into effect on 15 October 2011. The previously amended press code was launched on 3 December 2007. Along with the press code, the complaints procedure and Constitution of the PCSA were also launched.

The research for this treatise had begun prior to the launch of the amended press code. The terms of the current representatives in the office of the PCSA, Press Ombudsman's office and Press Appeals Panel is coming to an end and this prompted an internal review of the organisation and its documentation. Therefore, this treatise will analyse and compare the old and newly amended codes of conduct.

#### **3.7.1 The Newly Amended Press Code of Conduct**

The Council did not remove anything from the press code, but made additions (Retief, 2011). The previous code had eight articles, and the new one now has thirteen.

### **3.8 Ethical Considerations**

Although this is a qualitative study with an interpretivist approach, it in no way attempts to harm or infringe on the rights of the journalists, members of the South African public nor the members and affiliates of the PCSA.

As such, this treatise will strive for honesty by not fabricating or falsifying information. All information will be reported in a manner that is truthful, honest and fair. The outcome of this treatise is not affected by any personal or financial interests. Confidential information that may be harmful to the well-being of any individuals will not be disclosed.

### **3.9 Conclusion**

By analysing the cases, a clearer understanding of the PCSA's complaints procedure and its processes can be obtained. Through analysing the suggestions that were submitted to the PCSA's task team, the perceptions and awareness of the PCSA and the press code can be understood. In comparing the old and new codes,

it can be determined whether the code has improved and in what manner this change has taken place.

The following chapter will consist of the detailed findings of this treatise. That is, the analysis of the selected complaints, the suggestions submitted to the PCSA and PFC, as well as the comparison between the old and newly amended press code.

## **CHAPTER 4: RESEARCH FINDINGS**

### **4.1 Introduction**

In an attempt to gain an understanding of the system of self-regulation of the press in South Africa, the research findings of this treatise will be discussed in this chapter. This research is done through the analysis of selected texts that were sourced online from the press council's website. Articles were sourced from the newspapers, City Press and The Herald.

Therefore, the findings of this research are based on data that was collected through the method of content analysis as described in Chapter 3.

### **4.2 The South African Press Code**

The press code outlines the industry standard for journalists and publications that subscribe to its jurisdiction. Over the past year the press code had been amended in order to suit the demands of society and the changing role of the press.

### **4.3 The Old Press Code**

The PCSA set up the Press Code in order to protect freedom of expression, as it is set out in Section 16 of the Constitution of the Republic of South Africa. However, this protection does not extend to:

- Propaganda for war
- Promoting violence
- Promoting hate speech based on race, ethnicity, gender, religion, sexual orientation, a physical or mental disability or age.

The code was established to be as unbiased and accurate as possible in the system of press regulation. The first press code had eight sections. In October 2011 the amended press code came into effect with twelve sections. A year later in October 2012, the Press Ombudsman and his office announced further changes to both the code and system that will come into effect in January 2013. These changes will be discussed in the next chapter.

Initially the press code was written in a formal and legalistic manner. It consisted of a preamble and eight sections. These sections were:

1. Reporting of News
2. Discrimination and Hate Speech
3. Advocacy
4. Comment
5. Headlines, Posters, Pictures and Captions
6. Confidential Sources
7. Payment Articles
8. Violence

The complaints procedure stated that the complainant may only be a “person or body of persons [who] has a direct, personal interest in the matter complained of” (Press Council of South Africa 2010). Therefore, if the report does not directly affect a member of the public, he or she could not submit a complaint to the Press Ombudsman if they felt that a publication had published a report that he or she perceives as not representing the journalistic practices and standards endorsed by the press code.

#### **4.4 The Aims and Objectives of the PCSA**

According to the PCSA’s Constitution, the aims and objectives include the following:

- Promotion and preservation of freedom of the press and freedom of expression.
- Promotion of excellence in journalistic practice and ethics.
- The settling of complaints against publications that subscribe to the press code. (Article 1)

#### **4.5 The Complaints Procedure**

A member of the South African public or a body of persons could submit a complaint to the Press Ombudsman, on the condition that they were directly affected by the contents of the report in dispute. In an attempt to simplify the submission of complaints, complainants could make use of various channels. Complaints could be submitted in person, telephonically or in writing.

According to the complaints procedure, in order for the Press Ombudsman to accept a complaint, the complainant needed to “in writing waive any right to claim

civil relief of whatsoever nature directly or indirectly related to or arising out of the complaint” (Press Council of South Africa 2010).

The proprietor of a publication may delegate the editor to act on his or her behalf in dealing with the complaint. The PCSA presents the case against the publication, as “media organisations are held responsible [when a complaint is lodged and] not individual journalists” (Mnookin 2004 cited in Clifford *et al.* 2009:69).

#### **4.6 The Amended 2012 Press Code**

This amended press code came into effect in October 2011 and will be used until the end of 2012. The previous code was revised and more sections were added. Nothing was removed from the previous code, but some subsections had been made into sections of their own.

The press code initially had eight sections, the amended version has thirteen. Two new sections were added and three subsections were made into sections of their own. Four of the sections in the previous code were not revised. The sections in the amended press code are:

1. Reporting of News
2. Gathering of News
3. Independence and Conflict of Interests
4. Privacy
5. Dignity and Reputation
6. Discrimination and Hate Speech
7. Advocacy
8. Comment
9. Children
10. Violence
11. Headlines, Posters, Pictures and Captions
12. Confidential and Anonymous Sources
13. Payment for Articles

## **4.7 Analysis of the Old Press Code**

The following section analyses the original press code of the PCSA and Press Ombudsman's Office in detail. This code was in use until 9<sup>th</sup> October 2011. All complaints lodged before this date, were processed according to this code. This included complaints that were still in the process of being finalised after the new code had come into effect.

Please note that although the order of the sections in the press code is maintained in this analysis, the numbering of the sections in this analysis differs from that of the press code. The preamble is also included in this analysis. In the code the preamble is not numbered, but in this treatise it is and this creates an offset in the numbering.

### **4.7.1 The Preamble**

The original preamble was written in a legalistic manner and did not appear to flow coherently. It had three sections, titled 'Whereas', 'Now Therefore' and 'Definition'. There was no clear introduction to the sections and appeared as a few statements added before the code.

The first section, 'Whereas' dove directly into an extract from the South African Constitution, Section 16 of the Bill of Rights. The preamble stated that the code upholds the basic rights and freedoms stated in Section 16.

The second section, 'Now therefore' introduced the Press Council as a self-regulatory mechanism that is in place to provide impartial arbitration to complaints that arise from the code.

The third and final part of the preamble defined what the PCSA considered as child pornography. After the third section of the preamble, the conditions of the adopted code are stated without any further introduction.

### **4.7.2 Reporting of News**

This was the first section in the code and it commented on the manner in which articles were reported on. It had subsections, which are also known as articles. It stated that the members that subscribe to it are to report news in an unbiased, fair



and truthful manner. It also advocated against distortion and exaggeration of facts in news reports.

In subsection 1.3, the code states that “what may reasonably be true, having regard to the sources, may be presented as fact” (Press Council of South Africa 2010). The code does not disallow the presentation of information that is not based on fact. The section does however state that “opinions, allegation, rumour or supposition, shall be presented in such manner as to indicate this clearly” (Press Council of South Africa 2010). Information that is not reasonably true can be printed, provided that the preconditions are met. However, it needs to be considered that opinions, allegations and rumours in news reports can be damaging to the reputations of individuals and organisations, even if the preconditions are met.

Subsection 1.6 of the code declared that a publication would have to “make amends for publishing information or comment that is found to be inaccurate by printing, promptly and with appropriate prominence” (Press Council of South Africa 2010). However, the code does not give a clear definition of its understanding of the terms ‘promptly’ and ‘appropriate prominence’. No time frame or repercussions were specified should the publications fail to make the amends promptly. It is not clear whether ‘appropriate prominence’ was dependent on the placement of the original report or if it was dependent on the severity of the newspaper’s transgression.

Subsection 1.7.1 presented the first public interest clause in the previous code. It stated that: “visual representation of sexual conduct may not be published, unless a legitimate public interest dictates otherwise” (Press Council of South Africa 2010). The code did not clarify what may be considered as a legitimate case of public interest. Public interest will be further discussed later in this chapter.

The only mention of children in this code was in subsection 1.7.2, which declared that “child pornography shall not be published” (Press Council of South Africa 2010). Child pornography is illegal in South Africa, therefore it would be safe to assume that reports that were accompanied with images of child pornography would likely be prosecuted in the legal system.

There were no regulations that protected the rights of children, such as guidance and sensitivity when dealing with reports that involve children, in particular

when the report is based on sensitive matters such as abuse. There was also no regulation on protecting the identities of children in sensitive reports, and reports that could indirectly affect the well being of children such as reporting on a news story about a school staff member. There was also no regulation on publications aimed at children, especially as children are considered a vulnerable group.

Subsection 1.9 stated that news that was obtained in a manner that is unfair, dishonest or involves a breach of confidence cannot be published, with the exception of cases of legitimate public interest.

Subsection 1.10 regulated reporting on the private lives of individuals, which it states should be reported on with exceptional care. However, there was an exception, due to the public interest clause.

#### **4.7.3 Discrimination and Hate Speech**

This section contains three subsections that regulated reports referencing “race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental disability or illness, or age” (Press Council of South Africa 2010). The press code included sexual orientation or preference, which is not included in the South African Constitution, Bill of Rights section 9.2.

The Bill of Rights (1996) states that people cannot be discriminated on the basis of their race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. Although the Bill of Rights does not include sexual orientation or preference, the press code excludes some of the references made in the bill, such as belief and language.

#### **4.7.4 Advocacy**

This section of the code contained three subsections, stating that publications were allowed and entitled to advocate their own views, provided that there was no misrepresentation, distortion or suppressing of facts and ensuring that fact and opinion were clearly distinguished.

#### **4.7.5 Comment**

As with advocacy, the press were entitled to comment on news pieces of public importance, provided that the comment that was made is fair and clearly indicated as comment. It also had three subsections. The first entitled the press to make fair and honest commentary or criticism on events and actions of public importance. The second stated that commentary had to be clearly presented as such, and the third stated that commentary made must be free from dishonest motives and malice and that it should take into account the facts of the matter.

#### **4.7.6 Headlines, Posters, Pictures and Captions**

This section referred to the content that accompanies reports. The three subsections stated that headlines, posters and pictures were to give a reasonable description of the report. Posters were not to be misleading and pictures could not be manipulated.

#### **4.7.7 Confidential Sources**

There was only one article in this section which stated that, “the press has an obligation to protect confidential sources of information”. Protecting a journalist’s sources may be understandable in reports that affect the public at large, but this can be open to abuse. Can a journalist trust the authenticity and veracity of the information that is given by a source that wants to remain anonymous? Under the guise of a confidential source, it would be easy to pass on false information as fact, even if the journalist thoroughly researched the story. Only in cases where the livelihood of the source and the source’s family is put at risk should confidential sources be used.

The code failed to limit or control the use of confidential sources, especially if alternative routes could be used instead. This section was vague and open to misuse and abuse by the sources as well as by journalists and publications.

#### **4.7.8 Payment for Articles**

This section stated that persons who are known for notorious behaviour may not be paid to feature in articles. This rule was extended to their associates, colleagues, friends and family members. This section also stated that this could be overridden due to public interest.

The scope of the restrictions for payment of articles is too narrow and should not be limited to persons involved in criminal behaviour and their associates.

The section did not regulate payment to people in general, only those known to be involved in notorious behaviour. This section did not include payment to people who are suspected to be engaged in criminal behaviour. Also, this section did not consider the veracity of persons who expect to be paid to feature in reports. As with confidential sources, individuals who expected payment could have fabricated information.

#### **4.7.9 Violence**

This section reminded publications to exercise responsibility concerning publishing articles and photographs that feature violence and brutality.

#### **4.8 Analysis of the 2012 Amended Press Code**

This section analyses the amended press code. The code came into effect on 10<sup>th</sup> October 2011 and will be in use until the end of December 2012.

##### **4.8.1 The Preamble**

The format of the preamble of the amended code is reader friendly. Unlike the rigid structure of the previous preamble, this one eloquently introduces the press code. It is easier to read and to understand.

The preamble begins by explaining social responsibility of the press in serving society. It recognises the importance of the press in society and the rights of citizens as found in the South African Constitution in Section 16 of the Bill of Rights.

The preamble now also contains important statements that define the code and what publications that adhere to it stand for. The following declaration is the most important of these statements:

As journalists, we commit ourselves to the highest standards of excellence, to maintain credibility and keep the trust of our readers. This means striving for the maximum truth, avoiding unnecessary harm and acting independently (Press Council of South Africa 2010).

#### **4.8.2 Reporting of News**

In this code, this section only has eight subsections. Three subsections in the previous code were moved to other sections and there is one new subsection. With the exception of rewording a few sentences Art. 1.1 to 1.4 and 1.6 remained the same as they were in the previous code.

According to Art.1.5 journalists are to seek the views of the subject, or subjects, of critical reportage before the report is published. However, if there are grounds to believe that evidence will be destroyed, sources will be intimidated or the report may be prevented from being published; it is not necessary to do so. The amended press code adds that if the publication is unable to receive commentary, this needs to be stated in the report.

Art.1.7 was reworded and some pertinent information was moved to another section. In the previous code, Art.1.7 consisted of 1.7.1 and 1.7.2, whereas in this code there is only Art. 1.7. In the old code Art.1.7.2 stated “Child pornography shall not be published” (PCSA 2010) and this was moved to a new section on children.

Art.1.7 now states that reports, photographs and sketches that relate to indecency or obscenity must be presented in a sensitive matter due to the moral climate of the country. This subsection also maintains that images of sexual conduct cannot be published, unless it is done in the case of public interest.

The only new subsection that has been added to the Reporting of the News is Art. 1.8, which merely states “Journalists shall not plagiarise” (Press Council of South Africa 2010). Although this rule is paramount, the complaints declaration restricts the use of this rule. The office of the Press Ombudsman only accepts third party complaints if there is no risk of those directly affected taking the publication to court. This is a serious offence, which may also have legal implications should a journalist be guilty of plagiarism.

#### **4.8.3 Gathering of news**

This section is the first one from a previous subsection to be reworked. This section was previously Art.1.9 and has been reworded into a new section with two parts.

Art. 2.1 states that news must be obtained in a manner that is fair, honest and legal, unless the public dictates otherwise. Art. 2.2 states that public representatives must identify themselves as such. However, this can also be overlooked in a case of public interest.

#### **4.8.4 Independence and conflict of interest**

Independence and conflict of interest is the first new section in the amended code. This section attempts to prevent bias in reports and the possibility of the reader doubting the veracity of reports. The press may not allow different factors such as commercial, politic, personal and non-professional interests as well as accept bribes or gifts that may affect or influence reportage.

It must be indicated when outside organisations have contributed to the costs of newsgathering at all times. This is to ensure that the advertising content is not confused with editorial content.

#### **4.8.5 Privacy**

The previous code had Art.1.10 when dealing with privacy. Privacy is now a section on its own with four subsections.

The previous code's Art. 1.10 is now the Art. 4.1. The public interest clause remains in this piece. Art. 4.2 and 4.3 protect the identities of rape and sexual abuse victims and the HIV/AIDS status of individuals affected. Their identities can only be revealed with their consent or in the case of children, that of their legal guardian. The code does not take into consideration potentially sensitive cases. Such cases may include vulnerable groups such as developmentally disabled adults who may not be able to anticipate the consequences of their actions, and may need another person to act on their behalf.

#### **4.8.6 Dignity and Reputation**

Dignity and Reputation is another new section. This section is an extension of privacy. It states that exceptional care must be taken when dealing with matters that involve the dignity and reputation of people. It also maintains a public interest clause which may override the right to privacy.

#### **4.8.7 Discrimination and Hate Speech**

The code condemns discrimination and derogatory references based on

race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental disability or illness, age, or other status except where it is strictly relevant to the matter reported (PCSA 2011).

Journalists cannot discriminate nor use derogatory terms when commenting in reports. However, some terms can be used in the report if it is being quoted from someone being reported on, or if that person is relevant to the report.

#### **4.8.8 Advocacy**

This section is untouched and remained the same as in the previous code.

#### **4.8.9 Comment**

With the exception of changing “events of public importance” to “events of public interest” (Press Council of South Africa, 2007; Press Council of South Africa, 2011) this section remains the same. The changing of the word ‘importance’ to ‘interest’ is noteworthy, as something that interests the public may not necessarily be important for the public to know. This change therefore widens the sphere of what can be reported and commented on.

#### **4.8.10 Children**

The section on children is the biggest improvement in the press code. In the previous code child pornography, previously Art.1.7.2 was the only regulation in the press code that protected children. This section of the code also begins with a description of child pornography and follows with a statement that child pornography should not be published.

Art. 9.2 states that exceptional tact and care must be taken when reporting on children as they are a vulnerable group. A parent or guardian must give consent for the child to be interviewed or photographed, especially if the report may cause harm to the child involved.

The third and final subsection protects the identity of children who are victims of abuse and children who have been charged or convicted of a crime. This section does not have a piece on the protection of the identities of children of sexual abuse, as it is already covered under Privacy in Art. 4.2.

#### **4.8.11 Violence**

The section on violence remains unchanged from that of the previous code.

#### **4.8.12 Headlines, Posters, Pictures and Captions**

This section remains unchanged from the previous code.

#### **4.8.13 Confidential and Anonymous Sources**

This section was previously known as 'Confidential Sources' and has two new subsections.

One of the new subsections states that the use of anonymous sources should be avoided, unless there is no other option, and in such cases, exceptional care needs to be taken. This is important because it attempts to limit the misuse of confidential sources. However, dealing with confidential sources should be regulated further.

The code should further state how information from anonymous sources should be regulated. For example, anonymous sources should only be used, if there is a risk of the source and his or her family members losing their jobs or being put in harm's way. Anonymous sources should not be used if the source merely does not want to be known.

The second new subsection states that information that is a breach of confidence may not be published unless there is a legitimate case of public interest.

#### **4.8.14 Payment for Articles**

The previous code regulated the payment for articles to people who are engaged in, or are suspected to be engaged in criminal behaviour. The code now has a more general description for this section. It now states that payment to informants should



not be made when a crime is involved. However, if the information should be published due to public interest, an exception can be made.

#### **4.9 Changes in the press code**

Although there have been some changes in the code, the release of the amended code seemed rushed and as such, some important facts have been overlooked.

The change in the tone of the code is very important. It can be assumed that the amended code is easier to understand for journalists as well as members of the public. The legalistic manner of the previous code had put members of the public at a disadvantage, as it was difficult to understand. It is now easier for members of the public to understand the code, which will assist the members of the public when compiling information for their complaints.

The section on children is one of the biggest improvements in the code. It protects children who are victims of crime and sexual abuse. Although it regulates reporting on children, there is no regulation on publications whose target audience is children or reports in newspapers that are aimed at children.

The press code also offers no protection for adults who are in vulnerable groups such as the developmentally disabled who are unable to foresee the consequences of statements made to the press.

#### **4.10 Public Interest**

In the PCSA's first code, three subsections and one section had the clause which allowed the infringement of those subsections, provided that it was done in the case of legitimate public interest. In the amended code, the public interest clause appears eight times.

The definition of public interest is broad and varies amongst different interest groups. Identifying issues of public interest is "to identify particular interests with general interests or to camouflage self-interested advocacy" (Lewis 2006:694).

The PCSA does not provide a description of what it considers to be of public interest in either of the codes. As such, the context of how it can be used is very vague in the code. This is problematic as it is up to the Press Ombudsman and the

Press Appeals Panel to decide what they consider as public interest in the individual cases.

These are the sections in the old code in which the rule could be overridden if it is found to be in the case of public interest:

1.7.1 A visual presentation of sexual conduct may not be published, unless a legitimate public interest dictates otherwise.

This did not take into the consideration that the publication may potentially be exposing children to pornography. It also does not state how the images may be published. Even if the publication of images containing sexual conduct is published, publications should not be able to place these images on the front page. If a visual representation of sexual is published it, the front page should have a kicker that warns readers of the images inside so that caution may be taken with children and sensitive readers.

1.9 News, obtained by dishonest or unfair means, or the publication which would involve a breach of confidence, should not be published unless a legitimate public interest dictates otherwise.

It should be indicated how a legitimate public interest warrants a breach of confidence. This should be limited to individuals who serve in public office and who offer services to the government.

1.10 In both news and comment the press shall exercise exceptional care and consideration in matters involving the private lives and concerns of individuals, bearing in mind that any right to privacy may be overridden by a legitimate public interest.

The press code does not clearly state how the personal right to privacy may be overridden. A context should be allowed for public interest to be used as a legitimate claim to override the right to privacy.

Instead of 'public interest', it should be of 'public importance' as topics that interest the public are not necessarily important to the public. It should also only apply to individuals who are in positions of authority and power and only in cases

where the private lives of these individuals affect their positions in business and politics.

7. No payment shall be made for feature articles to feature people engaged in crime or other notorious misbehaviour or to convicted persons of their associates, including family, friends, neighbours and colleagues, except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

Payment for information, regardless of whether the person is a criminal or associated with a criminal or criminal behaviour, questions the veracity of any informant who received a payment for their commentary.

The aforementioned articles were the only ones that could be overridden in the case of public interest. Three new sections had public interest included in them and the previous code's Art. 1.9 was split into two new subsections under different headings. The four articles remained in the amended code and payment had some changes made to it. In its new section, the article on payment now states:

13. The press shall avoid chequebook journalism where informants are paid; particularly when criminals are involved, except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

This is a good development because the definition of who can be paid has been broadened and is no longer restricted to criminals and people who are associated with them or criminal behaviour. However, payment for articles in terms of public interest should be questioned, in particular if it relates to matters of the state. If an informant has information that should be published in a legitimate case of public interest, ethically it should not be paid for, and if it is not of public interest, payment for the information is not needed.

Section 2 of the code, 'Gathering of News,' was the first subsection rewritten into its own section in the amended code. Art. 2.1 was part of the previous code's Art. 1.9. Subsection 2.1 now states:

2.1 News should be obtained legally, honestly and fairly unless public interest dictates otherwise.

Art. 2.2 of the amended press code can also be overridden in a case of legitimate public interest.

2.2 Press representatives shall identify themselves as such, unless public interest dictates otherwise.

The code should include a better description for the context in which this can be done.

Section five 'Dignity and Reputation,' relates to the section on privacy and also has a public interest clause. It states:

5. The press shall exercise exceptional care and consideration in matters involving dignity and reputation, bearing in mind that any right to privacy may be overridden only by a legitimate public interest.

As with the code's rules on privacy, this section should also be more specific in what context public interest can be used.

The amended code protects the identity of children. The identity of a child cannot be revealed if the child could be harmed by this. This cannot be done without the consent of a custodial parent or similar responsible adult.

9.2 Exceptional care and consideration must be exercised when reporting on matters where children under the age of 18 are involved. If there is any chance that coverage might cause harm of any kind to a child, he or she should not be interviewed, photographed or identified unless a custodial parent or similarly responsible adult consents or a public interest is evident.

This should be clearly defined as the phrase 'similarly responsible adult' is too vague. Only a child's parents, guardian or social worker should be appointed in order to make decisions on behalf of the child.

If photographing a child or revealing their identity in the case of public interest has the potential to cause harm, prior to publication the newspaper must assist in

putting measures in place in order to protect the child. The code should be rigid in its definitions of public interest in this section. It should only allow reports where it is in the child's best interest to be interviewed, identified or photographed without the consent of a parent or guardian.

This section should also be extended by stating that information that can indirectly identify a child due to traits known in their communities should be avoided. Unique disabilities, traits, awards and residence should be avoided in reports where it can potentially identify the child and put him or her in harm's way.

Art. 12.3 was the latter part of Art. 1.9 in the previous code. It still states that a breach of confidence is allowed if done in the case of legitimate public interest.

The term public interest is too vague to be used in the code, as in each section it can be applied to different contexts. Also because public interest is so vague that it can be misused, an appropriate term would be public importance. Public importance limits what can be overridden in the regulations.

#### **4.11 Case studies of complaints sent to the Press Council of South Africa**

In this section selected complaints lodged by the Press Ombudsman's Office will be analysed. Firstly, two cases lodged during the previous code will be analysed followed by two cases that were resolved with the amended code. A comparison between the disputes of the old and amended press code will then be made.

##### **4.11.1 Old press code**

Two cases were chosen with rulings that were made on the regulation of the old press code. These are:

- Mr Mkhusele Khusta Jack vs The Herald; and
- Mr Jimmy Manyi vs City Press

Jack's complaint against The Herald will be analysed first and then Manyi's complaint against City Press.

#### **4.11.1.1 Mkhuseleli Jack vs The Herald**

Mkhuseleli Jack is a prominent businessperson and politician. He submitted and lodged a dispute at the office of the Press Ombudsman on the article *Big guns built shoddy homes* that was published in The Herald on November 11, 2009. The article was written by Khanyi Ndabeni.

The report is on top Nelson Mandela Bay businesspersons who have been implicated in building 'shoddy' and badly built low-cost homes in the municipality during the 1990s. The badly built houses, which totalled to 1852 houses, were to be demolished or rectified.

Jack based his submission on the fact that the article was defamatory towards him as there is no evidence that linked him to the badly built houses. His submission had two main complaints:

1. The article is defamatory towards him;
2. The article had not been properly investigated prior to publication

He submitted the following points as reasons for his complaints:

- He took on the work more than 10 years before the article was published;
- The article incorrectly stated that his business Illinge Development Service was subcontracted by the building company Stocks and Stocks, when it was in fact a joint venture;
- Jack had not received any complaints on the houses when he built them; and
- His company had received a certificate of completion (Retief, 2010).

The deputy Press Ombudsman, Johan Retief made the ruling for this case. With the first complaint, he found The Herald in breach of Art. 1.1, Art. 1.3 and Art. 1.4. He dismissed the second complaint for poor investigation.

#### **4.11.1.2 Analysis of Jack vs The Herald**

The report states Jack as being one of the implicated persons involved building the shoddy homes, allegations which the report states that he denies. According to the report on the case between Jack and The Herald, Jack did not admit to building the

badly built homes and that he had built approximately 200 houses for the municipality.

When Khanyi Ndabeni visited the areas where the low-cost houses were built, she found that some of the houses were badly damaged and falling apart. Ndabeni failed to confirm that the houses that she saw were indeed built by Jack. Therefore, Jack and Illinge Development Service cannot be directly linked to the badly built houses. According to Art. 1.4 in the press code that was in effect during the time of this case, “Where there is a reason to doubt the accuracy of a report and ... it has not been practicable to verify the accuracy of a report, this shall be mentioned in such report” (Press Council of South Africa 2010). The report did not verify who had built the houses which were falling apart and as such could not directly link any of the contractors to them. Therefore, the report also breaches Art. 1.1 in the code, as it fails to accurately report who is implicated in the construction of these homes as allegations of Jack being involved is presented as fact. It also breaches Art. 1.3 as it presents allegations as fact, when it should have been reported as allegations.

The article stated that the company in which Jack was the chairperson, Illinge Development Service, was subcontracted by the building company Stocks and Stocks. According to Jack, this information was untrue as it was a joint venture between the companies. Thus, the reporter breached Art.1.1 in this statement as well.

The complaint that the article had not been properly investigated was dismissed. Retief dismissed this complaint as the reasons Jack gave for his complaint were in fact published in the original story. The deputy Ombudsman found The Herald in breach of three Articles in the press code and dismissed only one of Jack’s complaints.

Mr Retief made the ruling on 21 June 2010. This is six months after the article was published, keeping in mind that the office of the Press Ombudsman only allowed members of the public to submit complaints up to 14 days after the article had been published. The time frame of this case goes against the PCSA’s claims that complaints lodged via the Press Ombudsman’s Office is a fast alternative to the legal route.

The Herald was sanctioned to publish an apology for any harm caused to Jack along with a summary of Retief's findings. They had to send the office of the Press Ombudsman a copy of the apology prior to publication. A copy of this dispute's ruling can be found in Addendum 4 and the original can be found online at <http://presscouncil.org.za/Ruling/View/mkhuseli-khusta-jack-vs-ep-herald-2174>.

#### **4.11.1.3 Jimmy Manyi vs City Press**

High profile businessperson, Jimmy Manyi submitted complaints based on two reports published in the City Press newspaper. His complaints were on the reports *Manyi survives the week* (published 10 October 2010) and *BMF task team on Manyi comes under fire* (24 October 2010). Both reports were written by Mpho Sibanyoni.

The first article, *Manyi survives the week*, reports that Manyi was in a struggle with senior members who were attempting to oust him as the president of the Black Management Forum (herein referred to as BMF). It was reported that some of the previous BMF presidents formed part of a group within the BMF called the "Concerned Group" who were trying to remove the presidency from Manyi. It stated that Manyi was battling with the CG in order to keep his position. It reported that this information was given to the newspaper in a media statement release. It also stated that Manyi set up a special board meeting to reverse a decision made at the BMF's annual general meeting (herein referred to as AGM) to investigate him. The article also states that he declined to comment when the journalist approached him at a gala dinner.

The second article, *Manyi comes under fire*, is a follow up story on the first article. According to this article, the BMF had set up a task team to investigate the allegations that were made against Manyi. The task team consists of members of the BMF task team.

In his submission, Manyi had seven complaints, six complaints for the first article and one complaint for the second. Most of the complaints Manyi stated in his submission referred to the fact that what was stated as fact in the articles was untrue. His complaints for the first article were:

- It was not true that the AGM requested that the board of the BMF set up a task team to investigate Manyi;



- That there was never an official BMF media statement released;
- It was untrue that he attempted to reverse the AGM's decision for a task team to investigate him by convening a special board meeting;
- It was untrue that he was advised against attempting to reverse the decision made by the AGM and going ahead with the special meeting that he had convened;
- It was untrue that he had declined to comment at the gala dinner; and
- The headline of the article is misleading (Retief, 2010).

For the second article, Manyi's complaint was that the articles' contents were untrue as no task team was established to investigate him.

#### **4.11.1.4 Analysis of Manyi vs City Press**

In reference to his first complaint, Manyi claims that there was no decision made to investigate him and that his presidency of the BMF was never threatened. According to Manyi, the claims made by the concerned group were never endorsed by the structure of the BMF.

City Press retaliated, stating various other facts that Manyi does not dispute. This includes that a task team was appointed to investigate claims made by the concerned group. It also contained a letter to the board which had allegations that were made against Manyi. In addition, according to City Press, it is apparent that the concerned group directly attacked Manyi and that this attack can be seen as a threat to his presidency (Retief 2010).

City Press provided two documents to support their claims to the office of the Press Ombudsman. These documents were a letter by former BMF president Lot Ndlovu that was addressed to the board of the BMF and a document titled *Terms of Reference: BMF Task Team*.

The purpose of Mr Ndlovu's letter was to call an urgent board meeting. The reason for the meeting was that the concerned group believed that unless the presidency voluntarily offers to vacate office, a motion of no confidence should be passed (Ndlovu, 2010 cited in Retief, 2010). The letter had lead to the creation of the second document, which City Press had given to the office of the Press Ombudsman.

The BMF had appointed a task team consisting of five members, which was appointed with the task of investigating the concerned group's process of raising their grievance as well as whether the issues that they raised had any substance.

According to Retief, although it is clear that the task team is to investigate the issues raised by the concerned group against Manyi, it is impossible to do so without focusing on Manyi. According to Art. 1.3 in the code used, "Only what is reasonably true can, having regard to the sources of the news, may be presented as fact," (Press Council of South Africa 2010). It can be stated that the task team is investigating Manyi, as they are investigating allegations that are predominantly directed at him. As such, Retief felt that the article insinuating that Manyi's position as the BMF president was threatened is reasonable. However, a quote from the article states that "Manyi is currently engaged in a bruising battle to maintain his position as president again past presidents" (Sibanyoni, 2010). The article does not insinuate that Manyi's position is threatened, it states it as fact. Nevertheless, Retief dismissed the first complaint made by Manyi.

Manyi's second complaint was that the BMF never released the media statement published in the article. The document that was used was actually a draft statement from the concerned group and not an official document from the BMF. When City Press was made aware of the error, the newspaper followed Art.1.6 by publishing an apology and retraction on 17 October 2010 as they were in breach of Art.1.1 and Art. 1.4 of the code. According to the apology, the concerned group sent the statement to Manyi to release as an official statement from the BMF, but it was never approved. The concerned group sent it to City Press, who quoted it as an official statement from the organisation (City Press, 2010). The office of the Press Ombudsman has a copy of this apology. As the newspaper has made amends to rectify this error, they will not be sanctioned for breaching Art. 1.1 and Art. 1.4.

Regarding his third complaint, Manyi does not dispute that he had convened a special meeting nor does he deny that the meeting was called to reverse the AGM's decision. Instead, Manyi claims that there was neither a decision at the board meeting nor the AGM to investigate him. Manyi also does not dispute that the information was sourced and referenced by three independent and confidential sources. Retief states that although the newspaper is justified in its reportage, it does

not necessarily mean that the statement is true (Retief, 2010a). This reflects the risk of using anonymous sources; although it is not disputed by Manyi, the veracity of the statements from the sources can be questioned. If Sibanyoni obtained the statement from only one source, the veracity of the statement would have been questioned further. Therefore, Retief dismissed this complaint.

Although City Press did not respond to Manyi's fourth complaint, it was also dismissed by Retief. In this complaint, Manyi denies that he was advised against attempting to reverse the decision made by the AGM.

According to Retief "it can be reasonably argued that the statement in question can be ascribed to three independent [and anonymous] sources immediately prior to the sentence in dispute" (Retief, 2010a). Therefore, he found that the statement was justified.

The fifth complaint was that the journalist stated that Manyi declined to comment on the story when approached at the gala dinner. Manyi disputed this by saying he had not declined, but was approached at an inopportune moment as he was entertaining three Ministers at his table and the journalist did not make an appointment to meet with him. According to Sibanyoni, he had attempted to contact Manyi through phone calls and sms before and after the gala dinner. Unfortunately, because Sibanyoni had lost his cell phone, there was no way to verify these claims.

Manyi also denies having received a sms from Sibanyoni, and that he did not answer Sibanyoni's call the day after the gala, as he had attended a church meeting and does not take his phone with him to church. As such, it is clear that Manyi never declined to comment on the article, all evidence shows that Manyi was contacted at inopportune moments, making the reportage inaccurate and unfair. Retief found City Press in breach of Art. 1.1 due to the reportage that Manyi declined to comment. The newspaper should have stated that the newspaper had been unable to contact Manyi to comment, or delayed publication of the story in order to schedule an appointment in order to interview Manyi for the story. City Press argued that after the second article, they had offered Manyi a right of reply to respond to the articles, but he had declined.

Manyi's sixth complaint was that the headline of the article was misleading. According to Art. 5.1 in the press code, "headlines and captions to pictures shall give a reasonable reflection of the contents of the report or picture in question" (Press Council of South Africa 2010). The accuracy of the content in the article may be challenged, partially due to the inaccurate media statement quoted, but the headline correctly represents the content of the article. The article is about the concerned group trying to remove Manyi from the post of BMF president and a task team was created to investigate the concerned group's claims on Manyi. Therefore, according to the article, his position is threatened. Taking these facts into account, the headline can be considered as a reasonable reflection of the article.

For the second article, *Manyi comes under fire*, Manyi's only complaint was that there was no task team investigating him. As Retief stated in the outcome of Manyi's first complaint, it is impossible to have a task team investigate the claims made about Manyi without focus being put on him. In addition, the article is a follow up to the *Manyi survives the week*, as such Retief found that the article was justified in the manner in which it was reported.

As City Press had already published an apology for one complaint, Retief did not consider it in the findings. In total, he dismissed five of Manyi's complaints and found City Press to be in breach of Art. 1.5, as it did not attempt to correctly seek Manyi's views in critical reportage. Retief considered the newspaper to be in breach of Art. 1.1, as the article stated that Manyi declined to comment on the story, when in fact he was consulted at inopportune moments.

Retief made the final ruling on 10 December 2010, two months after the publication of the first article. He reprimanded City Press as the journalist failed to contact Manyi at an opportune time prior to publication. They were to publish an apology to Manyi for any harm caused due to incorrectly stating that he declined to comment on the matter, and provide the Press Ombudsman's Office with a copy of the apology prior to publication. No deadline is given to City Press for the publication of the apology, and they are required to add the following at the end of it: "Visit [www.presscouncil.org.za](http://www.presscouncil.org.za) (rulings, 2010) for the full finding" (Press Council of South Africa 2010). Retief had not included this condition in the findings of 'Mkhuseli Khusta Jack vs The Herald' case.

Manyi was not happy with the findings of his case and applied for leave to appeal to the Judge Ralph Zulman, the Chairperson of the Press Appeals Panel. His application was refused. City Press published the apology to Manyi in February 2011, nearly five months after the first article and two months after Retief's findings.

A copy of this disputes finding can be found in Addendum 7 and the original can be found online at <http://presscouncil.org.za/Ruling/View/jimmy-manyi-vs-city-press-2217>.

#### **4.11.2 Amended press code**

Two cases were chosen in which the disputes were resolved using the amended press code. These cases are:

- The Nelson Mandela Bay Municipality vs The Herald; and
- Musa Capital vs City Press

The Nelson Mandela Bay Municipality's (NMBM) complaint against The Herald will be analysed first and then Musa Capital's complaint against City Press.

##### **4.11.2.1 The Nelson Mandela Bay Municipality vs The Herald**

Mr Kupido Baron, the Media Management Officer of Nelson Mandela Bay made a dispute on behalf of the Nelson Mandela Bay Municipality (NMBM). In his submission he had two complaints on two pieces that were published in The Herald.

The first piece is the article *No horsing about as farmer combats high petrol prices* which was written by David Macgregor and published on 16 April 2012. The article is about Shawn Warren, a farmer who uses horses to plough his farm due to the high cost of petrol and maintaining a tractor.

The second piece is a cartoon drawn by Mark Wiggett. The cartoonist used the article as inspiration. It was published the day after the article on the 'Opinion and Analysis' page. The cartoon consisted of four panels arranged in a square. The two panels on top were headlined "If we changed back to horse power, things would change for the better..." and the bottom two with "Or would they?" The first panel in the top row shows two men riding horses while reading newspapers and the second shows a woman leading a horse that has two children on its back. The third panel in

the second row shows mayhem as a horse and its rider cause a rampage and force people to jump out of its way. The fourth panel shows a horse and cart with four people and has the word municipality on the side. The horse is attached backwards onto the cart and therefore the horse is unable to move forward and pull the cart.

Baron has one complaint for each of the pieces. His first complaint is that the paper published a comment made by Warren which is racist. Baron's second complaint is that Wiggett's cartoon was meant to cause maximum harm to the NMBM.

#### **4.11.2.2 Analysis of the NMBM vs The Herald**

Baron complained that the article was racist due to the following sentence: "One of the nice things about horses is that they always come to work on time on a Monday morning and they don't have a *babelaas* [hangover]" (Warren, 2012 cited in Macgregor, 2012).

According to Baron, it is a racist and derogatory statement that was aimed at black workers as the majority of the work force on farms is black and coloured workers. If the statement was racist, the newspaper would have breached Art. 2.2. Part of Art. 2.2 which states that a person's race cannot be referred to in a manner that is prejudicial. No worker is singled out in the article. The article never mentions the race of Warren's workers.

The complaint that the article is racist is based on assumptions and the newspaper argues that it cannot be assumed that a specific race was being identified and attacked. The Herald also claims that it was a satirical representation as many employers are frustrated by workers who do not show up for work. It was a general comment which was jokingly made by Warren. Retief dismissed this complaint as the comment was not aimed at any specific race and because allegations of racism are serious matters that should not be taken lightly.

The second complaint is that the cartoon was meant to cause maximum harm to the NMBM as it attacks the intellectual capacity of the municipality's administration. According to Art. 3.1 newspapers were entitled to advocate their own views, provided that fact and opinion is clearly distinguished. Wiggett's cartoons appear on the 'Opinions and Analysis' page and are therefore classified as opinion. Also, according

to Art. 4.2 and 4.3, the press is entitled to comment on matters provided that it is fair and an honest expression of opinion and that it is done without dishonest motives. According to The Herald, the cartoonist was making a satirical comment as a form of freedom of expression and that the cartoon was not aimed at NMBM but at municipalities in general.

Retief found that the cartoon criticised municipalities, but was not meant to be malicious and dismissed the complaint. The first article was published 16 April 2012 and Retief made the ruling on 14<sup>th</sup> August 2012.

In Addendum 10 a copy of this disputes finding can be found. The original findings can also be found online at <http://presscouncil.org.za/Ruling/View/nelson-mandela-bay-municipality-vs-the-herald-2345>.

#### **4.11.2.3 Musa Capital vs City Press**

This complaint is one of four separate complaints that Musa Capital sent to the office of the Press Ombudsman. The complaint was from the Musa Capital's director Will Jimerson and was sent through its PR Company, Headlines. Jimerson's complaints are based on the report *Fight for cash mine heats up – Administrator says Bakubung should sue financial advisers*, written by Andile Ntingi and was published on 11 September 2011. Ntingi reported on the management and financial affairs of the Bakubung tribe by Abel Dlamini. According to the article, the report recommended that the Bakubung tribe file a law-suit against their financial advisors, Musa Capital. Musa Capital reportedly helped the tribe raise R527 million, which has become the centre of conflict. Allegedly, Musa Capital and members of the Bakubung royal family had benefited from this money.

Jimerson had four main complaints for this article. These complaints were:

- Deliberately omitting relevant information that contributed to the context of the story
- Presenting a report that has not been officially accepted or dismissed by the community as factual
- Deliberately damaging the reputation of Musa Capital
- The newspaper is neither fair nor accurate in its reportage.

#### **4.11.2.4 Analysis of Musa Capital vs City Press**

In Musa Capital's first complaint, Jimerson explained that the article excluded pertinent information that established the correct context of the story. The newspaper was given an official report from Musa Capital that refuted claims made by Dlamini.

Jimerson asserted that the newspaper was made aware that Dlamini's report contained many inaccuracies and claims that were unsupported. The newspaper responded to this, citing that the report given to them by Musa Capital was not official documentation as claimed and that some of the quotes in the article were extracted from this report. They also stated that they afforded the company a right of reply.

It was found that although parts of the document of Musa Capital were used, it was not mentioned that it was a report, which contained independent information. The article did not mention the report from Musa Capital. This omission created unbalanced in the reportage, therefore putting the article and newspaper in breach of Art. 1.2 of the amended code.

Due to the omission of the report and publishing the unfound allegations of Dlamini, Musa Capital alleges that the newspaper had deliberately intended to damage the reputation of the company. According to the newspaper, the article had been published due to public interest; it was based on fact and was not written out of malice as Musa Capital was quoted extensively in the article.

These are the parts to Musa Capital's third complaint:

1. Jimerson alleges that the journalist was aware that a person was attempting to damage Musa Capital's reputation due to financial reasons. Jimerson also claims Ntingi should have doubted the accuracy of Dlamini's report due to a phone call from an anonymous source that was taken in his presence as well as the head of Musa Capital's PR agency, Headlines.
2. A clear bias against Musa Capital due to the prominent use of a plug quote from Dlamini's report.
3. By omitting the fact that Dlamini was no longer the Administrator of the community the facts are distorted.
4. The journalist did not uphold his promise to Musa Capital that the article would include information about Dlamini's bad history.



5. A picture of protest was included in the article. The picture and caption is malicious as it led readers to believe that the protest was against Musa Capital.

According to Ntingi the call he took in Jimerson's presence was personal and it was a private conversation that did not involve the story. According to the findings, Ntingi was balanced as he listened to both sides of the story. In addition, the plug quote does not indicate bias as it is a journalistic practice. It was found that it is irrelevant that Dlamini was no longer the administrator and that the report was official as even though it was not yet tabled, it was commissioned by the provincial government. The panel could not make any findings on allegations of Dlamini's bad intentions.

City Press apologised for publishing the photograph, which the newspaper blamed on an error. Their apology confirmed that City Press was not malicious in the article. However, they did incorrectly caption the photograph by linking it to the article. As such, the paper was found to be in breach of Art. 5.1 and 5.3 as the caption did not give a reasonable representation of the article and the photograph was misleading.

Six parts of Musa Capital's complaint was dismissed and City Press was found to be in breach of four parts of the press code. They were sanctioned to apologise to the Musa Capital for not mentioning the official report from Musa Capital which contained independent sources as well as for the inaccurate photography and caption that was published. In addition, City Press is to publish a summary of the finding on the same page and section that the article was published. City Press must also add "Visit [www.presscouncil.org.za](http://www.presscouncil.org.za) (rulings, 2012) for the full finding" to the apology and must give the Press Ombudsman Office a copy of the apology prior to publication.

The findings were based on written submissions made by Musa Capital and City Press as well as a hearing. The hearing was held on 29 February 2012. The rulings were made by deputy Ombudsman Johan Retief, a press representative and a public representative of the Press Appeals Panel. The press representative was Neville Woudberg and the public representative Ethel Manyaka.

The final ruling was made on 5 March 2012, six months after Musa Capital submitted their complaint. There were various delays in the process of this dispute, predominantly due to City Press not complying and responding to emails from the office of the Ombudsman. City Press's first response to the Ombudsman's office was two and a half months after the complaint had been lodged (Jimerson 2012:5).

The findings of this dispute can be found online at <http://presscouncil.org.za/Ruling/View/nelson-mandela-bay-municipality-vs-the-herald-2345> and a copy of these rulings can be found in Addendum 12.

#### **4.11.3 Comparison of findings in cases of the old and amended codes**

The findings of these cases indicate some positive development as well of areas of possible growth.

Out of the four cases that were chosen, the shortest amount of time taken to resolve the dispute was two months. The average time taken was six months.

Table 7: Time taken by the PCSA to resolve the selected cases

<b>Jack vs The Herald</b>	<b>Manyi vs City Press</b>	<b>NMBM vs The Herald</b>	<b>Musa Capital vs City Press</b>
Six Months	Two Months	Five Months	Six Months

As seen in the table above, the disputes chosen involving The Herald newspaper, took longer than City Press' disputes on average. The findings do not include the reasons why the disputes took that long to resolve. The time frame of these disputes goes against the idea that the Press Ombudsman's Office is a faster route than the court system.

Over time, the sanctions that newspapers were given became more defined. In the timeline of the selected cases, Jack vs The Herald is the first. In the sanction, the newspaper was merely required to publish a summary of the finding along with an apology. The newspaper was required to submit a copy of the text before The Herald published it.

The next dispute was Manyi vs City Press and the newspaper also had to include a summary of the finding. Unlike the previous dispute, Retief defined on what points the newspaper had to apologise to Mr Manyi and also included a statement that directed readers to the full finding on the website of the PCSA.

Musa Capital vs City Press is third in the timeline. The previously mentioned conditions are included in City Press's sanction. The newspaper is given a detailed explanation on how the text should be written. City Press is also told to publish the text in an appropriate place, which would be the same page and section in which the disputed article was placed. No sanctions were made against The Herald with the NMBM case.

This shows that the sanctions placed on publications may have become stricter since at least 2010, when the Jack vs. The Herald case was resolved. Although there is still room for improvement, this growth is good.

#### **4.12 Public submissions**

Both the PCSA and PFC asked the public to submit their opinions and views on press regulation in the country. They allowed submissions from organisations, academics and members of the public. Submissions could be written or oral and could be sent to the organizations using various channels. The PCSA also had public hearings in Johannesburg, Cape Town, Bloemfontein, Durban and Port Elizabeth. It was reported that there was a poor attendance of press and public members at these hearings, particularly with the latter group (Reid, 2011).

In total, the task team of the PCSA received a paltry 53 submissions and the PFC received 230. A few of the submissions submitted to the PCSA were also submitted to the PFC.

##### **4.12.1 Public submissions to the PCSA**

For the purpose of this treatise, six submissions addressed to the task team of the PCSA were chosen to be analysed.

#### **4.12.1.1 The Law Society of South Africa**

Mac Boqwana and Peter Horn, the Co-Chairpersons of the Law Society of South Africa (LSSA) made the submission on behalf of the organisation. The LSSA consists of six constituent members in the country. They represent 20 000 attorneys and 5 000 candidate attorneys in South Africa.

In its submission to the PCSA, the LSSA refers to a press release that the organisation had released a month earlier. The press release voiced their concerns on the proposed Media Appeals Tribunal (Boqwana and Horn 2010:1). The society was concerned that if the tribunal was brought into legislation it would be accountable to Parliament and it would be used as a mouthpiece for those in power. The PCSA considers itself accountable to the public. In addition, the LSSA believes that the MAT will be ineffective because it would not restore the public's confidence in the press. This is because many people in the country believe that the PCSA and the press industry were going through a crisis of confidence.

The press release also voiced their concern on the calls to criminally sanction or to fine journalists for inaccuracies in stories. The LSSA is against criminalising journalists, but considered that certain sectors of the press lacked accountability and this could be developed through strengthening the jurisdiction of the Ombudsman.

This press release is used as the basis of the LSSA's submission. Boqwana and Horn set the context of the rest of their submission by raising the society's views of the MAT and the Protection of Information Bill. They believe that both are hostile to the democracy of the country and allege that the MAT may be a ruse to draw attention away from the Protection of Information Bill. According to the LSSA, the bill would 'water down' the provisions that are granted in section 32 of the Bill of Rights.

The LSSA raised many substantial factors that were detrimental to the PCSA. The MAT and bill shows that the PCSA was facing a crisis of confidence. According to the LSSA the crisis stems from three important factors (Boqwana and Horn 2010:5-6). These factors are:

1. The different viewpoints raised by spokespersons. There were, and still are, conflicting viewpoints of not only those in office, but also of the ruling party. Different viewpoints cause confusion, which leads to a lack of confidence.

2. It is not suitable for the State to have control over the press, as the press would become a puppet of the State. As such, it would no longer be a free press and not be able to fulfil its roles and functions, as stated in Chapter Two.
3. Public frustration with parts of the print media causes them to lose confidence.

This frustration is caused by:

- a. A lack of quality found in journalism. The LSSA has suggestions on how to improve the quality of journalism.
- b. Government officials being targeted by the press. Public officials are bound to be under scrutiny. The press is a watchdog that is accountable to the public and is required to report on what happens in public office. Therefore, reporting on the people who are in these positions cannot be avoided.
- c. Potential prejudice about power relations.

The LSSA did not only voice their concerns but also offered solutions. For the perceived low quality of journalism they have made the following suggestions:

1. Parity of publicity for an apology.

If a publication is sanctioned to write a retraction or apology it should receive the same amount of exposure that the article in dispute received. It can be seen in the analysed case between Musa Capital and City Press that this recommendation of the LSSA has been put in place by the PCSA. In this case, City Press was ordered to place their apology in the same section and page as the article that was disputed. However, City Press was not ordered to place any other prominence on it that the disputed article may have received. One argument against this prominence may be that, the apology is already taking up space in the paper, thus the paper does not generate any revenue for that space. Placing any more prominence on the apology would be taking up more revenue.

2. Publications need to represent the full scope of views.

According to the LSSA, even if a publication is dedicated to a certain view point, the publication should represent all the viewpoints of the different topics in the country. Logistically, this is improbable. Publications need to ensure that their articles are unbiased and reasonably true. As pointed out in the previous code Art. 1.5,

journalists must seek the views of the subject and this is all that is needed for the article.

Concerned citizens may state their own viewpoints in the opinion and 'Letter to the Editor' sections of the publication. They can also make their viewpoints heard on the website and social media pages of the publication, as many large publications are online.

3. Demonstrate well researched and investigated articles prior to publication.

Mistakes are often made when being hasty. The LSSA advocates that a distinction is made between a 'scoop' and a hasty report.

4. Publish articles in clear language.

The LSSA believes that focus should be on journalists writing in a manner that is easy to understand. Members of the public are on different reading levels. Articles should be written in a manner that is easily understood by most people.

5. Publish more follow-ups.

Sensational topics should have follow-ups as. This creates consistency which allows the newspaper to be more credible.

6. Address suspicion against the press protecting its sources.

This is also another recommendation that is apparent in the amended code. Although the amended code does not include that the press should explain why confidential sources are protected, the section had been expanded on. By limiting the conditions in which confidential sources can be used, the misuse and abuse of confidentiality is reduced. Abuse of anonymous sources cannot always be prevented but the restrictions in the amended code may assist in easing suspicion of these sources.

7. The removal of the waiver and deal with the right to dignity and privacy.

The waiver in the amended code has been reworded. Instead of forfeiting one's rights to use the courts, a complaint will be acknowledging that instead of using the legal system, he or she will be using the PCSA, which is a form of private arbitration. It is now known as the Complaints Declaration. The basic premise remains the same

as the waiver. After signing the Complaints Declaration the complainant may only apply to the courts if he or she is unhappy about the manner in which the procedure took place, but not on the dispute itself.

In the amended code the section on Privacy had been expanded and a new section on Dignity and Reputation has been included. The public interest clause appears in both of these sections.

The LSSA had made many good recommendations, and it is apparent that the PCSA task team used many of their suggestions in the final draft of the amended code.

#### **4.12.1.2 Freedom Front Plus**

Advocate Anton Alberts made this submission on behalf of the Freedom Front Plus (FFP), which is a right wing political party that promotes Afrikaner interests.

The political party submitted their suggestions in order to improve the press code and make the press more responsible. By doing this they believed that there would be no need for a MAT, which they do not support.

The FFP voiced some of its concerns of the previous press code. In its suggestions, the FFP adds a lot of jargon and rewrites parts of the code in a legalistic manner. It becomes too technical and is not easy to read. One must remember that the press code is not only for journalists and editors but also for the members of the public. News reports and the press code need to be at a level that is easily understood by people that are on different reading levels. If members of the public are unable to understand the code, it will not be in their favour when they are drafting their complaints. Fortunately, the PCSA did not insert the jargon and Latin into the final draft of the amended code. Instead, the code was written in a less legalistic manner.

One of the problems that the FFP found in the previous code was in Art. 1.3 that stated that “only what may be reasonably true ... may be presented as fact” (Press Council of South Africa 2010). The FFP found the term ‘reasonably true’ problematic as they believed that the only complete truth can be presented as fact (Alberts, 2011). Although this is a valid point, one must consider that different

individuals all have different viewpoints. As such, in a report two or more people may have different interpretations of the story. With these multiple interpretations, it is up to the journalist to research and discover what may be 'reasonably true' as there is no single complete truth.

The FFP recommended inserting a new section titled 'Prejudicial Journalism' as they feel that some journalists use their position to continuously denigrate against people or organisations that they dislike. This may be considered to fall under the Comment section, in which Art. 4.3 stated that comment must be "without malice or dishonest motives" (Press Council of South Africa 2010). Prejudice can be considered as malice and as such, this section would not be needed.

The FFP also raised their concerns on opinion columns as they perceived them to be rumour-mongering pieces. According to both the previous and amended code, provided that opinion pieces are clearly defined as such and are written in a fair manner, the press has the right to advocate its views. This is seen in the section on Advocacy. The FFP also raised their concerns on sensationalist headlines; however, the task team did not add anything to the section. The FFP also stated that when individuals lodge a dispute to a newspaper, the journalist who had written the article holds the individuals in contempt. There has been nothing added to the press code regarding this. It seems that the PCSA task team did not use any of the FFP's suggestions in the amended code. Although these suggestions were considered, it is impossible to make everyone who made a submission reasonably satisfied.

#### **4.12.1.3 Media Monitoring Africa**

William Bird, the Director of Media Monitoring Africa (MMA) made the submission on behalf of the organisation. MMA is a well respected organisation in the continent. It fervently opposed the proposed MAT.

MMA notes that "the current self-regulatory system is not working as well as it should be" (Bird, 2010). The organisation gives the following factors as reasons why it believes that the PCSA was not as effective as it should have been. These are their reasons:

##### **1. Knowledge and public awareness**



The MMA believes that it is apparent that there is a lack of awareness of the PCSA and the press code amongst journalists and members of the public. They believe that the adverts placed in newspapers are too small.

This is apparent even in the submissions that both the PFC and the PCSA received from members of the public. In South Africa there are over 700 publications, most of which subscribe to the jurisdiction of the PCSA and yet only a total of 283 public submissions were received by both the PCSA task team and the PFC. If there was a greater awareness of the PCSA more submissions would have been made.

## *2. Gaps in the code*

Although the MMA supported the PCSA and the press code, it felt that there were gaps in the code.

The MMA felt that the code needed to include a section on ethics where “the principle of minimising harm [is added as it] does not undermine in any way the ability to report better [but] it simply makes it clear that it is an imperative the media need to follow” (Bird 2010). This is an important part of media ethics, and it is found in the new preamble of the amended code. The new preamble concludes with this paragraph that shows the PCSA’s commitment to media ethics:

As journalists, we commit ourselves to the highest standards of excellence, to maintain credibility and keep the trust of our readers. This means striving for the maximum truth, avoiding unnecessary harm and acting independently. (Press Council of South Africa 2011)

This statement shows the PCSA’s commitment to maintain a high standard of media ethics that cements their accountability to the public.

Another gap that concerns the MMA is the lack of a section on children, which is a vulnerable group. This is important as exceptional care is needed when reporting on children and the MMA highlights that the section on child pornography is insufficient. The section on Children was the biggest improvement in the amended code and the submission from MMA is one of many that assisted in creating this section.

## *3. Challenges in process*

According to the MMA even though the PCSA is thought to be a cost- and time-effective alternative to the courts, the complaints procedure was drawn out and overly legal. This is a disadvantage to individuals and smaller organisations that have access to fewer resources than newspapers do. When the MMA placed a dispute against the Daily Sun, the newspaper immediately had their lawyers involved. If the MMA was a small organisation, they would not have been able to retaliate by using their own lawyers as well. This clear disadvantage to the complainant should be addressed.

If lawyers are involved, it is no longer cost effective. The PCSA should only allow complainants and newspapers to seek legal advice from lawyers, but not have the lawyers act on their behalf in the arbitration process. Or the council should be able to provide the complainant with legal assistance, if the complainant is unable to afford it. This will remove the advantage that newspapers have over the complainant.

MMA stated that in addition to this submission they will continue with their own research into the matter.

#### **4.12.1.4 Scripture Union**

The South African branch of this inter-denominational Christian movement had its submission written by Sikelelwa Dlanga. The movement received the consent of some South African Churches.

Scripture Union recognises that during apartheid a lack of press freedom and state control of the media was used to suppress and oppress the population. The organisation believes that many people gave up their lives so that the South African press can have freedom and for this reason, press freedom needs to be protected. These are some of the suggestions submitted to the task team:

1. *Putting nation building at the core of each report*

Scripture Union believes that it is important that reports are done truthfully and with sensitivity with the nation's best interest (Dlanga 2011). This is appropriate as the press is accountable to the public.

2. *Blasphemy in the press*

Scripture Union suggests the Christian faith journalists should have to consult at least three Christian sources to verify their statements in order to prevent biased reports. Art 1.4 in the previous code already dealt with reports where if there is reason to doubt the veracity of a report, the facts should be verified. It would be a time consuming process for a Christian faith journalist to consult three Christian sources unless the facts are doubted. Although the intentions of this suggestion are good, it is not always practical to implement this.

### 3. Responsible reporting

The press are to be responsible in their reports. Scripture Union believed that the press needs to uphold human dignity when reporting on the perpetrator of a story. This suggestion is reflected in the amended code's new section titled Dignity and Reputation, wherein it is stated that exceptional care and consideration must be taken.

Scripture Union also believes that the press must take exceptional care when reporting on vulnerable groups, including children. Scripture Union also suggested that children should not be interviewed unless a parent or social worker consents and that the press must protect the rights of children in all circumstances (Dlanga 2011).

It is apparent in the amended code that the task team used Scripture Union's suggestions. Both of the organisation's suggestions have been used in the amended code.

The organisation also made suggestions on how the functioning of the PCSA can be improved upon. It believes that the PCSA should be the representative of society and that people from all walks of life should be represented in the body. The PCSA and Press Appeals Panel, already has public representatives serving on their panels.

The organisation made another two excellent suggestions, the first being that the Press Ombudsman should release a monthly statement or report to each of the publications that subscribe to the jurisdiction of the PCSA. This would raise awareness of the PCSA and allow the public to become more involved. The report can be monthly, bi-monthly or quarterly. Constantly updating the public on the happenings in the PCSA creates a greater visibility for the organisation and allows

the public to become more involved. The Ombudsman already sends a quarterly report to Sanef and it would be beneficial for the PCSA to do the same for the public; after all the PCSA is accountable to the public.

The second suggestion Scripture Union made is that the Press Ombudsman should “invite schools to participate in educating the public and as part of social responsibility” (Dlanga 2011). This not only increases awareness, but also empowers learners and gets the public to become more active in society from a young age. The only problem might be attaining funding and resources to implement a campaign such as this.

#### **4.12.1.5 Reg Rumney**

Reg Rumney is a respected South African journalist and lecturer. Rumney focuses on the business, finance and economic fields.

Rumney made his submission in the form of an essay titled, “A Media Appeals Tribunal: Perceptions and Practicalities” (2010). His essay focuses on why statutory regulation in the form of the proposed MAT is not the best option to regulate the press.

Rumney believes that debates that surround the topic of press freedom should be:

- a. Evidence-based
- b. As dispassionate as possible to avoid rhetoric
- c. Seen in the context of the role the news media plays in promoting the aims of the constitution
- d. Take into account in the broadest possible way any change to the status quo that would affect the country and the economy (Rumney 2010).

Rumney critiques the MAT for being repetitive, vague and lacking depth. It also dismissed the PCSA as being self-serving. Judging from the outcome of the cases analysed above, the PCSA cannot be considered as self-serving as in most of the disputes, the newspapers were found to be in breach of the press code and sanctioned.

Rumney raises the point the MAT suggested, that the Press Ombudsman should not be a former journalist but an independent person who is not involved in the press. A former journalist is ideal for the Press Ombudsman's position as he or she would have the knowledge and experience of how a newsroom operates. As the Press Ombudsman would no longer work as a journalist there would be no conflict of interest. Another ideal candidate for the Press Ombudsman would be an academic in the field of journalism, as the candidate would have the knowledge of the industry but would not have a conflict of interest.

According to Rumney, statutory regulation in a parliament dominated by one political party is less than promising for the country's press freedom (2010:14). He admits that self-regulation will never be a perfect form of regulation and that self-regulatory councils are rarely universally loved as not everyone will be pleased with a free press (Rumney 2010:10; 15).

#### **4.12.1.6 Julie Reid**

Julie Reid is a respected South African media analyst and academic. Her submission is an opinion piece that was first published in the Daily Maverick. In her column, Reid critiques the press code and gives suggestions on how it could be improved. There are two parts to Reid's submission.

Reid critiques the code on only allowing first-party complaints. Only individuals and organisations that are directly affected by a report are able to submit complaints to the Press Ombudsman's office. Reid suggests that the narrow definition of who can complain contributes to the low awareness of the PCSA and the poor turnout at the PCSA's public hearings (Reid 2011). It is clear that poor awareness of the PCSA is a threat to press freedom and should concern the organisation. In order to uphold press freedom, the PCSA needs public support, but how can the PCSA be supported by a public that is unaware of its existence?

Other media regulatory bodies in the country allow third party complaints and because the PCSA's "definition of 'complainant' is so limiting, newspaper journalists effectively get away with a lot more than television or radio journalists do" (Reid 2011). The Broadcasting Complaints Commission of South Africa accepts third party complaints. However, it is important to understand that there is a difference between

broadcast and print journalism. If third party complainants are allowed, there would be certain parts of the code, which they would not be able to use in their dispute. Regarding the previous code, a third party complainant would not be able to create a dispute due to the factual accuracy of a report. That being said, a third party complainant should be able to create a dispute against a newspaper that breaches Art. 2.1, stating that discrimination should be avoided or Art. 5.1 if the headlines or captions to pictures do not reasonably reflect the contents of a report. These are just a few of the Articles that could be allowed by third party complainants.

Reid suggests that in order for the PCSA to fulfil its monitorial role it should involve the members of the public. The staff and resources of the PCSA are limited, but thousands of people read over 700 publications on a daily basis (Reid 2011). By allowing third party complaints, not only will the Press Ombudsman's office receive more complaints, but having more people monitoring the press, the journalistic standard will be increased. This is because widespread complaints will force publications to become "more careful, thus improving the quality of journalism" (Reid 2011). This would also increase public awareness of the PCSA and allow the public to become more involved and partake in social responsibility.

#### **4.12.2 Public Submissions to the PFC**

For the purpose of this treatise, six submissions addressed to the task team of the PFC were chosen to be analysed.

##### **4.12.2.1 Musa Capital**

Musa Capital has dealt with the Press Ombudsman's office on various occasions in disputes against a number of newspapers. At the time that Musa Capital made their submission to the PFC, the company had dealt with the PCSA for 13 months. The company's submission was to strengthen the state of self-regulation.

Based on their experience in dealing with the PCSA, the company believes the "Ombudsman process is not serving the purpose for which it was designed" (Jimerson 2012:1). That is the organisation as a speedy and cost effective alternative to the court system. At the time of Musa Capital's submission, the company had lodged four complaints at the Press Ombudsman's office. Two of Musa Capital's complaints had been resolved. The first complaint took six and a half months to

resolve and the second took ten months. Two of the cases were ongoing at the time of the submission. These disputes are now resolved and it took four and five months to resolve them respectively.

Jimerson's problem was that the process took as long as a court case would. He was even more concerned about the fact that untrue information that damaged his company's reputation remained in the public domain for nearly a year before the dispute was resolved. According to Jimerson the cause of the delays was not the PCSA, but the journalists and newspapers who abused loop holes in the code. This negatively impacts the perception of the PCSA.

Jimerson states that not only were there lengthy delays in receiving a response from the newspapers, but the Ombudsman often had to send multiple reminders. Newspapers and journalists who fail to respond or meet deadlines without prior notice that they would be unable to meet the deadline should be sanctioned. In Musa Capital's first dispute against Sunday World, which took ten months to resolve, the Ombudsman sent the newspaper the complaint and set a two-week deadline for a response. The newspaper did not respond and after one month, the Ombudsman sent the newspaper a reminder. The editor of Sunday World only responded to the Ombudsman six weeks after the original complaint had been sent to them. The PCSA did not sanction the newspaper for the delayed response. As newspapers are not reprimanded for failing to meet the PCSA's deadlines they do not have any urgency in replying to complaints. This could be prevented by creating a set time frame in which the disputes are to be resolved. If newspapers fail to comply within the deadline they should be sanctioned.

#### **4.12.2.2 South African Council of Churches**

The South African Council of Churches (SACC) consists of twenty-six denominations who are working on the moral reconstruction of South Africa. They focus on the issues of people who are socially, spiritually and economically marginalised in the country. The main concern of the SACC is how regulation of the press can ethically contribute to the wellbeing, development and formation of their members (SACC 2012).

The organisation believes that the problem with self-regulation is that the sanctions imposed on newspapers that breach the press code are not vigilant enough. The SACC compares the regulation of the press to other professional bodies that are regulated by the State in the country. The professional bodies that the SACC used as examples are the Health Professional Council, the Pharmacy Councils of South Africa, Allied Health Professions Council, Medical Aid Schemes Council and the Nursing Council of South Africa. There is a major difference between the organisations that the SACC used as examples and the PCSA. That is, none of the examples given are in the media industry, and all of these bodies regulate sectors in the health industry. Although the SACC raises a valid point that these bodies are regulated by law with their own acts, it cannot be overlooked that the manner in which the press operates is a completely different manner to that of the healthy industry. The press deals with people in positions of authority on a regular basis, in particular Cabinet Ministers, Members of Parliament and government officials. Allowing statutory regulation would give these people an opportunity to misuse and abuse the system.

However, the SACC believes the abuse of power that comes with statutory control can be deflected by not allowing government officials to be representatives in the body. They feel that the representatives should be made up by the press and members of society, especially members of society who represent marginalised groups.

#### **4.12.2.3 University of Stellenbosch: Journalism Department**

Four of the senior members of the Journalism Department of the University of Stellenbosch made this submission to the PFC.

The academics do not deny the mistakes made by the press, but are in full support of self-regulation. As educators they reaffirm the official statement that media and journalism studies professionals in the country made in 2010. Part of the statement that they reaffirmed was that they “take seriously [their] task to inculcate the values of social responsibility, independence and accountability in their students” (Botha *et al.*, 2012). This statement is profound because it is important to educate future journalists on ethics and the PCSA. This provides a good foundation for future



journalists. However this will not be a guarantee that they will never breach media ethics or that they will never have complaints lodged against them.

The department acknowledges this and states that in order “to be an ethical journalist you need to be an ethical citizen as well” (Botha *et al.* 2012). The academics can educate future journalists on ethics, but their ethical stand point is not due to their job, but the individual himself. By setting high journalistic standards and teaching students media ethics, educators build a good foundation for journalism students and can only hope that they continue to build on this foundation.

Another issue raised was the unequal power relations in media ownership. Statutory regulation will not be able to deal with these issues. The department recognises that state regulation would not be able to address the issues of ethics and that regardless of the type of regulation and how well it operates it can be misused.

#### **4.12.2.4 Children’s Rights Centre**

The Children’s Rights Centre (CRC) consists of a network of organisations which promote the rights of children and stand against their abuse. The CRC sent this submission to both the PFC and Parliament regarding the Protection of the Information Bill.

The centre believes that they should not be focusing on the best way in which the press can be regulated, but should rather be focused on finding the best way in which freedom of information can be entrenched. It can be considered that the CRC suggests the best manner to do this is if it is done through creating and implementing new legislation to protect the press.

The centre’s stance is that secrecy and withholding information leads to the exploitation, neglect and abuse of marginalised and vulnerable groups. The CRC recognises the importance of information in a democracy, so that people can make informed decisions. It is not those who are in power that are negatively affected by undisclosed information as they have access to resources that will enable them to protect themselves.

The CRC made three main suggestions. These suggestions are as follows:

1. All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information.

The centre believes that an individual should be responsible to process requests to information and that the process complies with the law. They also feel that there should be a time limit on dealing with these requests.

2. Appeals to a Board, Ombudsman or Human Rights Commission

The centre feels that the law should provide the right to appeal the refusal of access of information. An Independent body should be used for this purpose.

3. Protection for whistleblowers

The centre believes that whistleblowers should be protected. According to the CRC, protection should be given to whistleblowers provided that “they acted in good faith and in reasonable belief that the information was substantially true and disclosed evidence of wrongdoing” (Zingu 2011). As a self-regulatory body the best manner in which the PCSA can offer protection to whistleblowers is through journalists keeping their sources confidential. However, in such cases it should be guaranteed that the information provided is reasonably true.

#### **4.12.2.5 The National Union of Mineworkers**

The National Union of Mineworkers (NUM) protects the rights of mineworkers in South Africa. In their submission the union states their views on the issue of regulation of the press in South Africa.

The submission is written in a legalistic manner and the organisation immediately indicates their political affiliation with the ANC. It is safe to assume at this point that the union is in full support of the MAT.

The union indicates that they feel there is a vacuum in legislation that prevents journalists and editors from being accountable for questionable and illegal behaviour. In order for an action to be illegal, it needs to break a law, so the journalists and editors behaviour can be questionable but not illegal.

NUM questions the impartiality and effectiveness of the PCSA due to the fact that it is funded by the print media industry. However, the PCSA operates without

interference from PMSA, Sanef and other bodies in the press. For example, the Public Protector is funded by the government. That does not mean the Public Protector's office is ineffective.

NUM believes that the PCSA is not sufficient in protecting the rights of the public and that the self-regulatory body needs to be supplemented with the MAT. It provides examples such as the News of the World phone hacking scandal in England, where the self-regulatory system is under scrutiny. The report also mentions countries where the government plays a role in regulating the press, such as Ghana and Mexico, however as Mexico is transitioning into an open democracy, their government's role in press regulation is diminishing.

Ghana and Mexico are not the best examples to advocate statutory regulation. In the Reporters without Borders 2011-2012 Press Freedom Index Ghana ranked at 41<sup>st</sup> place, one position ahead of South Africa and Mexico is placed at 149. The report overlooks the countries where the press has a self-regulatory system and it works well. It also overlooks the fact that the countries with the highest rating of media and press freedom are self-regulated. This is a blatant distortion of facts in order to suit their own needs.

NUM's submission is filled with propaganda and references the ANC's 52<sup>nd</sup> conference multiple times in its submission. It also inserts a complaint submitted to the editor of the Sowetan newspaper due to an article that implicated the integrity of the union.

#### **4.12.6 Trudie Blackenberg**

Trudie Blackenberg submitted her personal views on the press industry and its regulation. Particular attention needs to be paid to the role of the public in ensuring press freedom, as it is not only the responsibility of the press, but also the government.

Blackenberg feels that members of the public are in an ideal position to watch over the press. This echoes an earlier statement made by Julie Reid in her submission to the PCSA's task team, which was analysed earlier in this chapter. Blackenberg states that this is only possible if the public's ability to analyse, understand and utilise the media is increased. This is because only the public has

the ability to complain to the PCSA and it's through receiving complaints that the standard of journalism can be improved upon. Blackenberg feels that the members of the public need to have a more proactive role in the press freedom environment.

## **CHAPTER 5: CONCLUSION**

### **5.1 Introduction**

An overview of the findings of this research will be discussed in this chapter. This will be done through analysing the outcomes of the previous and amended press codes. This study shows that the PCSA and Press Ombudsman's office has made positive development in some areas.

### **5.2 The Press Code**

The analysis of the codes has shown the differences and similarities between the previous and the amended codes. Here is a summary of Chapter Four's findings:

- In the review process the task team and the PCSA had taken into consideration the concerns of the public and it is reflected in the finalised amended code
- The content of the code has developed to suit the needs of the public
- The amended code has become less legalistic and is written in a manner that is easy for people at different reading levels to understand
- Children are now protected by the code
- The code now protects the right to privacy, dignity and preserving the reputation of individuals.

Although the code has grown profoundly in these areas, there are some areas of concern. These include:

- The increased use of a public interest clause in the amended code. The PCSA does not define what it considers to be public interest and does not stipulate the conditions and context in which it can be used to override the Article in question, thus leaving this open to abuse.
- The amended code still does not protect vulnerable groups such as the developmentally challenged.
- Like the previous code, the amended code does not provide a time frame to ensure that disputes are quickly resolved in order to minimise the harm caused by incorrect and untruthful reports.

Although it is impossible to develop a perfect press code that the entire population will be satisfied with, these are concerns that need to be addressed as it would affect those who lodge complaints at the Press Ombudsman's office. That being said, the amended code shows the PCSA and press regulation in the country has strengthened since its inception. This positive development would not have been achieved with statutory regulation.

During 2012 plans were made to convert the PCSA into an independent co-regulatory body and with more proposed changes to the code. However, it should be considered that the PCSA was never a pure form of self-regulation. This is because although they were in the minority, public members served both on the PCSA and the Press Appeals Panel. Therefore the change from self-regulation to independent co-regulation is not that drastic.

### **5.3 Case Studies**

With each instance, the case studies chosen illustrate how the Ombudsman's Office has improved in sanctioning wayward newspapers. Over time the sanctions placed on wayward newspapers became more defined. At first sanctioned newspapers were commanded to publish apologies that were not defined, but over time this has changed. Although this change can be seen in all the cases, it is most apparent between the rulings of the old press code and the amended press code. In the rulings of *Musa Capital vs City Press*, not only did Retief articulate the points that City Press needed to publish in the apology, but he indicated that the apology had to be published in the same section and page as the article that was disputed.

A big cause of concern is the time it takes for the disputes to be resolved. Out of all the cases analysed, the shortest time frame in which a dispute was resolved was two months. The average time frame was six months. This is a cause for concern for the individuals who lodge complaints against newspapers as incorrect information, as the damage to their or their organisation's reputation remains in the public domain for a long time. In addition, by the time the newspaper publishes the apology, the report on the complainant is no longer a hot topic in the news.

The cases also showed that defiant journalists who did not respond to complaints were damaging the reputation of the PCSA. Sanctions should be imposed

upon these journalists or publications in order to ensure that they will follow the correct procedure when dealing with complaints. This will assist in preventing wayward journalists and publications from tainting the reputation of the PCSA and will assist in disputes being finalised faster.

#### **5.4 Public submissions**

The submissions sent to the PCSA and PFC do not only contain suggestions on how to improve the system of regulation in the country, but they also convey the public's views on the system, press freedom and the public's role in press freedom.

Many of the submissions to both the PCSA task team and the PFC felt that the proposed Media Appeals Tribunal and statutory regulation is not an ideal form of regulation for the press in South Africa. However, that did not mean that they felt that the PCSA was effective, as many of the submissions did not only include viewpoints of the organisation but also suggestions on how the organisation should improve the press code and Constitution of the PCSA. It is clear that the PCSA took many of the suggestions into consideration as this is reflected in the amended code. Suggestions made in the submission from the Law Society of South Africa are a few of many changes that are now found in the amended complaints process. According to the LSSA apologies should be given the same amount of exposure as the article disputed. This is found in the rulings that Retief made in *Musa Capital vs City Press*. Other suggestions that are now found in the press code have also been made by Scripture Union and Media Monitoring Africa.

In Julie Reid's submission to the PCSA and Trudie Blackenberg's submission to the PFC, both women feel that the public should be included in regulating the press. They feel that this will assist in the regulation process.

It is clear that the public does not participate enough in ensuring press freedom in the country. This can be seen in the poor attendance at the PCSA's hearings as well as the lack of submissions to both the PFC and PCSA. The lack of participation is detrimental to the regulation of the press. Reid attributes this to lack of awareness and Blackenberg feels that is caused by low levels of media literacy in the country.

Although many of the selected submissions were not in favour of statutory regulation, there was no clear indication of what form of regulation is favoured. Most of the submissions favoured either self or public regulation.

## **5.5 Recommendations**

In order to continue growing the jurisdiction of the PCSA and the press code, a few recommendations have been made.

1. The PCSA should have a standard badge which should be placed in every issue of the publications that adhere to its jurisdiction. It will be small in size and not take up much space on either the first or second page of the publication. This is to build brand awareness of the organisation.
2. The PCSA needs to create channels in which the public can become more involved in upholding high journalistic standards and maintain press freedom.
3. Although the placement of apologies had been improved upon, kickers should also be placed for apologies on reports that also had kickers.
4. The PCSA should create a monthly or quarterly report that is released to the public. This will allow the PCSA to be in direct contact with the public. In order to minimise costs to implement this, the report should be published on their website. Newspapers that subscribe to the jurisdiction of the PCSA should publish a summary of the report and point readers to the PCSA's website in order to read the full report.
5. The PCSA should create a public campaign in order to raise awareness of the organisation.

## **5.6 Conclusion**

No press regulatory body is perfect. As the needs of society changes, the press needs to adapt to those needs. This is reflected in how the country's press has been regulated since the inception of the press. The political, economic and social conditions of the country have shaped how the press is regulated. Now that South Africa's press is free, the regulatory system in place needs to uphold this freedom as well as ensure that a greater degree of accountability and press freedom is obtained. Although the PCSA was not perfect, this study shows that the PCSA has assisted in



not only regulating the press but also remaining accountable to the public it serves. The PCSA showed that it is a body that takes into consideration the views of the public and upholds their values and although the body will be restructured in 2013, the focus of the PCSA will continue providing the high levels of journalistic standards for the country.

The restructure of the PCSA will not be the last. As a society changes, the press industry needs to adapt to its needs. This means that the press code will have to constantly be developed to suit society's rapidly changing needs. The PCSA has attempted to meet those needs by constantly changing to ensure that the regulatory structure remains relevant.

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## **ADDENDUM 1: PRESS CODE IN USE UNTIL 9<sup>TH</sup> OCTOBER 2011**

### **THE SOUTH AFRICAN PRESS CODE**

#### **Preamble**

#### **WHEREAS:**

Section 16 of the Constitution of the Republic of

South Africa enshrines the right to freedom of expression as follows:

(1) Everyone has the right to freedom of expression, which includes:

- (a) Freedom of the press and other media;
- (b) Freedom to receive or impart information or ideas;
- (c) Freedom of artistic creativity; and
- (d) Academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to

- (a) Propaganda for war;
- (b) Incitement of imminent violence; or
- (c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

The basic principle to be upheld is that the freedom of the press is indivisible from and subject to the same rights and duties as that of the individual and rests on the public's fundamental right to be informed and freely to receive and to disseminate opinions; and

The primary purpose of gathering and distributing news and opinion is to serve society by informing citizens and enabling them to make informed judgments on the issues of the time; and

The freedom of the press allows for an independent scrutiny to bear on the forces that shape society.

#### **NOW THEREFORE:**

The Press Council of South Africa accepts the following Code which will guide the South African Press Ombudsman and the South African Press Appeals Panel to

reach decisions on complaints from the public after publication of the relevant material.

Furthermore, the Press Council of South Africa is hereby constituted as a self-regulatory mechanism to provide impartial, expeditious and cost-effective arbitration to settle complaints based on and arising from this Code.

## **Definition**

For purposes of this Code, "child pornography" shall mean: "Any image or any description of a person, real or simulated, who is or who is depicted or described as being, under the age of 18 years, engaged in sexual conduct; participating in or assisting another person to participate in sexual conduct; or showing or describing the body or parts of the body of the person in a manner or circumstances which, in context, amounts to sexual exploitation, or in a manner capable of being used for purposes of sexual exploitation."

## **1. Reporting of News**

1.1 The press shall be obliged to report news truthfully, accurately and fairly.

1.2 News shall be presented in context and in a balanced manner, without any intentional or negligent departure from the facts whether by:

1.2.1 Distortion, exaggeration or misrepresentation;

1.2.2 Material omissions; or

1.2.3 Summarisation.

1.3 Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinions, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.

1.4 Where there is reason to doubt the accuracy of a report and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be mentioned in such report.

1.5 A publication should usually seek the views of the subject of serious critical reportage in advance of publication; provided that this need not be done where the publication has reasonable grounds for believing that by doing so it would be prevented from publishing the report or where evidence might be destroyed or witnesses intimidated.

1.6 A publication should make amends for publishing information or comment that is found to be inaccurate by printing, promptly and with appropriate prominence, a retraction, correction or explanation.

1.7 Reports, photographs or sketches relative to matters involving indecency or obscenity shall be presented with due sensitivity towards the prevailing moral climate.

1.7.1 A visual presentation of sexual conduct may not be published, unless a legitimate public interest dictates otherwise.

1.7.2 Child pornography shall not be published.

1.8 The identity of rape victims and victims of sexual violence shall not be published without the consent of the victim.

1.9 News obtained by dishonest or unfair means, or the publication of which would involve a breach of confidence, should not be published unless a legitimate public interest dictates otherwise.

1.10 In both news and comment the press shall exercise exceptional care and consideration in matters involving the private lives and concerns of individuals, bearing in mind that any right to privacy may be overridden only by a legitimate public interest.

## **2. Discrimination and Hate Speech**

2.1 The press should avoid discriminatory or denigratory references to people's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental disability or illness, or age.

2.2 The press should not refer to a person's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental illness in a prejudicial or pejorative context except where it is strictly relevant to the matter reported or adds significantly to readers' understanding of that matter.

2.3 The press has the right and indeed the duty to report and comment on all matters of legitimate public interest. This right and duty must, however, be balanced against the obligation not to publish material which amounts to hate speech.

## **3. Advocacy**

A publication is justified in strongly advocating its own views on controversial topics provided that it treats its readers fairly by:

3.1 Making fact and opinion clearly distinguishable;



3.2 Not misrepresenting or suppressing relevant facts;

3.4 Not distorting the facts in text or headlines.

#### **4. Comment**

4.1 The press shall be entitled to comment upon or criticise any actions or events of public importance provided such comments or criticisms are fairly and honestly made.

4.2 Comment by the press shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to.

4.3 Comment by the press shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair account of all available facts which are material to the matter commented upon.

#### **5. Headlines, Posters, Pictures and Captions**

5.1 Headlines and captions to pictures shall give a reasonable reflection of the contents of the report or picture in question.

5.2 Posters shall not mislead the public and shall give a reasonable reflection of the contents of the reports in question.

5.3 Pictures shall not misrepresent or mislead nor be manipulated to do so.

#### **6. Confidential Sources**

The press has an obligation to protect confidential sources of information.

#### **7. Payment for Articles**

No payment shall be made for feature articles to persons engaged in crime or other notorious misbehaviour, or to convicted persons or their associates, including family, friends, neighbours and colleagues, except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

#### **8. Violence**

Due care and responsibility shall be exercised by the press with regard to the presentation of brutality, violence and atrocities.

## **ADDENDUM 2: PRESS CODE IN USE FROM 10<sup>TH</sup> OCTOBER 2011 TILL END OF DECEMBER 2012**

### **THE SOUTH AFRICAN PRESS CODE**

#### **Preamble**

The press exists to serve society. Its freedom provides for independent scrutiny of the forces that shape society, and is essential to realising the promise of democracy. It enables citizens to make informed judgments on the issues of the time, a role whose centrality is recognised in the South African Constitution.

Section 16 of the Bill of Rights sets out that:

“Everyone has the right to freedom of expression, which includes:

Freedom of the press and other media;

Freedom to receive and impart information or ideas;

Freedom of artistic creativity; and

Academic freedom and freedom of scientific research.

“The right in subsection (1) does not extend to

Propaganda for war;

Incitement of imminent violence; or

Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.”

The press holds these rights in trust for the country’s citizens; and it is subject to the same rights and duties as the individual. Everyone has the duty to defend and further these rights, in recognition of the struggles that created them: the media, the public and government, who all make up the democratic state.

Our work is guided at all times by the public interest, understood to describe information of legitimate interest or importance to citizens.

As journalists, we commit ourselves to the highest standards of excellence, to maintain credibility and keep the trust of our readers. This means striving for the maximum truth, avoiding unnecessary harm and acting independently.

We adopt the following Code:

## **1. Reporting of News**

1.1 The press shall be obliged to report news truthfully, accurately and fairly.

1.2 News shall be presented in context and in a balanced manner, without any intentional or negligent departure from the facts whether by distortion, exaggeration or misrepresentation, material omissions, or summarisation.

1.3 Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinions, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.

1.4 Where there is reason to doubt the accuracy of a report and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be mentioned in such report.

1.5 A publication should seek the views of the subject of serious critical reportage in advance of publication; provided that this need not be done where the publication has reasonable grounds for believing that by doing so it would be prevented from publishing the report or where evidence might be destroyed or sources intimidated. If the publication is unable to obtain such comment, this shall be stated in the report.

1.6 A publication should make amends for publishing information or comment that is found to be inaccurate by printing, promptly and with appropriate prominence, a retraction, correction or explanation.

1.7 Reports, photographs or sketches relating to indecency or obscenity shall be presented with due sensitivity to the prevailing moral climate. A visual presentation of sexual conduct should not be published, unless public interest dictates otherwise.

1.8 Journalists shall not plagiarise.

## **2. Gathering of news**

2.1 News should be obtained legally, honestly and fairly unless public interest dictates otherwise.

2.2 Press representatives shall identify themselves as such, unless public interest dictates otherwise.

## **3. Independence and conflicts of interest**

3.1 The press shall not allow commercial, political, personal or other nonprofessional considerations to influence or slant reporting. Conflicts of interest must be avoided, as well as arrangements or practices that could lead audiences to doubt the press's independence and professionalism.

3.2 Journalists shall not accept a bribe, gift or any other benefit where this is intended or likely to influence coverage.

3.3 The press shall indicate clearly when an outside organisation has contributed to the cost of newsgathering.

3.4 Editorial material shall be kept clearly distinct from advertising.

#### **4. Privacy**

4.1 The press shall exercise exceptional care and consideration in matters involving the private lives and concerns of individuals, bearing in mind that any right to privacy may be overridden only by a legitimate public interest.

4.2 The identity of rape victims and victims of sexual violence shall not be published without the consent of the victim or in the case of children, without the consent of their legal guardians.

4.3 The HIV/AIDS status of people should not be disclosed without their consent, or in the case of children, without the consent of their legal guardians.

#### **5. Dignity and Reputation**

The press shall exercise exceptional care and consideration in matters involving dignity and reputation, bearing in mind that any right to privacy may be overridden only by a legitimate public interest.

#### **6. Discrimination and Hate Speech**

6.1 The press should avoid discriminatory or denigratory references to people's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental disability or illness, age, or other status except where it is strictly relevant to the matter reported.

6.2 The press should not refer to a person's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental disability or other status in a prejudicial or pejorative context except where it is strictly relevant to the matter reported.

6.3 The press has the right and indeed the duty to report and comment on all matters of legitimate public interest. This right and duty must, however, be balanced against the obligation not to publish material which amounts to hate speech.

## **7. Advocacy**

A publication is justified in strongly advocating its own views on controversial topics provided that it treats its readers fairly by:

7.1 Making fact and opinion clearly distinguishable;

7.2 Not misrepresenting or suppressing relevant facts;

7.3 Not distorting the facts.

## **8. Comment**

8.1 The press shall be entitled to comment upon or criticise any actions or events of public interest provided such comments or criticisms are fairly and honestly made.

8.2 Comment by the press shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to.

8.3 Comment by the press shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair account of all available facts which are material to the matter commented upon.

## **9. Children**

### **Definition of Child Pornography**

For purposes of this Code, “child pornography” shall mean: “Any image or any description of a person, real or simulated, who is or who is depicted or described as being, under the age of 18 years, engaged in sexual conduct; participating in or assisting another person to participate in sexual conduct; or showing or describing the body or parts of the body of the person in a manner or circumstances which, in context, amounts to sexual exploitation, or in a manner capable of being used for purposes of sexual exploitation.”

9.1 Child pornography shall not be published.

9.2 Exceptional care and consideration must be exercised when reporting on matters where children under the age of 18 are involved. If there is any chance that coverage might cause harm of any kind to a child, he or she should not be photographed or identified unless a custodial parent or similarly responsible adult consents or a public interest is evident.

9.3 The press shall not identify children who have been victims of abuse or exploitation, been charged or convicted of a crime.

## **10. Violence**

Due care and responsibility shall be exercised by the press with regard to the presentation of brutality, violence and atrocities.

## **11. Headlines, Posters, Pictures and Captions**

11.1 Headlines and captions to pictures shall give a reasonable reflection of the contents of the report or picture in question.

11.2 Posters shall not mislead the public and shall give a reasonable reflection of the contents of the reports in question.

11.3 Pictures shall not misrepresent or mislead nor be manipulated to do so.

## **12. Confidential and Anonymous sources**

12.1 The press has an obligation to protect confidential sources of information.

12.2 The press shall avoid the use of anonymous sources unless there is no other way to handle a story. Care should be taken to corroborate the information.

12.3 The press shall not publish information that constitutes a breach of confidence unless a legitimate public interest dictates otherwise.

## **13. Payment for Articles**

The press shall avoid chequebook journalism where informants are paid, particularly when criminals are involved, except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

Available at: <http://presscouncil.org.za/ContentPage?code=PRESSCODE>

### **ADDENDUM 3: BIG GUNS BUILT SHODDY HOMES**

By Khanyi Ndabeni

Nelson Mandela Bay – Several top politicians and businessmen in Nelson Mandela Bay have been implicated in building hundreds of shoddy, low-cost homes in the 1990s that will now have to be demolished and rebuilt at a cost of millions.

Among them are businessman and top city Cope member Mkhuseleli Jack, former ANC council chief whip Mike Nzotoyi's wife, Karen, and Eastern Cape Nafcoc construction sector president Welcome Gawu.

While Jack and Nzotoyi denied building any sub-standard houses, Gawu openly admitted to building shoddy RDP houses in Motherwell, Soweto-on-Sea, Veeplaas and Zinyoka (Govan Mbeki).

Gawu, owner of Old Man Construction, says that many sub-contractors at that time were forced to build poor quality homes because they only received R15000 a house.

"Out of that money, about half had to pay for services and land, while the other half was used for building material," he said. "We mixed a lot of building sand with little cement in order to complete the houses."

While government earlier this month vowed to blacklist unscrupulous contractors, Gawu said he was surprised the government wanted to punish them now as "they knew about the problem at the time the houses were built and did nothing about it".

"It would have cost more than R20000 to build one house in those days, but, because they pressured us to build houses so that they would gain votes, we tried to deliver."

Gawu told The Herald that some of the contractors who had built shoddy RDP houses in the region had not been qualified and it had been easy to get a building contract in those days as no background checks were made.

Human Settlements Minister Tokyo Sexwale said earlier this month his department would have to put aside R800-million for the reconstruction of badly built, free low-cost houses in the Eastern Cape and KwaZulu Natal.

About 60 housing projects – a total of almost 20000 homes – in all the municipalities and districts in the province are now under the rectification programme in the Eastern Cape.

In Nelson Mandela Bay, the government will spend more than R33-million rebuilding and repairing 1852 houses. These include RDP homes in Mathew Goniwe township, Soweto-on-Sea, Veeplaas, Motherwell and Walmer.

"These are houses that either have no roofs or were built incorrectly and pose a danger to the beneficiaries," said Housing Department spokesman Lwandile Sicwetsha.

People whose houses needed to be demolished or rectified would be allocated temporary structures.

Stocks and Stocks sub-contracted Ilinge Development Service – chaired by Jack – to build RDP houses in Mathew Goniwe township in 1999.

When The Herald team inspected houses there, some were falling apart and residents say their homes leak during wet weather.

One beneficiary, Zola Msisi, said the contractor did not finish building the toilet, while the bricks at the front door of the house were loose.

"I'm scared that one day this house will fall while I'm inside," he said. He had tried to patch up some of the cracks but they kept developing as the bricks were loose.

Jack said his company had hired professionals to build the houses 10 years ago.

"I've never been in those houses myself. We built them 10 years ago and, if they are not properly maintained, they will fall apart," he said.

Jack said his company received a certificate of completion and no one had complained about the condition of the houses when they were built.

Abafazi Contractors, owned by former ANC city council chief whip Mike Nzotoyi's wife, Karen, built houses in Langa in Uitenhage and Wesley Estate in Motherwell. She said the company was the first to build RDP houses in Walmer, and was still building low-cost houses in Nelson Mandela Bay.

A team from The Herald visited some of the first RDP houses built in Walmer township. Many had no ceilings, others bore cracks and residents said most of them leaked.

Karen Nzotoyi refused to discuss the issue when asked for comment.

Several residents told how their badly constructed homes quickly deteriorated.

Govan Mbeki resident Khonzile Thweyi said his house had collapsed 10 years after it was built.

"A few years after it was built in 1996, the house kept cracking and the windows fell down without anyone putting pressure on them.

"I patched some of the holes, but three years ago when I was closing the door, my house fell down, damaging all my furniture."

He now lives in a shack nearby.

When a Herald team visited Govan Mbeki this week, almost all the houses had huge holes in the walls and no windows.

Resident Twayile Masumpa's house has developed huge cracks and he has had to use wood to try and cover them.

The home is less than 15 years old, but half of it is now a shack, with only a few bricks left to show that it was once a brick-and-mortar house.

"It was not built according to standard," Masumpa said.

"Even inspectors did not come to monitor if everything was right. A year after it was built, my house starting falling brick by brick."

Another Govan Mbeki resident, Toby Tolo, said his uncle had to move out after his RDP house became too dangerous to live in.

"The house kept falling apart. Even when he tried to fix it, it kept on falling," Tolo said.

"He was scared that one day the house would fall down and hurt him and his family, so he moved out."

Municipal spokesman Luncedo Njezula said the current municipality had not built any of the houses that had to be demolished.



He said most of the houses that needed rectification had been built under contract by the previous interim city administration before the Nelson Mandela Bay Municipality came into existence.

Since its formulation, housing officials had a responsibility to monitor certain phases in the construction of homes and “no councillor is involved in the procurement processes of the municipality”, said Njezula.

The official said that any builder that was not performing according to prescribed standards was not awarded new contracts by the municipality. In addition, no builder was re-issued work once they had been removed from a job, Njezula said.

- THE HERALD

Available at: <http://human-settlements.blogspot.com/2009/11/low-cost-homes-top-politicians-and.html>

## **ADDENDUM 4: RULING OF MR MK JACK VS THE HERALD**

Ruling by the Deputy Press Ombudsman

June 21, 2010

This ruling is based on the written submissions of Mr M. Boqwana, for Mr M.K. Jack, and the EP Herald newspaper.

### **Complaint**

Mr Mkhuseleli Jack complains about an article in the EP Herald, published on November 11, 2009, and headlined Big guns built shoddy homes.

The main complaint is that the article is defamatory towards Jack, as it is said to implicate him as an unprofessional and corrupt person who was responsible for building shoddy houses – while there is no evidence that linked him with houses that were built badly.

It is also complained that the story was published without proper investigation, in that:

- Jack undertook the work almost 11 years prior to the publication;
- Jack was not a subcontractor with the building company Stocks and Stocks (as alleged in the story);
- there has never been a single complaint (as alleged in the story) about the approximately 200 houses that Jack built;
- Jack and his partners were throughout the construction process guided by building professionals; and
- the houses referred to in the story were certified by professionals.

### **Analysis**

The story is about several top politicians and businessmen in Nelson Mandela Bay who have been implicated in building shoddy, low-cost houses in the 1990s that now needed to either be demolished or rebuilt. The cost to the 1852 houses in Nelson Mandela Bay that needed rectification would reportedly amount to R33M.

The story identifies Jack as one of the people responsible for this situation. In the story he denies building any sub-standard houses, saying his company had hired professionals to build the houses 10 years ago.

He also reportedly said that:

- he had never been in the houses;
- if the houses were not properly maintained, they will fall apart;
- his company received a certificate of completion; and

- there were no complaints when the houses were built.

The story also mentions that Stocks and Stocks sub-contracted Ilinge Development Service, chaired by Jack, to build RDP houses in 1999.

We shall now look at the merits of the complaint:

### *Implicated*

The main complaint is that the story links Jack to the building of shoddy houses, while there is no evidence thereof.

There is no question that the story does make this link. After the intro, that says that several top politicians and businessmen have been implicated in building hundreds of shoddy houses, the second sentence reads: “*Among them* are businessman and top city Cope member Mkhuseleli Jack...” (emphasis added)

The only question here is if the newspaper had enough substance to make this allegation.

The newspaper says the houses in question were clearly listed by the provincial housing department as being sub-standard and that Jack also admitted that he was involved in building some of them. This, EP Herald says, was enough evidence to publicly link Jack to the issue.

This argument is not convincing. Jack never admitted that he was responsible for the building of shoddy houses – hence the complaint. The only thing that he “admitted” to was that he was involved in building some houses. That, in itself, does not make him a guilty party. (He said he had build approximately 200 houses, while 1852 houses in that area needed repair.)

If the newspaper had had any evidence that the houses that Jack built were included in those that needed to be demolished or repaired, it did not report it. It only says that its reporter inspected houses in the area and found “some” of them were falling apart. These houses could easily have been built by builders other than Jack.

In short: The article links Jack to the building of shoddy houses without providing a single shred of evidence to support it.

EP Herald did not produce any such evidence in its reaction to the complaint either.

Even worse:

- The allegation that Jack was partly responsible for the mess is not attributed to a source, not even to an anonymous one;
- It is presented as a fact that Jack was implicated; and

- The questions who implicated him and why he was implicated are not addressed at all.

This is quite serious, as it probably damaged Jack's reputation and public image – making a mockery of the old media ethical guideline namely to minimize harm as far as possible.

#### *Without proper investigation*

Based on the above, the complaint that the story was published without proper investigation can only be upheld. However, this part of the complaint pertains to specific issues other than implicating Jack for being partly responsible for the housing debacle (as discussed above).

These issues include that Jack undertook the work almost 11 years prior to the publication; that he was not a subcontractor with the building company Stocks and Stocks; that there has never been a single complaint about the approximately 200 houses that he built; that he and his partners were throughout the construction process guided by building professionals; and that the houses referred to in the story were certified by professionals.

Oddly enough, in its reaction to the complaint the newspaper says Jack “did not mention to her (the reporter, Khanyi Ndabeni) that the houses had been certified by professionals, duly handed over to the municipality and that no complaints had ever been received. If he had, we would certainly have included this information in the story. Mr Jack only made these comments to Ndabeni after the story was published.”

This is odd, because those are the very statements that have indeed been reported in the story...

Be that as it may, the complaint that the article was published without proper investigation pertaining to the specific issues mentioned above is without foundation. The article indeed states that Jack undertook the work 10 years earlier, that there has never been a single complaint about the condition of the houses that Jack built, that Jack and his company were throughout the construction process guided by building professionals, and that the houses referred to in the article were certified.

The only exception is the complaint that Jack was not a subcontractor with Stocks and Stocks, but that he was rather working in a joint venture. Ndabeni, however, maintains that Jack told her that he was a subcontractor with Stocks and Stocks. The newspaper also says it was only after publication that Jack pointed out that it was a joint venture.

Clearly, Ndabeni was under the impression that Jack was a subcontractor with Stocks and Stocks. This is not necessarily due to poor investigation, as the complaint suggests.

## Finding

EP Herald implicated Jack in the poor building of houses without providing any shred of evidence to this effect. It also stated it as a fact, without any reference to a source.

This amounts to a **breach** of

- Art. 1.1 of the Press Code: “The press shall be obliged to report news truthfully, accurately and fairly.”
- Art. 1.3: “...Where a report is not based on facts or is founded on opinions, allegation, rumour or supposition, it shall be presented in such a manner as to indicate this clearly.”
- Art. 1.4: “Where there is reason to doubt the accuracy of a report and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be mentioned in such report.”

The complaint about the alleged poor investigation is **dismissed**.

## Sanction

EP Herald is directed to **publish** a summary of this finding, together with an appropriate **apology** for the harm it may have caused to Jack. Our office should be furnished with the text prior to publication.

## Appeal

Please note that our Complaints Procedures lay down that within seven days of receipt of this decision, anyone of the parties may apply for leave to appeal to the Chairperson of the SA Press Appeals Panel, Judge Ralph Zulman, fully setting out the grounds of appeal. He can be reached at [khanyim@ombudsman.org.za](mailto:khanyim@ombudsman.org.za).

Johan Retief  
Deputy Press Ombudsman

Available at: <http://www.presscouncil.org.za/pages/posts/mkhuseli-khusta-jack-vs.-ep-herald78.php>

## **ADDENDUM 5: MANYI SURVIVES THE WEEK**

BY: Mpho Sibanyoni

Johannesburg – If it was a boxing match, the score for the fight between Black - Management Forum (BMF) president Jimmy Manyi and senior members of the body who want him ousted would have been level.

Manyi is currently engaged in a bruising battle to maintain his position as president against past presidents Lot Ndlovu, Nolitha Fakude and Bheki Sibiya. However, he survived another week when the BMF policy conference's annual general meeting (AGM) requested the board to set up a task team to investigate both Manyi and the stalwarts.

"The AGM has mandated the board to form a task team that will engage on the substantive matters raised by the concerned members of the BMF," says a BMF media statement released on Friday.

"The team will also assist to clarify the procedural matters on whether the BMF procedure was followed on how this matter was raised."

The media release adds that there will be no further media engagement until the task team publishes its findings.

"This was the consensus of all the BMF members, which was arrived at in the interest of protecting the BMF brand and healing the forum," it says.

Ndlovu, Fakude and Sibiya accused Manyi of leadership incompetence, arrogance, amateurism, lacking logic and the political smearing of his detractors.

Three independent sources, who preferred to remain anonymous, said Manyi convened a special board meeting on Thursday and tried to reverse the AGM's decision to have him investigated.

He was, however, advised against the move as it would be viewed as undermining the AGM.

At the BMF gala dinner at the Sandton Convention Centre on Friday, Manyi declined to comment.

The BMF board is expected to call for a special meeting before December and identify a group of professionals who will constitute the task team.

- CITY PRESS

Available at:

<http://152.111.1.87/argief/berigte/citypress/2010/10/27/CP/2/msmanyi.html>

## **ADDENDUM 6: BMF TASK TEAM ON MANYI COMES UNDER FIRE**

BY: Mpho Sibanyoni

Johannesburg - The Black Management Forum (BMF) has set up a task team to investigate allegations levelled against the forum's president Jimmy Manyi, but its composition is being contested.

The team is also expected to investigate the procedure followed by a group calling itself the Concerned Members, made up of the BMF past presidents, in raising the allegations against Manyi.

Last month, the Concerned Members wrote an open letter to the BMF board accusing Manyi of being autocratic and intimidating employees.

Following a meeting on October 14, the board resolved to appoint five people to serve in the task team. The team has been given 60 days to conclude its work.

The task team is chaired by BMF Limpopo chairperson Abram Luruli, while Free State deputy chairperson Brian Leserwane is the secretary-general.

BMF Mpumalanga's deputy chairperson John Nkadimeng, Northern Cape deputy-chairperson Peace Ntuli and co-opted board member Lizelle Haskins are the remaining task team members.

The Concerned Members, who include past presidents Lot Ndlovu, Nolitha Fakude, Bheki Sibiya, this week complained about the composition of the task team.

"All members of the board have already made up their minds on the issues we have raised. Some members are against us and some agree with us," said the Concerned Members spokesperson Lot Ndlovu.

"To make BMF board members, part of the task team shows that the board lacks respect for the annual general meeting, ordinary members and us as the Concerned Members," he said.

He suggested that the the board engage the services of independent organisations to conduct the probe.

BMF deputy president Tembakazi Mnyaka declined to comment on the composition of the team.

"I am not going to respond to your questions because we have internal processes that we are dealing with," she said.

A BMF board member who preferred to remain anonymous said the board members were selected due to cash constraints.

Ndlovu said the board should have informed the Concerned Members about the cash constraints.

“We cannot sacrifice the good image of the organisation because of money,” he said.

The team will investigate whether the complaints in the letter from the Concerned Group have substance, and probe if the manner the Concerned Group raised its concerns flouted the BMF policies. It will also propose internal processes that would ensure people who have concerns about the BMF leadership are given the best possible platform to raise their grievances.

City Press has seen the names of the five individuals and the terms of reference in a BMF document.

- City Press

Available at: <http://m.news24.com/fin24/Business/Manyi-probe-under-fire-20101024>



## **ADDENDUM 7: RULING OF MR J MANYI VS CITY PRESS**

Ruling by the Deputy Press Ombudsman

December 10, 2010

This ruling is based on the written submissions of Mr J. Manyi and the City Press newspaper.

### **Complaint**

Mr J. Manyi, the president of the Black Management Forum (BMF), complains about two stories in City Press, headlined Manyi survives the week (published October 10, 2010) and BMF task team on Manyi comes under fire (October 24). Both stories were written by Mpho Sibanyoni.

#### ***The first story***

Manyi's main complaint is that the statement that the AGM requested the BMF's board to set up a task team to investigate him is untrue.

He also complains that:

- there never was a BMF media statement;
- the statement that he had convened a special board meeting and tried to reverse the AGM's decision to have him investigated is untrue;
- the statement that he was advised against convening the special board meeting is untrue;
- the statement that he declined to comment is untrue; and
- the headline is misleading.

#### ***The second story***

Manyi complains that there is no task team "on him".

### **Analysis**

The ***first story*** says that Manyi was battling to maintain his position as president of the BMF as senior members of the body wanted to oust him. Previous BMF presidents Lot Ndlovu, Nolitha Fakude and Bheki Sibiya reportedly accused Manyi of leadership incompetence, arrogance, amateurism, lacking logic and of political smearing of his detractors. They were part of a group within the BMF calling itself the "Concerned Group" (CG). The story also says that Manyi convened a special board meeting to reverse a decision taken at an AGM to have him investigated.

The **second story** builds on the first, saying that the BMF has set up a task team to investigate allegations levelled at Manyi as well as to look into the procedure followed by the CG in raising allegations against Manyi.

We shall now consider the merits of the complaint:

***The first story:***

Task team to investigate Manyi

In a sense, this is the heart of the complaint.

The sentence in dispute reads: “...(the AGM) requested the board to set up a task team to *investigate* both *Manyi* and the stalwarts”. (emphasis added to highlight the complaint)

Manyi denies that there ever was a decision to investigate him. In related statements, he denies that his position as president was ever threatened, that BMF structures had ever endorsed the “wild claims and demands” by the CG, and that he ever was the subject of discussion in any board meeting or in the AGM.

City Press says Manyi does not dispute the following, which is “common cause”:

- the CG lodged a letter of complaint with the BMF Board and later issued a press release in which his leadership style at the BMF was criticized;
- the CM group consists of seemingly high-profile persons within the BMF such as a number of former BMF presidents;
- A task team was appointed by the BMF Board with a mandate to investigate, amongst other things, a letter from the CG (that contained allegations against Manyi).

With regards to the composition of the CG, the nature of the complaint publicly aired by this group and the mandate of the task team, the newspaper adds that:

- it appears “by all accounts” that the CG launched a direct and personal attack on Manyi as president of the BMF;
- this attack could reasonably be interpreted as a threat to his position at the BMF; and
- describing the task team as one “on Manyi” is fair, since the CG levelled their allegations directly and personally against him.

Manyi replies to this, saying that he was elected unopposed in 2009 by BMF’s branches. He says that Ndlovu, Sibiya and Fakude were not leaders of any branch or small committee in the BMF. They therefore had “no capacity to pronounce for the organization nor influence how the organization thinks...”

He adds that the only other structure that can depose a BMF president is the board – a meeting that Manyi says he came out of “smiling”. He says that the CG “had failed dismally” (at the board meeting) and the City Press should have known that. The AGM also did not “pronounce at all” about him, he says.

Manyi reiterates that there is “no investigation or even envisaged investigation” on him – what is being investigated, he says, is the flouting procedure by the CG and the veracity of the substance of their allegations. “City Press has no right to prejudge the outcome of the probe on the substance and conclude that therefore Manyi is being probed!”

We shall now focus on Manyi’s complaint and related statements, namely that:

- there never was a decision to investigate him;
- his position as president was never threatened;
- no BMF structures have ever endorsed the “wild claims and demands” by the CG; and
- he never was the subject of discussion in any board meeting or in the AGM.

Firstly then (with regards to Manyi being investigated or not), we’ll have to take a close look at two documents that the newspaper provided our office with.

In a letter by Ndlovu, addressed to the BMF board and dated September 29, 2010, he calls for an urgent board meeting “where a motion of no confidence in the presidency should be passed unless they have voluntarily offered to vacate the office”.

Part of his motivation reads as follows: “The presidency has displayed a frightening brand of arrogance, amateurism and lack of logic. The BMF is, therefore, less respected than it was before – precisely because there is no internal respect.”

The second document is a direct consequence of the first. It is headlined: Terms of Reference: BMF Task Team, wherein the BMF appointed a task team consisting of five members. Its mandate was twofold, namely to investigate:

- the process followed by the CG in raising their grievance; and
- “whether the issues raised by the concerned group has substance”.

The latter part of this mandate is important. From this, it is clear that the task team was to investigate “issues raised”. Allegations, therefore. But these allegations were mainly directed against Manyi himself. If one investigates allegations directed against a person, it would be impossible to do so without also focusing on the *person him/herself*. The phrase “to investigate Manyi” is therefore materially correct, even though it may be a little strong.

It is indeed not a matter of “prejudging”, as Manyi says.

Moreover, the sentence stating that a task team would investigate Manyi is followed by a direct quote that reads: “ ‘The AGM has mandated the board to form a task team that will engage on the substantive matters raised by the concerned members of the BMF,’ says a BMF media statement on Friday.” (The fact that it was not a media statement but a draft statement from the CG is not relevant at this stage – we shall come back to this.)

The newspaper, therefore, had two documents to rely on – one by the BMF and another by the CG. These two considerations combined made the newspaper’s reportage reasonable.

Secondly Manyi downplays the role and stature of the three former BMF presidents, saying that his position as president was never threatened.

It may be true that the ex-presidents did not occupy positions of leadership in the BMF at the time, yet it is reasonable to accept that (together) they still had quite some influence in the organization. Also, the task team’s terms of reference is clear – the issues raised (regarding Manyi) were to be investigated, the outcome of which may have threatened his position. Coupled with Ndlovu’s request for a vote of no confidence in Manyi, it was reasonable for the newspaper to insinuate that Manyi’s position was threatened.

Note that this is not a “verdict” to the effect that his position was indeed threatened – only that, based on the information at its disposal at the time, it was reasonable for the newspaper to create that impression.

Lastly, Manyi’s assertion that no BMF structures have ever endorsed the “wild claims and demands” by the CG and that he never was the subject of discussion in any board meeting or in the AGM may quite possibly be true. A decision was taken to form a task team to investigate – and it would have been premature to either endorse or to even discuss him at that stage.

### ***BMF media statement***

The story refers to a “BMF media statement”.

Manyi says there has never been such a statement.

City Press admits this, saying that the document it referred to was rather a draft statement by the CG. When made aware of this, it published a retraction and an apology the following week (October 17).

A copy of this document is in our office’s possession.

### ***Special board meeting to reverse the AGM's decision to have Manyi investigated***

The story says that Manyi convened a special board meeting and “tried to reverse the AGM's decision to have him investigated”. This information, the story adds, is based on three independent sources.

Manyi calls the sentence in question a “blue lie”, saying that there was never such a decision at the AGM nor was there any such discussion at the board.

City Press says that:

- it “seems common cause” that Manyi called a special board meeting shortly after the AGM. The newspaper notes that Manyi does not dispute the fact that he convened the meeting; and
- it got its information regarding this matter from three independent sources. It adds: “Two of the sources indicated that they have no alliance with either Mr Manyi or the Concerned Members, but are concerned about the manner in which both sides are acting to the detriment of the BMF”.

The statement in dispute is indeed preceded by a reference to “three independent sources” who reportedly gave the newspaper this information. I have no reason to doubt this; Manyi also does not dispute it. The newspaper was therefore justified in its reportage.

However, this again does not necessarily mean that the statement itself is true.

### ***Advised against ‘the move’***

The story says that Manyi was advised not to try and reverse the AGM decision “as it could be viewed as undermining the AGM”.

Manyi denies this.

The newspaper does not respond to this part of the complaint.

From the context it can reasonably be argued that the statement in question can be ascribed to the three sources that the story mentions in the sentence immediately prior to the sentence in dispute.

### ***Declined to comment***

The story says that Manyi, at a BMF gala dinner a few days prior to the publication of this story, “declined to comment”.

Manyi says that nothing was put to him to respond to. He argues that he was the host and that he “simply did not have time for interviews”, adding that there were three Ministers at his table.

City Press says that:

- its journalist (Sibanyoni) attempted to call Manyi on October 8, but he did not answer his phone;
- Sibanyoni then sent an SMS to him, to which Manyi failed to respond;
- the journalist approached Manyi at the gala dinner for comment, but was told that it was an inopportune time;
- Sibanyoni phoned him the next day, but Manyi again failed to answer; and
- Manyi knew that the allegations by the CG were in the public domain, “especially since these allegations were discussed at the AGM” and he also knew that the newspaper was seeking comment from him on this issue – yet he failed to make use of the opportunities to comment.

The newspaper adds that it also afforded Manyi a right of reply (after the October 24 article) and/or to publish a letter from him setting out his responses. Manyi rejected these offers, the newspaper says.

To this, Manyi replies that:

- it was not reasonable for Sibanyoni to expect him to respond to a telephone call at the height of the goings on in a conference where he was officiating;
- he never received any SMS from Sibanyoni;
- it was not reasonable to expect from him to desert three Ministers at his table, one of whom was representing the President, and to conduct an interview with a journalist who did not make an appointment with him;
- on the next day, he rested after a hectic three days and also attended a church meeting (he says he does not take his phone to church); and
- the newspaper’s offer of a right to reply and/or to publish a letter from him is “paternalistic”. “Why does City Press think they know what is good for me? Is it because I am black? Indeed I want them to retract their lies, defaming statements and substandard journalism.”

I have asked City Press to supply me with any kind of evidence to support its claim that it indeed tried to contact Manyi. The newspaper telephonically responded that the journalist could not comply as his cell phone was stolen; it also said that it had difficulty in retrieving calls made from its offices.

This is unfortunate.

Manyi is correct: He cannot reasonably be expected to give an impromptu interview whilst in the midst of a conference or at a gala dinner, with Ministers at his table. The

following sentence is therefore unfair: “At the BMF gala dinner at the Sandton Convention Centre on Friday, Manyi declined to comment.”

Moreover, if the journalist indeed tried to contact him on other occasions, as he says that he did, this should have been mentioned in the report.

### ***Headline misleading***

Manyi says that the headline (Manyi survives the week) is misleading as his role as president was never threatened.

Based on the newspaper’s argumentation above, it says that the headline is (therefore) fair.

The issue here is simple. Art. 5.1 of the Press Code states that headlines should give a fair reflection of the contents of the report in question.

The story says that Manyi was “currently engaged in a bruising battle” to maintain his position as president of the BMF as senior members of the body wanted to oust him. Manyi may refute that this is true, but that is what the story says – which is indeed reflected in the headline.

I have also previously argued that it was reasonable for the newspaper to suggest that Manyi’s position as president was threatened.

### ***The second story:***

#### ***Task team ‘on Manyi’***

The headline says: BMF task team on Manyi comes under fire. The story adds that the BMF has “set up a task team to investigate allegations” directed at Manyi. It also states that one of the mandates of the task team is to “investigate whether the complaints in the letter from Concerned Members have substance”.

Manyi complains that there is no task team “on him”.

Based on the argumentation regarding the same issue in the first part of the complaint above, it was reasonable for the newspaper to use the phrase “task team on Manyi”.

### **Finding**

#### ***The first story:***

#### ***Task team to investigate Manyi***

The newspaper was justified in its reportage. This part of the complaint is **dismissed**.

### ***BMF media statement***

This part of the complaint has been dealt with as the newspaper already published a correction and an apology.

### ***Special board meeting to reverse the AGM's decision to have Manyi investigated***

The newspaper was justified in its reportage. This part of the complaint is **dismissed**.

### ***Advised against 'the move'***

The newspaper was justified in its reportage. This part of the complaint is **dismissed**.

### ***Declined to comment***

The newspaper failed to supply our office with any shred of evidence that it had tried to contact Manyi. The benefit of the doubt therefore goes to Manyi. Its attempt to do so at an inopportune time was also insufficient. This is **in breach of** Art. 1.5 of the Press Code that states: "A publication should usually seek the views of the subject of serious critical reportage in advance of publication..."

The statement that Manyi declined to comment at the dinner was unfair to him. This is **in breach of** Art. 1.1: "The press shall be obliged to report news...fairly."

### ***Headline misleading***

The headline accurately reflects the content of the story. This part of the complaint is **dismissed**.

### ***The second story:***

### ***Task team 'on Manyi'***

The newspaper was justified in its reportage. This part of the complaint is **dismissed**.

### **Sanction**

City Press is:

- **reprimanded** for failing to try to contact Manyi at an opportune time; and
- directed to **apologise** to Manyi for the unfair statement that he declined to comment at the dinner.

The newspaper is asked to publish a summary of this finding and to furnish our office with the text prior to publication.



Please add the following sentence at the end of the text:  
“Visit [www.presscouncil.org.za](http://www.presscouncil.org.za) (rulings, 2010) for the full finding.”

### **Appeal**

Please note that our Complaints Procedures lay down that within seven days of receipt of this decision, anyone of the parties may apply for leave to appeal to the Chairperson of the SA Press Appeals Panel, Judge Ralph Zulman, fully setting out the grounds of appeal. He can be reached at [khanyim@ombudsman.org.za](mailto:khanyim@ombudsman.org.za).

Johan Retief  
Deputy Press Ombudsman

Available at: <http://www.presscouncil.org.za/pages/posts/jimmy-manyi-vs.-city-press131.php>

## **ADDENDUM 8: NO HORSING ABOUT AS FARMER COMBATS HIGH PETROL PRICES**

BY: DAVID MACGREGOR

Grahamstown - A cabbage-farming preacher has bucked high petrol prices by turning to horse power to plough his lands.

Although he has seemingly moved the hands of time back to an era when life was a lot slower, Grahamstown's Shawn Warren insists he still manages to get the work done as quickly as a tractor – but at a fraction of the price.

“You are working in nature, there is no pollution and the horse residue [manure] helps to fertilise the cabbages.

“One of the nice things about horses is that they always come to work on time on a Monday morning and they don't have a babelas [hangover],” the 42-year-old quipped.

“It is also a very therapeutic stress reliever that keeps me fit and healthy at the same time.”

A Jack-of-all-trades, Warren – who lives on a smallholding next to Waainek Prison on the outskirts of Grahamstown with his wife, Gerrie, three children and 52 horses – decided to train two cart horses to work the land after being shocked at the price of hiring a tractor and driver to do the work.

“I borrowed a tractor to break the ground when I first started planting cabbages and quickly realised the cost of petrol and wear-and-tear was phenomenal,” Warren said.

To make matters worse, the tractor soon got bogged down in the muddy field for hours on end – leaving him saddled with a hefty hire bill. “That is when I decided six months ago to use horses to plough and harvest,” he said.

The grunt work is rotated between eager cart horses Tiny and Crystal, and a bonus of growing cabbages is that the animals also get to enjoy the fruits of their labour.

“I make much more profit using horses,” Warren said. “They eat some of the cabbages when I harvest, keeping my feed costs down to about R100 each a month.”

Skilfully guiding the plough in a straight line behind Tiny the percheron cart horse, Warren said his quarterly efforts to turn the soil for planting 50 000 cabbage seedlings at a time had become much more than just a family affair, with friends and neighbours also pitching in to get down and dirty in the field.

“It is like stepping back in time,” he said. “Everybody loves working with horses in the soil in the old way. We are never short of people wanting to help.” His 16-year-old daughter, Kayla, walks the horse in a straight line, while son Keenan, 14, follows with a spade to dig the wet soil off the plough when it clogs up

Keenan and his younger brother, Kelvin, 13, also share time behind the plough – instead of sitting around watching TV. “I threw the TV away a few years ago,” Warren said.

Besides being a Pentecostal Protestant minister who runs a weekend tent ministry for 50 people on his farm, Warren shoes horses, grows and sells cabbages and works as a wild horse wrangler.

Many of his 52 horses were caught in the wild in the Amathola mountains and trained to be ridden as part of his equine outreach.

Instead of shooting wild horses for dog food, many farmers now know to call the Grahamstown horse whisperer to capture and remove them instead.

A modern-day cowboy, Warren is counting the days until he and a friend leave for an epic cross-country horse ride to the Northern Cape at the end of the month.

When that adventure is over, he will be back behind his plough gently coaxing his horses to earn their keep the old-fashioned way.

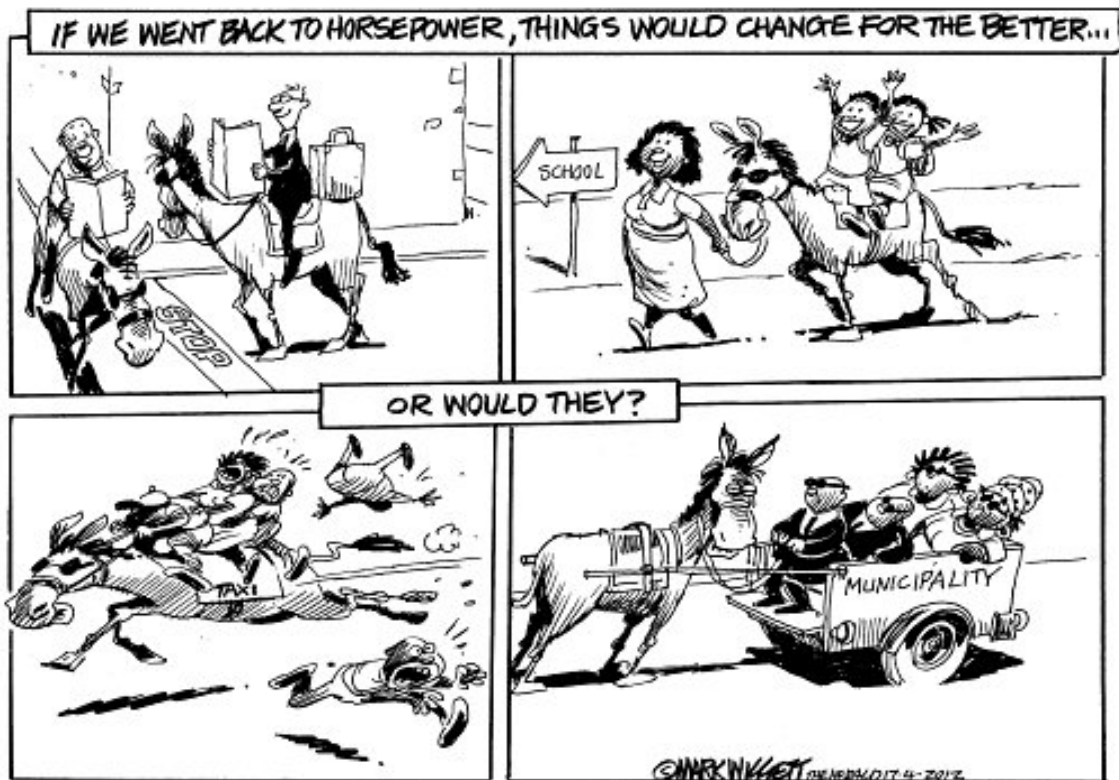
“Once I started ploughing with horses I knew that I would never use a tractor again,” he said.

- THE HERALD

Available at: <http://www.peherald.com/news/article/5598>

## ADDENDUM 9: WIGGETT'S WORLD CARTOON

- BY: Mark Wiggett



Available at: <http://www.peherald.com/gallery/76>

## **ADDENDUM 10: RULING OF NELSON MANDELA BAY MUNICIPALITY VS THE HERALD**

Ruling by the Deputy Press Ombudsman

August 11, 2012

This ruling is based on the written submissions of Mr Kupido Baron, media management officer of the Nelson Mandela Bay Municipality (NMBM), and The Herald newspaper.

### **Complaint**

The NMBM complains about a story in The Herald on 16 April 2012 and headlined No horsing about as farmer combats high petrol prices, and about a cartoon that was published the next day.

The municipality complains that a comment by a farmer (in the story) is racist, and that the cartoon was meant to cause the NMBM maximum harm.

### **Analysis**

The story was about a farmer who used a horse to plough his land because of the high cost of petrol.

The cartoon was a four-panel piece about the use of horses for transport. The top two panels of the cartoon said: "If we went back to horse power, things would change for the better..." The third panel showed people scattering as a horse and rider cause mayhem. The fourth one portrayed a horse pushing the cart – labelled "municipality" – and carrying four people. The words above the third and fourth panels were: "or would they?"

#### *Story: Racist*

The sentence in dispute says: "One of the nice things about horses is that they always come to work on time on a Monday morning and they don't have a babelas"

The NMBM complains that this statement is racist as it was aimed at black workers. Baron says: "Since it is the norm in South Africa that black and coloured workers make up the majority of the workforce on farms, and the story does not state otherwise, I therefore get the impression that this is a derogatory statement aimed at black workers and to describe how the horse (an animal) can be considered better than them."

The Herald denies that the statement is racist and regards it as "a satirical depiction of the frustration of all employers of staff who bunk work". The newspaper argues that

one cannot assume that the farmer was referring to people of any particular ethnic group.

Allegations of racism should always be treated seriously; on the other hand, such allegations should never be made lightly.

The reference to the Monday morning “babelaas” comment was not aimed or directed at any person or group, but was a general comment about workers not pitching for work on Mondays – a universal malady. Even if his comment mostly referred to black people, that in itself would not be racist. To suggest otherwise would stretch the imagination a bridge too far.

I also note that the:

- farmer reportedly “quipped” the statement in dispute; clearly, this was said in jest; and
- newspaper did not state the disputed part as fact, but attributed it to its source.

And yes, sometimes animals are more reliable than people – of any colour or ethnicity.

#### *Cartoon: Maximum harm*

The NMBM complains that the cartoonist “intended to cause maximum harm to the image of the Nelson Mandela Bay Municipality and its employees”. It describes the cartoon as a deliberate attack on the intellectual capacity of the administration of the NMBM and says that it made “a political statement”.

Baron argues that the story about the horse was not linked to the municipality and states that “the cartoon is a deliberate negative statement...as it cannot be linked to any newsworthy event initiated by the municipality”.

The Herald says cartoonists “do have some levity and the freedom of artistic expression to satirically comment on one or two seemingly unrelated events as a form of humour”. The newspaper argues that the cartoon was aimed not only at the NMBM, but also at several other municipalities that were slow in servicing their residents. It points out that it has published several stories about overspending and under-servicing in the many small municipalities in its region.

Firstly, it would be wrong to suggest that cartoonists, or indeed journalists, have a greater measure of free expression than ordinary citizens. Everyone has the right to criticise, to express an opinion, however wrong it may be, and to poke fun at people who are paid with public money.

Also: Public officials should not be too sensitive about criticism, but rather welcome it if it is not meant maliciously.

In this case, I find the criticism in the cartoon to be mild, and not malicious. Even if it was “damaging”, that in itself would not have been sufficient to rule against the newspaper.

Whether a cartoon is linked to a newsworthy event or not is irrelevant. The nature of the cartoon is entirely at the behest of the cartoonist and the editor.

### **Finding**

The complaint is **dismissed** in its entirety.

### **Appeal**

Please note that our Complaints Procedures lay down that within seven days of receipt of this decision, either party may apply for leave to appeal to the Chairperson of the SA Press Appeals Panel, Judge Ralph Zulman, fully setting out the grounds of appeal. He can be contacted at [Khanyim@ombudsman.org.za](mailto:Khanyim@ombudsman.org.za).

Johan Retief  
Deputy Press Ombudsman

Available at: <http://www.presscouncil.org.za/pages/posts/nelson-mandela-bay-municipality-vs.-the-herald351.php>

## **ADDENDUM 11: FIGHT FOR MINE CASH HEATS UP**

BY: Andile Ntingi

There is a new development in the saga involving a North West tribe and a mine. A state-appointed administrator has drafted a report that recommends that a lawsuit be instituted against the financial advisers of the Bakubung-ba-Ratheo community.

The community has a substantial stake in the R6.2-billion platinum mine.

The report, drafted by Abel Dlamini, a chartered accountant, concludes private equity firm Musa Capital gave negligent advice to the community.

Musa helped the community sell a portion of its stake in Wesizwe Platinum, the JSE-listed company constructing the mine, through a series of complicated transactions that raised R527 million.

But soon after the money was raised a split erupted within the tribe's royal family over control of the wealth. The fight has been raging for three years, with accusations that Musa and some members of the royal family having benefited while the majority of the 33 000-strong community remains dirt poor.

Dlamini was appointed to administer the affairs of the tribe last October.

"On the face of it the advice dispensed by Musa regarding the monetisation of the community's shareholding in Wesizwe and the subsequent advice for the community to invest the proceeds thereof into the Musa Kubu Fund was negligent in that the needs of the community have been completely ignored," the Dlamini report says.

"A damages claim against Musa should be investigated as soon as possible before Musa has an opportunity to dissipate assets."

But Musa has hit back, accusing Dlamini of lacking financial acumen in his conclusion that the firm dished out bad advice to the Bakubung.

"This is an absurd conclusion without any substantiation at all," said Musa executive director William Jimerson.

"Based on the numerical and accounting inaccuracies in his report it is clear that Mr Dlamini lacks the financial skill or acumen to make such a claim. The Musa Kubu Fund has generated an about 7% dividend yield back to investors matched with an unrealised asset growth in excess of 20%.

"No matter what the asset class, this level of performance is anything but negligent."



North West Premier Thandi Modise's spokesperson Cornelius Monama has confirmed receipt of the report.

MEC for local government and traditional affairs Paul Sebegu said the report was still to be tabled before the provincial government's executive. He said claims that the government had dismissed the Dlamini report were untrue.

Dlamini declined to comment and referred questions to Modise's office.

"No resolution in relation to the appointment of Musa has ever been furnished by the traditional council. At its high point, the community may potentially take action against Musa for dealing in its assets without proper authority," the report says.

Jimerson also dismissed this conclusion by Dlamini.

"There are no fewer than five such resolutions for our work done for the community along with numerous video recordings of full community meetings during which our mandate was confirmed," he said.

Nearly R300 million of the R527 million raised was invested in the Musa Kubu Fund, a R470 million private equity fund that has invested in companies in emerging markets such as Argentina and Zambia.

The strategy resulted in about 44 million Wesizwe shares belonging to the Bakubung being sold and collateralised in a series of complex transactions.

For three years Musa has been fighting allegations of stealing Bakubung's wealth and, even though it has disclosed the details of the transactions following numerous court battles, the allegations persist.

"We, as the royal family, are going to do everything in our power to get back the community's stolen wealth," vowed Ignatius Monnakgotla, a member of Bakubung's royal family opposed to Musa.

Dlamini's report also accuses Musa of not properly disclosing the fees it charged for implementing the monetisation of Wesizwe's shares and for administering the proceeds.

In his report Dlamini claims that Musa earned R72 million in fees, which amounted to about 13% of total proceeds. But this has been dismissed by Musa, which says it billed the community R55.1 million but was only paid R42.9 million for its work over a four-year period.

Jimerson said had Musa not executed the monetisation, the monetised shares would have been worth about R215 million today, but the community realised more than R500 million in cash and still remains the biggest black economic empowerment shareholder in Wesizwe, with a 9.25% stake in the company.

- CITY PRESS

Available at: <http://www.citypress.co.za/business/fight-for-mine-cash-heats-up-20110910/>

## **ADDENDUM 12: RULING OF MUSA CAPITAL VS CITY PRESS**

Ruling by the Deputy Press Ombudsman and two members of the Press Appeals Panel

5 March, 2012

This ruling is based on the written submissions of Director of Musa Capital Will Jimerson and the City Press newspaper, as well as on a hearing that was held on 29 February 2012 in Johannesburg. Jimerson represented Musa Capital and Ms Zanele Mbuyisa appeared for the newspaper. The two members of the Press Appeals Panel who assisted me were Neville Woudberg (press representative) and Ethel Manyaka (public representative).

### **Complaint**

Musa Capital (MC) complains about a story in City Press, published on 11 September 2011 on page 3 of its business section and headlined Fight for mine cash heats up – *Administrator says Bakubung should sue financial advisers*.

MC's main complaint is that the story omits relevant information that it gave the journalist that would have provided context to the story.

The firm also complains that the story:

- presented a report as fact that has not officially been tabled, accepted/dismissed or discussed by the community;
- deliberately damages its reputation; and
- is neither fair nor accurate (details are discussed below).

### **Analysis**

The story, written by Andile Ntingi, is about a report drafted by state-appointed administrator and chartered accountant Abel Dlamini involving the management and financial affairs of the Bakubung tribe, including a R6 billion platinum mine in which the Bakubung has "a substantial stake". One of the report's recommendations is that a law-suit be instituted against the private equity firm MC, financial advisers of the Bakubung. The story states that MC has helped the community to sell a portion of its stake in the construction company Wesizwe Platinum – an effort that has reportedly raised R527 million. Ntingi writes that this money then became a bone of contention, with accusations that MC and some members of the royal family have benefited from this transaction – whilst the majority of the 33 000-strong community "remains dirt poor". The story quotes Dlamini's report as saying: "A damages claim against Musa should be investigated as soon as possible before Musa has an opportunity to dissipate assets." MC's executive director Will Jimerson reportedly replied that Dlamini's claim was without any substantiation.

The panel will now look at the merits of the complaint:

*Relevant information, context omitted*

MC complains that the story omits relevant information that would have given context to the story.

Jimerson argues that both he and Ms Simone Lipshitz, head of MC's PR agency, timely made the newspaper as well as the Premier's Office (North West) aware of the "fact" that Dlamini's report contained unsupported claims and inaccuracies, and that the report was subject to discussion and amendment. The firm explains that it gave the newspaper "official documentation" to substantiate this ("additional information material to the allegations made by Mr Dlamini in his report") – and complains that City Press omits this (necessary) context which "establishes the questionability of its (the Dlamini Report's) accuracy and validity". MC argues that this omission constitute a breach of the Press Code.

The "official documentation" refers mainly to a report that MC has written to refute Dlamini's claims.

Jimerson pointed out that the story cited one of the errors (that MC earned R72 million in fees) as fact – despite the "fact" that Ntingi acknowledged to both himself and Lipshitz that this was an error.

City Press replies that:

- Jimerson's response to the Dlamini's report that MC supplied it with, was not an "official document";
- it gave MC a right of reply – which "appears significantly" in the story; and
- some of the quotes in the story did come from that document, adding that these quotes were attributed to MC.

In its response to the newspaper's reply to its complaint, MC addresses the story's (alleged) lack of quoting from its response to the Dlamini Report, as well as the way in which the story quoted Jimerson.

Regarding its response to the report and the story's alleged lack of quoting from it, MC states the following:

- No information from its document is quoted in the article (only from Ntingi's interview with Jimerson) – evidence of the newspaper's bias against MC;
- It provided the newspaper with a detailed point-by-point rebuttal of every allegation made by Dlamini – but the story omitted this information;
- City Press had evidence, verified by independent third parties (as contained in its response to Dlamini's report), to the effect that MC had provided the Bakubung with R700 million in liquidity – and yet the newspaper reported the

allegation that it had stolen the community's money, whilst omitted the firm's view to the contrary;

- The documentation it gave the newspaper was indeed "official" in that it had been received by the Premier's office and was an official Musa document. It asks: "Does the fact that our document was not commissioned by the Premier make it any less relevant or credible than Dlamini's? Especially given that our document includes third party proof from auditors and financial institutions that Dlamini's report is a lie?"
- The relevance of quoting from its report lay in the fact "that there is substantial material from credible third parties which would make it clear to the reader that it is not 'Musa's word' versus Mr. Dlamini, but instead Mr. Dlamini versus auditors, accountants and multiple lawyers". Jimerson said this brought into question Dlamini's competence – a "vitally relevant point to the reports and article in question"; and
- There is no fairness and objectivity in quoting from the Dlamini report, but not from MC's document – "surely, a Dlamini claim should be set against a direct Musa response to the Dlamini claim?"

Regarding the way in which Jimerson was quoted, MC says:

- Simply being quoted in itself does not guarantee objectivity – the latter is only determined by the relevance of the information mentioned, adding that the story quotes him highly selectively;
- Even though the story quotes Jimerson, his quotes are only used "a long way after the damaging accusations from Dlamini are given prominence";
- Jimerson is not quoted with any support from the third parties quoted in his report; and
- Jimerson is quoted as an individual who is "unofficial", whereas the "official" nature of the Dlamini report is given undue weighting.

The panel has confined the complaint (the "relevant information" that the story allegedly omits) to the report that MC has written in response to Dlamini's one.

Firstly, we note that the story's coverage of the Dlamini Report is not in question – this report was in the public interest, and there was no complaint that the article misrepresented that document.

Also, we believe that the journalist did well to quote Jimerson fairly extensively. This went some way in bringing balance to the story.

However, although the story does contain some information from MC's report (which the journalist read prior to publication), we are convinced that that the failure to mention that such a report existed, that it contained some documentary evidence from independent third sources and that it was presented to the Premier as MC's official response to the Dlamini Report, resulted in an unbalanced story.

This is the point: when one reads the Dlamini Report and the story only, there seems to be no problem. But when one also takes MC's report into account, one gets a totally different impression – one that the story should have reflected. Thus, it should have mentioned that such a report, together with its documentary evidence, existed.

We hasten to state that we:

- are not saying that the one report is correct or more correct than the other (we are in no position to make such a judgment, nor are we required to do so); and
- do not expect from the journalist to have made such a decision (quite the contrary!).

We do, however, believe that Ntingi should have mentioned the existence of MC's report, together with the documented "evidences", and left it to the public to decide for itself – the neglect of which resulted in an unfair reflection of the issues that were at stake.

#### *Report not officially been accepted*

MC complains that, although the Dlamini Report was not officially sanctioned, the story presents its contents as fact.

MC notes that Dlamini's report has not been tabled at the time of the publication of the story in dispute nor had it been discussed with the community – both of which should have happened before the document could be regarded as official.

MC also objects to the newspaper's argument that the report was official because it was written by someone who was appointed by the province – it argues that the official nature of the report did not guarantee its accuracy.

City Press admits that Dlamini's report had not been tabled, but adds that the story made that clear.

The sentence that the newspaper refers to reads: "MEC for local government and traditional affairs Paul Sebegu said the report was still to be tabled before the provincial government's executive."

MC replies that this quote is "buried in the middle of the report" and does not clarify that the report had not been officially accepted. "This leaves the inference in the public's mind that Dlamini's recommendations about Musa carry the imprimatur of the province."

The panel is satisfied that the story is clear about this issue – it explicitly states that the Dlamini Report "was still to be tabled before the provincial government's executive", which clearly indicates that the contents of that report were not yet

officially sanctioned. It also precludes the notion that the story presents the contents of that report as fact.

We do not believe that the statement about “still to be tabled” was “buried” in the middle of the story. Although it may have been better to mention it earlier in the article, the way it was published cannot constitute a breach of the Press Code.

#### *Deliberate damage to reputation*

MC complains that City Press has deliberately damaged its reputation.

The firm states that the publication of unofficial and unfounded allegations against it could potentially “severely damage” the firm’s reputation and therefore contravenes the first article of the Press Code (that deals with truthful, accurate and fair reporting). It argues that, as a financial services organisation, its reputation is seminal to its credibility and adds that the newspaper published the story, despite it having pointed this out to its journalists. It alleges that Ntingi himself noted that MC “was being unnecessarily maligned” in the Bakubung affair.

It argues: “City Press...knew before writing their report that the Dlamini claims were at the very least questionable, and in Musa’s view, supported by third party evidence, were factually incorrect and deliberately damaging.”

Jimerson concludes that:

- Ntingi wanted to put MC in a bad light and that he had aligned himself with forces that mounted a smear campaign against this company “some 18 months ago”; and
- the newspaper’s “deliberate and calculated” unfair and inaccurate decisions, its neglect to put matters into context, and its material omissions of fact all contravened the Press Code.

City Press denies this, stating that the statements in the story were based on fact and that it was published in the public interest. It adds that the report indeed raised some issues that did not put MC in the best light, but argues that the story merely reported on the findings and recommendations in that report.

It adds that if its intentions were malicious and deliberately tarnished MC’s name, it would not have quoted MC so extensively in the story.

MC replies: “How is it possible to claim lack of malice and bias against Musa when the story is about an unverified report claiming that Musa has stolen money from the Bakubung Ba Ratheo, when both the reporter and the editor are in possession of evidence verified by independent third parties, including financial institutions and auditors, that proves that Musa has actually provided the community with R700 million in liquidity that the community would not otherwise have had?”

The panel does not believe that the damage that the story did to MC (because of the neglect mentioned under the first heading above) was deliberate. The newspaper's argument at the hearing that if Ntingi was "deliberate" in causing MC damage he would not have quoted Jimerson so extensively, is convincing. The journalist's failure to cover MC's report adequately indeed caused MC unnecessary – but not deliberate – damage. We put this neglect down to Ntingi not being diligent enough in this matter; we accept that he was not deliberately malicious and that he did not want to cause MC harm.

This point will be amplified in our discussion about the photograph that accompanied the story (below).

### *Reporting neither fair nor accurate*

Jimerson complains that the following issues provide additional grounds for believing that the newspaper was neither fair nor accurate in its reporting. He says that:

- Ntingi took a telephone call in his and Lipshitz's presence – a call "from someone who was a member of the small constituency (the so-called 'Concerned Group') who fuelled the smear campaign against Musa and its client"; he claims that Ntingi told them that this person said to him: "Why don't Musa just get out of the way? Why don't they take their cut and give us the rest of the money." From this, Jimerson concludes that Ntingi was fully aware that the source who provided him with the report had vested and nefarious financial reasons for maligning his company – and states that the journalist therefore should have doubted the veracity of the Dlamini Report;
- the prominent use of a plug quote from the Dlamini Report (to the effect that a damages claim against MC should be investigated before the firm had an opportunity to dissipate assets) showed "a clear bias against Musa" and unequivocally claimed that MC had criminal intentions;
- Dlamini's "official" status as the author of the report is used to validate his allegations – while the latter's mandate only lasted for six months. He adds: "To omit the fact that he is no longer the community's Administrator is to distort the facts" – and says that this gives greater credibility to Dlamini's report;
- Ntingi acknowledged that Dlamini's had bad intentions and a bad history, and even said that he would include that in the story – a promise that he did not keep; and
- the picture and its caption were misleading, in that they wrongly led readers to believe that the protest depicted in the photo was against MC. This, he said, showed the newspaper's "malicious and negligent intent".

To this, City Press replies as follows:

- Ntingi denies Jimerson's version regarding his telephone conversation and says that that call was personal;



- Readers would have understood that the plug quote was a recommendation made by Dlamini – which Jimerson disputed in the same story. The newspaper adds that the purpose of the story was to highlight Dlamini’s recommendations;
- The “information” as to Dlamini’s alleged motivation was speculative and could not be proven; moreover, the article was about Dlamini’s findings, not about himself; and
- A grievous error was made in publishing the picture, “which had no relevance to the story” – something for which the newspaper says it is willing to apologise.

Jimerson replies that Lipshitz was a witness to the telephone call; and that the information regarding Dlamini was not speculative, but based on proven facts.

The panel will discuss the five bullet points mentioned above by MC one by one.

Firstly, the telephone call: at the hearing, the panel accepted that the call that Ntingi took while Jimerson and Lipschitz were at his office was indeed a private conversation that had nothing to do with the matter at hand. Jimerson was therefore mistaken about that specific call.

We also noted that the following matters were not in dispute:

- Someone from the “Concerned Group” did say to Ntingi that MC should get out of the way and give the Bakubung the rest of the money (in a previous conversation); and
- Ntingi communicated this to Jimerson.

We do not agree with Jimerson’s argument that Ntingi should have realised that that source had vested and nefarious financial reasons for maligning his company because of the above-mentioned statement – and that the journalist, on the basis of that, should have doubted the veracity of the Dlamini Report.

On the contrary, we believe that Ntingi did well as far as this matter is concerned – he listened to both sides (as he should have done), and he did not act as a spokesman for the Concerned Group – otherwise he would not have mentioned the statement in question to Jimerson.

Secondly, the plug-quote from the story: This is standard journalistic practice and does not prove that the newspaper was biased against MC.

Thirdly, the neglect to state that Dlamini was no longer the Bakubung’s administrator (giving greater credibility to his report): The Dlamini Report was official, even though it was not tabled at the time of the publication of the story. As the report was commissioned by the provincial government, he was acting on behalf of the Premier. The fact that his tenure had since expired was of no consequence.

Fourthly, regarding Dlamini's alleged "bad intentions" (which was not included in the story): The panel cannot make any finding on Dlamini's supposed intentions.

Lastly, the photograph: The newspaper has apologised for using a picture that incorrectly highlighted the community's protest against MC.

The fact that City Press did so immediately after having been made aware of this mistake and unconditionally offered to apologise for this, again confirms our belief that the newspaper was not malicious or that it deliberately tried to cause harm to MC.

We also note that the caption to the picture was misleading, as it falsely linked the picture to the story.

## **Finding**

### *Relevant information, context omitted*

The failure to mention the existence of MC's report, together with the "evidences" from outside sources, resulted in an unfair and unbalanced reflection of the issues that were at stake.

This is **in breach of**:

Art. 1.2 of the Press Code that states: "News shall be presented in context and in a balance manner, without any intentional or negligent departure from the facts, whether by...material omissions..."; and

Art. 1.1 that says: "The press shall be obliged to report news...fairly."

### *Report not officially been accepted*

This part of the complaint is **dismissed**.

### *Deliberate damage to reputation*

This part of the complaint is **dismissed**.

### *Reporting neither fair nor accurate*

The first four parts of the complaint is **dismissed**.

The use of a picture and its caption that misleadingly projects the image that a protest was staged against MC is **in breach of Art.:**

5.1 that says: "...captions to pictures shall give a reasonable reflection of the contents of the report or picture in question"; and

5.3 that states: “Pictures shall not misrepresent or mislead...”

Sanction

City Press is directed to **apologise** to MC for:

- failing to mention the existence of its document (responses to Dlamini’s report) and the independent sources that are mentioned in that document; and
- publishing a misleading photograph and caption.

The newspaper is directed to **publish** a summary of this finding (not the full ruling) and the sanction in an appropriately prominent manner and on the same page and section that the story in dispute was published. After setting the context, the story should start with what the newspaper got wrong. The text should include some relevant information contained in MC’s document that responds to issues raised in the Dlamini report, and the fact that the document was officially handed to the Premier. After that, City Press is free to elaborate on the parts of the complaint that were dismissed.

The newspaper should furnish our office with the text prior to publication. Please add to the text: “Visit [www.presscouncil.org.za](http://www.presscouncil.org.za) (rulings, 2012) for the full finding.”

## **Appeal**

Please note that our Complaints Procedures lay down that within seven days of receipt of this decision, either party may apply for leave to appeal to the Chairperson of the SA Press Appeals Panel, Judge Ralph Zulman, fully setting out the grounds of appeal. He can be contacted at [Khanyim@ombudsman.org.za](mailto:Khanyim@ombudsman.org.za).

Ethel Manyaka (public representative)

Neville Woudberg (press representative)

Johan Retief (Deputy Press Ombudsman)

Available at: <http://www.presscouncil.org.za/pages/posts/musa-capital-vs-city-press296.php>

## ADDENDUM 13: LAW SOCIETY OF SOUTH AFRICA'S SUBMISSION TO THE PCSA



LAW SOCIETY  
OF SOUTH AFRICA

OFFICE OF THE CO-CHAIRPERSONS

21 October 2010

The Task Team  
Press Council of South Africa  
P O Box 47221  
PARKLANDS  
2121

By e-mail: [review@ombudsman.org.za](mailto:review@ombudsman.org.za)

### COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA

The Law Society of South Africa (the LSSA) seeks to respond to the request from the Press Council of South Africa (the PCSA), published in the *Sunday Times* on 26 September 2010, on ideas to improve self-regulation of the press.

The LSSA brings together its six constituent members – the Cape Law Society, the Law Society of the Northern provinces, the KwaZulu-Natal Law Society, the Law Society of the Free State, the National Association of Democratic Lawyers and the Black Lawyers Association – in representing South Africa's 20 000 attorneys and 5 000 candidate attorneys.

In a press release issued on 6 August 2010, the LSSA expressed its concern at the threat to freedom of access to information and media freedom. In the press release, the LSSA stated as follows:

*However, the LSSA is greatly concerned about the suggestion that the media requires external regulation. What appears to be envisaged is a government-appointed 'independent' tribunal which would serve as a forum for appealing decisions made by the Press Ombudsman, and which would be accountable to Parliament. The fact that the Tribunal would be accountable to Parliament is cold comfort – ultimately what this will amount to is government oversight over the media, which cannot be countenanced in a democratic state. It appears that the purpose of the Media Appeals Tribunal is essentially to remove self-regulation, which has been criticised in the Discussion Document on the basis that the appointment of a former journalist as the Press Ombudsman automatically leads to bias in favour of the media. This criticism is not borne out by the jurisprudence that has emanated from the Press Ombudsman. The Ombudsman has issued a number of highly critical findings against the media and ordered the publication of several prominent apologies, including front page apologies. The right of individuals to approach the court in cases of defamation is entrenched and the discussion should actually be how best to utilise this, including accessing lawyers for such acts.*

The Law Society of South Africa brings together the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers in representing the attorneys' profession in South Africa.

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*Of further concern is the call for journalists to be criminally sanctioned or fined for publishing inaccurate stories. Such a step would entirely negate the right to freedom of the media and place South Africa amongst the ranks of several autocratic states around the world where criminal sanctions are used to silence the media. The LSSA is of the view that the concerns about lack of accountability among certain sections of the media should be addressed by an improvement on the current system of self-regulation together with strengthening of the Ombudsman's powers.*

In the light of the commitment made in its public statement, the LSSA makes the following brief comments which summarise some of the current issues and any potential conflict with the Constitution. The LSSA merely highlights some ideas on the issues of self-regulation of the press, with reference to the request of the PCSA.

In drafting these comments we considered the constitution of the PCSA, the Press Code, and the PCSA invitation referred to above.

Both the envisaged Media Appeals Tribunal and the Protection of Information Bill 6 of 2010 are directly inimical to a democracy. As such they undermine the Constitution of the Republic of South Africa, 1996. The debate around the envisaged Media Appeals Tribunal and especially the Protection of Information Bill goes to the very essence of the type of future society South Africa seeks to become.

Before dealing with the matter of the self-regulation of the press, some background comments on the Protection of Information Bill and the Media Appeals Tribunal are necessary.

#### **The Protection of Information Bill**

The first issue that requires consideration is whether the Media Appeals Tribunal (the MAT) was designed to draw debate away from a far more serious matter: The Protection of Information Bill 6 of 2010 (the Bill).

The Bill will be the third and final Act of Parliament to water down the provisions of section 32<sup>1</sup> of the Bill of Rights in our Constitution, 1996. The original intent of section 32 was to grant everyone the right of access to *any information held by the State*. With regard to information held by others not part of the State, the requester had to make a case for access on the basis that the information was required for the exercise or protection of any rights.

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<sup>1</sup> S 32 Access to information  
 (1) Everyone has the right of access to  
 (a) any information held by the state; and  
 (b) any information that is held by another person and that is required for the exercise or protection of any rights.  
 (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

Section 32 (2) of the Bill of Rights lead to the Promotion of Access to Information Act 2 of 2000 (PAIA). For practitioners experienced in this field, PAIA is more of an expensive impediment to access than part of the 'reasonable measures to alleviate the administrative and financial burden on the State'. (Access to privately held information is even more difficult to obtain for people without deep pockets.)

The second Act of Parliament which effected part of the provisions of section 32 of the Bill of Rights is the Protected Disclosures Act 26 of 2000. A serious flaw in this Act is the requirement for certain disclosures to be made in 'good faith' and other disclosures to be made without reward.

Whistle-blowers are thus left to face the desperately difficult task before making a disclosure to disavow any thoughts of vengeance which might render their disclosure 'bad faith'. Far from protecting the whistle-blower, the Act curtails the flow of important information. Like PAIA, the Protected Disclosures Act was not thought through very carefully before it was passed.

The current Bill that may lead to the Protection of Information Act is much more far reaching in its potential consequences. If this Act comes into existence in its current form, it may be challenged in the Constitutional Court. However, on the assumption that by some method the Act passes constitutional muster, the core conceptual flaw of the Act is 'to regulate the manner in which State information may be protected'.

State information belongs to the citizens and inhabitants of a country as voiced through Parliament. That is why, with regard to the original text of section 32 of the Bill of Rights, the National Assembly made the scope of access so wide. PAIA was the first practical step to limit the scope of access to information by dint of bureaucratic inertia. The complexity of the very application form adds to the difficulty of a requester.

But the Protection of Information Bill takes a concerning step further. Unlike the Protection of Information Act 84 of 1982 passed by the apartheid Parliament, which the Bill seeks to replace, and which was far more modest in its scope and application, the Bill now moves the classification and categorisation of information out of Parliament and into the hands of functionaries. This is untenable.

The Bill basically breaches the essential tenets of the separation of powers by giving to functionaries powers which only Parliament can exercise. The classification and categorisation of State information is a matter for Parliament. That power derives from the National Assembly which passed the Constitution, 1996, (here referring particularly to section



32 of the Bill of Rights), which in turn the Constitutional Court certified for ultimate commencement on 4 February 1997.

A more detailed analysis of the Bill is not necessary for these comments.

Next is a synopsis of the current issues relating to the confusion about self-regulation and the Media Appeals Tribunal as a method to improve self-regulation. There are fourteen aspects to address, some of which overlap, but with a different emphasis and focus.

### **Synopsis of the issues raised**

The following aspects have been raised:

1. There are *'wayward journalists'* from whom 'the public needs protection'.
2. The press *'watchdogs'* – the Press Ombudsman and the Press Council – are *'ineffective'*.
3. There is *no 'economic transformation'* in the 'print media'.
4. There is *no diversification of local media ownership*, especially in the print media.
5. The print media is viewed with *profound suspicion*, even as a 'threat to democracy'.
6. The MAT is needed to protect socialism and to offset the *'liberal offensive'* against democracy.
7. *Parliament will investigate self-regulation* and the desirability of the MAT to oversee self-regulation.
8. The *MAT is needed* to hear complaints against journalists, to impose legal penalties and to *win the 'war of ideas'*.
9. There is a *lack of quality in reporting* in the print media.
10. There must be a balance between freedom of expression and *dignity*; the press *'ignores'* the latter.

Further considerations are:

11. The issue of *media freedom* in all its facets with emphasis on improving the *self-regulatory structures*, if improvement is needed.
12. The *MAT will stifle investigation into corruption*, scandals and internal party disputes.
13. The Protection of Information Bill and the MAT *may well be in conflict with the Constitution*.
14. *The MAT shifts the focus* from a more important issue: the Protection of Information Bill.

## Points to consider concerning the issues above

### Crisis of confidence about self-regulation

Of the four main forms of regulation – statutory regulation, co-regulation, self regulation and self-discipline – self regulation is a voluntary regime which operates mainly through industry or corporate codes of conduct or rules and social audits beyond or outside direct government control.<sup>2</sup>

Self-regulation varies from 'soft law'<sup>3</sup> to exceptionally strict control such as in certain professional associations. Essentially self-regulation is internal to an industry but may have an external monitoring component.

It appears that the profound difficulty the PCSA faces at the moment is a crisis of confidence in the self-regulation of the print media that is, to a very large extent, *not of its own making*.

The crisis of confidence stems from a conglomeration of the following factors.

1. The criticisms of the press are conceived in confusion where certain spokespersons raise different views. The ruling party has yet to resolve definitively whether South Africa under its leadership is to be a developmental (socialist) state or a free-market (capitalist) state. Hence the criticism voiced by Minister Blade Nzimande is qualitatively different to the criticism voiced by, for example, the leader of the ANC Youth League, Julius Malema.
2. Control and ownership of the print media by the State cannot be countenanced. In a socialist state, the media is the mouthpiece of the administration. In a democracy the media is the watchdog against unwanted encroachment by the State into business and private affairs. The fact that the media is infinitely more complex than this, is the key to saving self-regulation of the press.<sup>4</sup>
3. There is an astounding frustration in certain quarters with the print media that motivates the criticism of the media. The frustration is based on three features, two of which can be addressed and ameliorated by the PCSA.

<sup>2</sup> Paraphrased from *Advertising Law in South Africa*, by Tanya Woker, Juta & Co Ltd, 1999 and 'Privatisation of water in Southern Africa: A human rights perspective' 2004 *AHRLJ* 218 at 221, by Danwood Mzikenge Chirwa.

<sup>3</sup> L. Senden 'Soft law, self-regulation and co-regulation in European law: Where do they meet?' (2006) 9 *Electronic Journal of Comparative Law* 1 27 quoted by Hakeem O Yusuf in 2008 *AHRLJ* 75 at 103.

<sup>4</sup> The most important change the PCSA can make which is within its control is to explain the skill of quality journalism in didactic articles in the newspapers to evoke and engender debate about the core principles of a free press. This idea is dealt with below.



- a) The first frustration relates to the perceived lack of quality of our journalism.
- b) The second relates to the perceived targeting of government officials.
- c) Third, there is a parroting by some of prejudice about power relations in post-apartheid South Africa which tends to clog change.

### Perceived lack of quality of journalism

There are at least seven matters in which the perception of the quality of our journalism, and the quality itself, can be improved.

1. The Press Code must require *parity of publicity for an apology*. Corrections and explanations may receive less coverage. However, retractions are akin to apologies and must receive parity of publicity in terms of location in the publication, space and detail. The issue of apologies and retractions is most critical. Consequently it needs to be addressed immediately.
2. As Prof Kader Asmal has indicated, there is a kaleidoscope of views on almost all topics in South Africa. *Publications need to represent the full scope of those views*, even if the publication is dedicated to a particular view.
3. Articles in the press need to demonstrate by content *how well researched and investigated they were before publication*. A useful tool for self-regulation would be to create a special adverse criticism in which a distinction is drawn between a 'scoop', thoroughly researched, documented and investigated before publication, and '*stealing a march*' where a publication, in search of a scoop, makes mistakes due to a failure of one of those three essential criteria for a valid scoop.
4. The PCSA needs to persuade its members to *publish articles in clear language* to explain the skill of quality journalism. The articles could be didactic in nature, or even in special cartoons. The purpose would be to evoke and engender debate about the core principles of a free press. In this regard, complexity and detail need to be embraced not avoided. In order to increase the quality of a publication and the enjoyment for the reader successfully, more detail and more complexity, written in *language that is easy to understand*, is required. It is appreciated that to write a pithy and clear article takes more time than to write a ramble,<sup>5</sup> but in articles dedicated to express the skill of journalists, the effort is worthwhile.

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<sup>5</sup> In his letter to the Jesuits dated 4 December 1656 (*Lettres Provinciales* (1656-1657), no. 18) Blaise Pascal wrote sardonically:

5. The PCSA needs to request its members to publish more follow-up articles. An oft voiced critique of media in general and print media in particular is that a matter stays in the news while topical and titillating. After that it disappears into oblivion. The reason why follow-up articles are so important is that readers become aware of a consistency of reporting that counters the cynical criticism against so-called 'sensationalist scoops'.
6. The PCSA needs to request its members to address the general suspicion held by an alarming number of readers (sceptically, cynically, rationally or by prejudice) against the press protecting its sources.<sup>6</sup> Explaining the need to safeguard the identity of sources can be done through the didactic articles suggested above. However, a more sophisticated approach needs to be considered in the short term. (Perhaps consideration should be given to a law that extends privilege to the relationship between journalist and source similar to that of legal privilege.)
7. With regard to the submissions to the Task Team published by Prof Guy Burger on 12 October 2010: We agree with the proposal that *there should not be any waiver of the right to take further legal action as a condition precedent for jurisdiction of the Press Ombudsmen*, and that the Press Code should deal with *South African constitutional rights to dignity and privacy and the common law right to reputation*. A straightforward acknowledgement of those rights in the code, juxtaposed to 'freedom of expression, is necessary.

### Perceived targeting of government officials

The perception that the (print) media targets government officials (or other prominent persons) is not a peculiarly South African phenomenon. However, two factors have contributed to this perception. First, section 32 of the Constitution, 1996,<sup>7</sup> allows everyone access to any information held by the State, whereas access to privately held information is gained only when required for the exercise or protection of any rights.

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Translation: 'My Reverend Fathers, my letters do not customarily follow one another so closely, nor are they usually so ponderous. The little time I have had has caused both the one and the other. I have made this one longer only because I have not had the leisure of making it shorter.'

<sup>6</sup> The *Mail & Guardian Online* ran an article on 18 October 2010 dealing with the resignation of Ms Mary Metcalfe and the spat with Minister Blade Nzimande. One of the telling comments expresses more eloquently the point made about sources.

In the comments column, a certain Mack Nyati wrote:

'Who are these 3 sources in government? Does the claim that the sources are in government put a stamp of authenticity to this report? Why did the minister demand the LK's resignation? Exactly what is the article trying to 'enlighten' us about? Who wrote this article?'

<sup>7</sup> See footnote 1 above.

Consequently and paradoxically, for many years the State was an easier target for journalists seeking serious stories than the private sector. The irony is that part of the purpose of the Protection of Information Bill is to plug this perceived gap, created in the Constitution itself.

The second factor is that, regrettably, the perception is not without substance. Obvious abuses of power in the private sector do not get the same level of intense investigation<sup>8</sup> or reporting as do the abuses by State officials. For example,

- many of the Competition Commission cases, even those first exposed by the press, do not receive full follow-up stories;
- many of the trials involving white-collar crime in the private sector also do not receive coverage; and
- many of the contracts of employment in the private sector of formerly high-placed government officials are not investigated with a view to the parable of the shrewd manager<sup>9</sup> and the benefits thus accumulated in the private sector.

However, perceptions can change quickly. It will not be too difficult for the PCSA to remove the perception that the media target government officials. *All that is required is for investigative journalists to be more persistent in their investigations of the private sector so that a proper spread of stories hits the broadsheet.*

### **Prejudice which clogs change in post-apartheid South Africa**

The post-apartheid prejudice about power relations relates to the effect not only of the legacy of apartheid and colonialism but also to the 'sour grapes of sore losers'. In this regard the print media is again in a maelstrom not of its own making. The print media is one part of an intensely complex and contradictory society.

The most advantageous way in which the print media can deal with prejudice is to expose its existence and refute it with sound arguments.<sup>10</sup> The print media cannot be defensive. If anything, the print media must engage more and use more humour.<sup>11</sup>

<sup>8</sup> The timeshare industry is an example. In July 2005 Sheena Adams, then of The Star, reported that the Club Leisure Group was under investigation by the DTI and SARS. After directors from the Club Leisure Group and their lawyers complained the story was discontinued. However, a cursory investigation into the Timeshare Institute of South Africa (as it was then) would have shown a series of cross-directorships with the Club Leisure Group that should have raised concern.

<sup>9</sup> The Gospel according to St Luke: chapter 16.

<sup>10</sup> 'My father always used to say, "Don't raise your voice. Improve your argument." Good sense does not always lie with the loudest shouters, nor can we say that a large, unruly crowd is always the best arbiter of what is right', per Archbishop Desmond Tutu.

### Restoring confidence in self-regulation

Complaints about the self-regulation of the press have neglected two important considerations. The first is that the MAT will not restore confidence in the print media. A government-imposed control over the media will harm the credibility of the Government and of South Africa as a whole tremendously. The MAT will be regarded as a form of censorship.<sup>12</sup>

The second is the positive effect that can be achieved by strengthening codes of conduct and ethics. Apart from the review of the constitution of the PCSA and the Press Code currently underway, to our knowledge no attention has yet been paid to the important and enabling provisions of the Consumer Protection Act 68 of 2008.<sup>13</sup>

The Consumer Protection Act provides for industry-wide codes of conduct developed not only by owners, marketers, managers and advertisers, but also by consumers and consumer groups to be prescribed by the Minister of Trade and Industry. The mechanism to get such codes prescribed is set out in section 82. It requires the group seeking the code to approach the National Consumer Commission, which in turn will recommend the proposed industry code to the Minister.

Before any new drafting of amendments to the constitution of the PCSA or the Press Code takes place, the PCSA should make its changes with s 82 of the Consumer Protection Act in mind. The Consumer Protection Act is a more sophisticated piece of legislation than the Protection of Information Bill, and serves to render further contemplation about the MAT unnecessary.

Yours faithfully

**MAX BOQWANA**  
CO-CHAIRPERSON

**PETER HORN**  
CO-CHAIRPERSON

<sup>12</sup> On the thirtieth anniversary of the Soweto uprising the Sowetan published an amusing, thought-provoking cartoon on the front page which caricatured the photo taken by Sam Nzima on 16 June 1976.

<sup>13</sup> Per Nacine Gordimer interviewed by Stephen Moss for the *Mail & Guardian Online*: 17 September 2010.

<sup>14</sup> The Consumer Protection Act 68 of 2008 was assented to on 24 April 2009. Some of its provisions came into force a year later. The general provisions of the Act, due to come into force on 24 October 2010, were postponed by the Minister of Trade and Industry on 23 September 2010 until the commencement date of 31 March 2011. However, section 82 (2) is already in force.

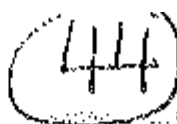
Available at:

[http://www.presscouncil.org.za/media/PDFs/1/PCR\\_Sub1\\_Law%20Society%20of%20South%20Africa.pdf](http://www.presscouncil.org.za/media/PDFs/1/PCR_Sub1_Law%20Society%20of%20South%20Africa.pdf)

## ADDENDUM 14: FREEDOM FRONT PLUS'S SUBMISSION TO THE PCSA



PARLIAMENT  
of the REPUBLIC of SOUTH AFRICA



MEMBER OF PARLIAMENT

Freedom Front Plus, House of Assembly, Cape Town  
16 December 2011

www.ffp.org.za



KCHAM

22 March 2011

Mr. Joe Thibloe  
The Press Ombudsman  
The Press Council of South Africa  
2nd Floor  
7 St. Davids Park  
St Davids Place  
Parktown  
2193

Delivered by E-Mail: [letyann@ombudsman.org.za](mailto:letyann@ombudsman.org.za)

Dear Mr. Thibloe

### Re: Proposal for Revised Press Code

We refer to the above matter and advise that we hereby wish to make a submission regarding the Press Code.

Firstly, we wish to thank you for affording us this opportunity to make a submission to your office regarding the Press Code. We regard the Press Council and the Press Ombudsman as sacrosanct in keeping the press ethical and balanced. We also fervently support the independence of the press and the mechanism of self-regulation in its totality. Without an ethical and balanced free press the 'powers that be' will have it even easier to flout the rule of law and the interests of the public at large. We regard the press as an ally in the opposition in general and specifically in the fight against corruption and abuse of power.

It is against this background that we wish to make certain submissions that we believe will make the press even more responsible, which in itself will not leave much room for the ANC government to continue with the absurd idea of a media tribunal.

Over time we have come to identify certain inadequacies that deserve attention as follows (amendments are underlined and in bold and deletions are struck through)

#### 1. Reporting of News

We submit that certain aspects regarding the reporting of news need to be addressed. While the Code is quite extensive, we wish to propose that the following amendments be implemented (the rationale for each change follows each rule):

**Rule 1.1:**

"The press shall be obliged to report news truthfully, accurately and fairly and shall give expression to the *audi alterem partem*-rule."

**Rationale:** This addition will ensure that all views are canvassed before a news report is published so as to ensure equity with regard to all parties involved in a matter.

**Rule 1.2:**

"News shall be presented in context and in a balanced manner; without any intentional or negligent departure from the facts whether by in any manner, including but not limited to:

1.2.1 Distortion, exaggeration, toning down or misrepresentation;

1.2.2 Material omissions; or

1.2.3 Summarisation; or

1.2.4 Any other form of manipulation of the presentation of the facts.

More specifically, when a news report is compiled the press and the journalist in question will ensure that each party to a matter shall receive equal exposure as is reasonably possible."

**Rationale:** While this rule is well designed, it lacks the openness for any other method of presenting an unbalanced work. As for 1.2.1, it is submitted that balance can also be affected by way of underplaying certain facts that would have brought necessary balance. The last sentence is necessitated by the habit of the press to paint a picture of a situation according to the view of the party making certain assertions and only providing the other party(ies) a brief response to the painted and tainted canvas.

**Rule 1.3:**

"Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with due regard to context and importance. Where a report seems reasonably true or is not based on facts or is founded on opinions, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly."

**Rationale:** We find it problematic that the truth may be reasonably true. As far as we are concerned only the complete truth can be presented as fact. Therefore, if something is deemed to be reasonably true – thus a subjective assessment having been made – it deserves to be treated like opinions, allegations, rumours and suppositions and must be indicated clearly in the news report.

**Rule 1.5:**

"A publication should usually must always seek the views of the subject of serious critical reportage in advance of publication; provided that this need not be done where the publication has reasonable grounds for believing that by doing so it would be prevented from publishing the report or where evidence might be destroyed or witnesses intimidated."

**Rationale:** It is a fundamental principle of equity that the *audi alterem partem*-rule be applied in all news reporting. This must be an imperative in accordance with the Constitutional right of administrative justice. We do, however, agree with the exceptions in the last part.

#### Rule 1.6:

**"A publication should make amends for publishing information or comment that is found to be wholly or partially inaccurate by printing, promptly and with appropriate equal prominence, a retraction, correction or explanation, and where other parties have been prejudiced, an apology. A publication shall not be entitled to use or publish a defense that the information or comment was partially true."**

**Rationale:** It is of the utmost importance that the press publishes the truth wholly, and where it does not know it, should state that it is the case. The damage of publishing even half truths can be so irreparable that publishing a rectification or apology after the fact cannot make amends. It is also appropriate where the press is asked to do so, to publish an apology without hesitation. Owning up to mistakes must also be part and parcel of the press' moral arsenal. In the case where rectification or an apology must be made it must be given exactly the same prominence as the infringing publication as it will be the only equitable manner in which to make amends for the infringement of Constitutional rights. In the event that the published 'facts' were partially true, the press should not be able to use that as a defense for publishing incomplete information.

#### 2. Prejudicial Journalism

We wish to have a new heading inserted as stated above. It happens that journalists who may have an irrational dislike of an individual or persons belonging to an affiliation of some sort use their profession's platform to continuously prejudice and denigrate these persons and/or simply ignores them when they have achieved positive results. Normally these acts are subtle and quite insidious, but can be traced by having regard to the print record of these journalists.

Therefore, the following rule is proposed:

**"Neither the press, nor any individual journalist shall engage in a process of subtle or overt prejudice, discrimination or denigration of persons, communities or organisations for any length of time by, including but not limited to, prejudicial references, selective reporting, preference to opposing parties, inaccurate reporting, omissions of relevant media statements and facts, and breach of the *audi alterem partem*-rule, whether made in reporting news, advocating a view, stating an opinion or made in jest in columns or otherwise, that will have the effect of creating a negative view of the subject in the eyes of the public."**

We do realise that the above wording is not perfect, but we propose it as a point of departure.

#### 3. Rumour-Mongering and Jest

It so happens that the press report on events and persons in opinion columns that is designed to be interesting – akin to rumour mongering – and/or humorous. Many journalists use these platforms to make statements of opinion and bias that paint persons and events in a certain prejudicial hue. The unwritten rule of these columns is that, due to its nature of tongue-in-cheek opinion, it does not require adherence to facts, respect of persons and organisations, and adherence to the *audi alterem partem*-rule.

Our view is that this is an outright abuse of freedom of expression and should not be condoned in any manner. Therefore, we propose the following rule:

**"Neither the press nor any individual journalist shall engage in conduct that entails the stating of an opinion as part of rumour or in jest that is contrary to fact, whether partial or wholly, and in breach of the subject's right to dignity and the *audi alterem partem*-rule."**

Furthermore, it also happens that journalists engage in creating and spreading baseless or incomplete facts as rumours about persons and organisations among the journalistic fraternity resulting in the negative treatment



by the journalistic fraternity of such persons or individuals. While this might not be an act that strictly takes place in the printed media itself, it does take place in the journalistic realm and deserves regulation.

Therefore, we propose the following rule:

**"Neither the press nor any individual journalist shall engage in creating and spreading rumours, whether published in the press or otherwise, about persons and organisations that is baseless or based on incomplete facts."**

#### **4. Headlines, Posters, Pictures and Captions**

We believe that rule 5.1 is inadequate to ensure equitable treatment of persons and organisations reported upon by the press. For instance, one party to a dispute or issue would receive preferential treatment by the press for sensationalist purposes by using their view of the matter in the headline to the exclusion of others with severe prejudicial effect. In other cases political parties would be mentioned when a headline ties them to a negative event, yet will be omitted when they have achieved a positive result. This is also a serious and ongoing problem that is dealt with by the press in a very nonchalant manner.

Therefore, we propose the following amendments to rule 5.1:

**"Headlines and captions to pictures shall give a reasonable, accurate and balanced reflection of the contents of the report or picture in question and shall give expression to the audi alteram partem-rule. Furthermore, where persons or an organisation has been instrumental in achieving a positive result, it shall be explicitly mentioned in the headline."**

Rule 5.1 impacts on rules 5.2 and 5.3 and therefore, they need to be amended as follows:

##### **Rule 5.2:**

**"Posters shall not mislead the public and shall give a reasonable, accurate and balanced reflection of the contents of the reports in question."**

##### **Rule 5.3:**

**"Pictures shall not misrepresent or mislead nor be manipulated to do so, or be abused by making irrelevant or gratuitous use thereof."**

#### **5. Future Conduct of the Press when investigated by the Press Ombudsman**

It also happens that whenever the press or a journalist have been referred to the Press Ombudsman by a complainant, irrespective of whether the complainant or the respondent wins, the press thereafter treats the complainant with contempt and more often than not engages in conduct that is reminiscent of retribution. This must be prohibited at all cost.

Therefore, we propose the following new rule:

**"The Press or any journalist, after having been referred to the Press Ombudsman by a complainant and irrespective whether the matter is still pending or whether the matter has been concluded for or against the press or journalist, shall not engage in any act that can be deemed to be motivated by retribution for having been referred to the Press Ombudsman, whether made in reporting news, advocating a view, stating an opinion or made in jest in columns or otherwise."**



We trust that you shall find this submission in order and are looking forward to your comments.

Yours sincerely,

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Available at:

[http://www.presscouncil.org.za/media/PDFs/6/PCR\\_Sub44\\_Freedom%20Front.pdf](http://www.presscouncil.org.za/media/PDFs/6/PCR_Sub44_Freedom%20Front.pdf)

# MEDIAMONITORING Africa

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Promoting human rights and democracy through the media since 1993

The Chair  
South African Press Council  
By email: [csa@csa.org.za](mailto:csa@csa.org.za)

18 August 2010

Dear Mr Louw

## Re: Strengthening the self regulator system in South Africa

Following our conversation on some constructive suggestions for strengthening the press council, I hereby submit a few of these.

We would like to reiterate from the outset that Media Monitoring Africa (MMA) is clearly and unambiguously opposed to the establishment of a Statutory Media Appeals Tribunal. We have here and will continue to argue wherever possible in the public discourse to challenge the notion of such an institution.

It must also be noted that in our view the current self regulatory system is not working as well as it could or should be. There are a host of reasons for this. If we can use the current tragic situation against our media, in good, we hope it can be in ensuring that we make our self regulatory systems not only comparable with international democratic practices but amongst the best in the world.

### 1. Knowledge and public awareness:

Despite the bolstering of the office in recent years the Press Ombudsman has spoken out privately about journalist lack of knowledge of the Code, for ordinary members of the public. Yes there are now notices placed in newspapers, print media but they are often small and don't assist readers understand more about the process or the code. It is very rare for the advert to be carried in the Daily Sun for example – despite their stated commitment to agreeing to abide by the code. In short we believe there is a clear need for public awareness of the code, and of the processes followed and how it functions. One of the reasons we believe the current allegations bring media ignore the broadcast media is because there is far greater public awareness of their code and their processes. It is imperative once more that if we are to create greater awareness that we all address this issue. We say all of us, as we believe it is not only the Press Council's job to do this but media houses, editors, media NGOs and anyone who has an interest in securing the effective operation of a self regulatory press council. MMA has a few ideas as to how this can be done and we would be very interested in exploring some of these with the Council further.

# MEDIAMONITORING AFRICA

## 2. Gaps in the code:

As mentioned previously while our existing code is adequate there are some gaps which if filled would make our code an example of international best practice. You will be aware of the guiding ethical principles for reporting.

The following are taken from Bob Steele(1-3) from the Poynter Institute and Franz Kruger(4):

1. *Seek Truth and Report it as Fully as Possible*
  - a. *Give voice to the voiceless.*
  - b. *Hold the powerful accountable.*
2. *Act Independently*
  - a. *Recognize that good ethical decisions require individual responsibility enriched by collaborative efforts.*
3. *Minimize Harm*
  - a. *Be compassionate for those affected by your actions.*
  - b. *Treat sources, subjects, and colleagues as human beings deserving of respect, not merely as means to your journalistic ends.*
  - c. *Recognize that gathering and reporting information may cause harm or discomfort, but balance those negatives by choosing alternatives that maximize your goal of truth-telling.*
4. *Accountability*
  - a. *Journalists should be prepared to explain and answer for their work.*
  - b. *Cooperation with self-regulatory bodies*

Sadly as things stand the principle of minimising harm is currently absent from our press code. While relatively new in media ethics the principle is growing in stature as more people become aware of the power of the media and its concomitant responsibility. It is also clear that many of the concerns expressed regarding the media is its potential for harm. The concept of minimising it does not undermine in any way the ability to report better it simply makes it clear that it is an imperative the media need to follow as and where appropriate and it should in our view be one of the principles that is taken into consideration in adjudicating complaints.

The last principle quoted above is one of accountability from Franz Kruger. This may seem obvious as this is what the press council does but for people to have greater buy in and for the code to have greater application it is important that this principle is stated clearly in the code.

Another clear gap in the press code – and also the Broadcaster Code of Conduct (thought to a lesser degree) is the absence of children from the code. You will be aware that the only mention of children is under the definition of child pornography. As I mentioned in our discussions we currently have a media law advocate finalising an opinion on the need and importance of including a clause on children in the code.

To date the opinion has not been finalised. We will of course make it available to you as soon as we have it. In the interim though we wish to highlight the importance given to children in our constitution through Section 28 as well as the numerous other special protections afforded to children in our laws and international obligations.

## MEDIAMONITORING AFRICA

Reporting on children requires specialised skills and adherence to the highest ethical practice. This is why we run an honours level course with Wits Journalism on reporting on children and also why we presented to Sanef, and Sanef recommended Guidelines for reporting on children. We believe that our code as it stands is not in line with our constitutional values around children. Further you may also be aware of the potential for a new piece of legislation seeking to ban all forms of pornography - much of it done on the basis of protecting children's rights. MMA opposes this argument and will oppose the legislation as well - not because we support pornography, but because we have a view, (shared by many other progressive Children's Rights groups) of children's rights and freedom of expression that says that they should be integrated and operate together, rather than being used as a means to shut down and limit freedom of expression. Accordingly we believe that it is imperative that a clause on children is included in our press code. (We will also be taking the same suggestion to the BCCSA.) Not only will this bring the code, in our view, more in line with our constitution, but it will also demonstrate that media clearly are seeking to protect the most vulnerable groups in society. As children account for 39% of our population, it would also be good for them to be represented in the code.

### 3. Challenges in process:

MMA's experience of the Press Council is that it was overly legal, drawn out and would be disadvantageous to less resourced and less disadvantaged organisations and entities, there is therefore some sort of protection needed for these lesser advantaged organisations once they get involved in the Ombudsman process. As a rule MMA seeks to resolve issues constructively before approaching the Press Ombudsman as it is confrontational. Our experience however suggests that there is room for improvement in this regard. When we lodged our complaints with our partners against the Daily Sun they immediately brought in their lawyers. Luckily we had the resources to find our own lawyer and advocate. They brought in Adv Gilbert Marcus and we had his colleague Adv Steven Budlender. While this ensured a fair fight in the appeal it was clear that had we not had the legal resources our complaint would have been quashed even earlier. As it was we complained on the basis of a concerned civil society organisation. Yet the Daily Sun's response was to immediately respond with the law. While we cannot deny them the right to do so it put us at a disadvantage and we know that if we bring a complaint against them again we will not draft it but will get a lawyer to do so to ensure greater legal soundness to our arguments. While we admit our case was unusual as it was based on a trend of reporting and not an isolated incident we feel that the whole point of the Press Council was obfuscated in terms of seeking speedy, easy non-legal relief. Maybe a possible option would be to say that lawyers can only be brought in if the case goes on appeal? We do not know. What is clear is that our experience of the system was very legal and had our attorneys advocate not been so magnanimous, it would have cost MMA a significant amount of money in legal fees, fee we do not have and we believe normal citizens would not. MMA would again be very supportive on engaging further on these issues and finding constructive solutions to them.

## MEDIAMONITORING AFRICA

You may also know that MMA also intends to carry out research into the complaints that have been submitted, the rulings and the people involved with a view to building a case to demonstrate the effectiveness of the Press Council. We will be doing this together with media monitoring of some of the other issues raised by the ANC against the media. We would welcome an opportunity for us to discuss these suggestions and others as well as how MMA may cooperate with the Press Council in taking some of these ideas further.

We thank you for the opportunity to make these suggestions.

Yours sincerely



William Bird  
Director and Ashoka Fellow  
Media Monitoring Africa

## ADDENDUM 16: SCRIPTURE UNION'S SUBMISSION TO THE PCSA

2011/03/16

FW: Christian Contribution and response

**FW: Christian Contribution and response to Press Ombudsman hearings**

Johan Retief

Sent: 16 March 2011 11:03 AM

To: Eric Thukho

Attachments: The Christian response to J.L.docx (23 KB)



**From:** Sikelelewa Dlanga [mailto:sike@su.org.za]

**Sent:** 15 March 2011 06:20 PM

**To:** Johan Retief

**Subject:** Christian Contribution and response to Press Ombudsman hearings

Dear Mr Retief

Please receive the submission with the on behalf of and with consent of some churches and Christian youth.

Thank you for the work that you do. May God increase your capacity, give you wisdom and strengthen you as you go forward.

He promises that if we ask for wisdom He will give it to us.

Strength and wisdom to you!

Sike Dlanga

On behalf of Scripture Union, Christian youth and the broader church.

021 686 8595

### The Christian response to the Press Ombudsman hearings

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The following statements are written on the consent of and together with some of the greater Christian church and Christian youth.

The history of the church's influence in South Africa as a moral high ground of society:

It was in the 1800's when the late Reverend Soga made a call to Africans to embrace the universal call to bring together the people of God. Already then he penned such hymns as, 'Lizalis' idinga lakho Nkosi yeNyaniso, zonke iintlanga zonk' izizwe mazizuze usindiso.' He promulgated a gospel that was non racist, non-sexist non-sectarian right at the back of a massive destruction of the Africans along the Eastern Cape who were robbed off their land through uNongqawuse. This clear stance taken for the human race was one of the building blocks of the moral fibre of the church that was to emerge guns blazing against Apartheid three centuries down the line.

The church played a crucial role in the unfolding of South African history. Primarily a section of the church gave birth to the morally bankrupt philosophy of Apartheid but to the credit of the broader church, apartheid was overturned through the role church played to mobilise and galvanise mass support to fight and defeat apartheid.

The church is the custodian of the moral compass otherwise known as the Bible which advocates throughout for moral uprightness and charge the church to be the agents of change from moral bankruptcy to the yielding to the reign of God where righteousness is the order of the day. To date the claims the Bible makes on this subject have stood the test of time. The God who became man enabled Christians to translate what could have been pie in the sky in terms of morality to real and tangible outworking of the Godly code of morality and ethics.

Statistics seem to suggest that just over 80% of the SA citizenry subscribe to the Christian faith meaning therefore the obligation to succumb and be guided by the principles as outlined in the Bible.

### PRESS FREEDOM

Press freedom was one of the rights which were secured by the attainment of political freedom. It is important that this was an outcry against that system that had used press and media as tools of oppression and suppression. Located within this struggle was once again

the role played by the church to speak out unashamedly and courageously against the diabolical forces of Apartheid and in a sense laying down the foundation on which freedoms such as that of the press could be premised. This was done at a huge cost, many paid the ultimate price.

It is against this background that it becomes necessary that this hard earned freedom be guarded from being usurped by agents of destruction and waywardness. Put directly, Press Freedom is no licence to degrade, humiliate, perpetuate ungodly racial tendencies, promulgation of dominant political agendas, etc. Christians have a clearly defined role where they are charged to be the voice of the voiceless, to defend the rights of the poor and speak against injustice anywhere and at any time. It is this responsibility that Christians bring to the table as part of its contribution towards the safeguarding of the freedom of press.

#### PORNOGRAPHY

There is clear guidance from the Bible with regards to physiology and the attendant dignity accorded to human beings. Pornography violates this right and renders a human body as an object reduced to sexual depravity. The responsibility of the Church though is not only to fight against pornography, nor merely to guard against but rather to ensure that a counter message is promulgated at all different levels of society. Education and re-education of the citizenry is the primary focus if this evil is to be dealt with decisively. The programmes being currently run at schools on subject such as lifeskills are designed to bring in a new consciousness about sex and sexuality which will eventually lead to less policing on this subject but rather to see dignity restored to human beings.

It is for this reason that the church must be consulted with regards to matters pertaining to pornography to ensure that the press is sensitized to what elements lead inevitably to misuse and abuse of the God given gift. The language used needs to be scrutinized without censorship to ensure that wrong messages aren't flighted giving rise to more incidents of Pornography.

#### IN VIEW OF THE ABOVE MENTIONED STATEMENTS WE ADVISE THE INCLUSION OF THESE CODES:

- Christians support media freedom however true freedom is truthful and does not distort the truth under any circumstances. Truth in no means the defamation and the stripping of people's dignity. The responsibility of the press is to report truthfully with sensitivity with nation building at the core of each reporting. The Church sees the role



of media as important however, we are also mindful that this importance is not denigrated by unethical and unbecoming journalism.

- The spirit of Ubuntu became what South Africa was known for after our attainment of the democracy. It is this spirit that led people like Rev. Soga in his quest to bring the people of God together regardless of race, colour or creed. It was this same spirit that led people like former President Mandela, the late Mr. Sisulu, the late Mr. Sobukwe to name but a few to lay down their lives for the benefit of many. This spirit says I am because you are and because I acknowledged the role you play in my becoming I will honour you. I will honour your strengths but I will honour you also in your weakness. This finds resonance in the Bible verse in the book of Corinthians where the Apostle Paul cries to God about a weakness in his flesh. God's response to his cry is not to remove the weakness but God says to him: "My strength is made perfect in weakness." Humanity in its frailty lunched on to this truth, and lived this out through the spirit of Ubuntu. Ubuntu does not break down perceived weakness but by my strength I compliment your weakness, so that together we look good. This I feel is also the role of the media – make us look good, do not hide our weaknesses but build us up. Tear us up to build us up so that this beautiful country of ours and its people can live up to their destiny.
- The press is to be servants of society. The press is to provide news that are truthful and for the enhancement of the country.
- The press is to be sensitive to the state of the nation and respond responsibly. If the press is found guilty of inciting or fuelling a contentious matter in the nation unnecessarily there must be a heavier penalty than usual.
  - The press was guilty of this during the time of the death of AWC leader Eugene Terreblanche and during the so-called 'Xenophobic' attacks and many other times.
- Blasphemy in the press and including online newspapers:
  - When reporting on issues regarding the Christian faith journalists are to consult at least three Christian bodies to verify their statements. This also serves to protect the public from a single sided story and stereotyping.
  - The name of God (The Father), Jesus (The Son) and The Holy Spirit are not to be used negatively or in any light that is offensive to Christian believers or that seeks to demean them. To the Christians the Trinity is the basis of their beliefs – denigrating the name of the Father, the Son

and the Holy Spirit is **offensive** to Christians and to their God. This is a serious matter to us.

- The press is asked to deal with any member of society who calls themselves a Christian and does something contrary to the Bible as a separate case rather than smearing and stereotyping the whole body of Christ. Generalising is unfair and tends to put groups of people in a negative light unfairly based on the actions of a few. Deal with issues not people or the groups they belong to.
- Responsible reporting:
  - Human dignity must be upheld at all times when reporting even if the wrong doer has done wrong – 'tear down bad behaviour to build the man'.
  - Children, injured, abused and other vulnerable individuals are to be protected when reporting. This responsibility we take very seriously as the body of Christ.
  - In a case of abuse or injuries medical persons and social workers must be give consent of interviews for injured and abused people or it will be viewed as further violation and abuse.
  - Reporting must be truthful and balanced at all times for all parties and group of society.
  - Any newspaper that perpetually reports a single-sided negative view of a particular group without reporting on the rest of story must be heavily fined. The public is to be alerted.
  - The press is obligated to find and report on good news daily with as much vigour as it does bad news. What the press is currently doing is that it has a single approach where it only reports negative stories unless it is a positive story about sport. This is not balanced reporting it is portraying a false impression of the state of our nation.
- Authority figures in the press:
  - The dignity of authority figures must not be dishonoured at any point. Freedom of speech does not include freedom to dishonour.
  - The truth must be reported without deliberate and malicious intentions to shame authority figures.
  - Only matters relevant to the story must be reported and nothing further if it does not benefit the article.

- The press must be aware that while parents have a responsibility to protect children the press has a responsibility to ensure that what is reported will not negatively affect children.
- Nudity and pornography:
  - There is to be no child pornography or any sexual images publicly displayed on billboards or on any print.
  - No nudity including women with shiny breasts on sports magazines.
- Children:
  - No child should be interviewed without the consent of a Social Workers or their parents especially in a abuse situation.
  - Children and minors must be protected by the press if the press exposes any child in a vulnerable situation they must bear the consequences.

SUGGESTIONS ON HOW THE PRESS OMBUDSMAN OR SELF-REGULATED BODY CAN BE BETTER EQUIPED TO SERVE THE PUBLIC:

- Full representation of society:
  - The majority of society must be represented in the body, in this case 80% of South Africans are Christian therefore there must be a strong Christian representation.
  - A full representation of society must be taken into account.
- Youth, churches, celebrities, sports persons including other members of society must be represented in the body in order to ensure a fair media.
- The Press Ombudsman must release a statement or a monthly report that will go out to every publication in the nation to increase visibility, awareness and as a way to show accountability to the broader public.
- The Press Ombudsman must invite schools to participate in educating the public and as part of social responsibility. If young learners are empowered from an early age that they must take responsibility for what they read we are building more responsible journalists and adults in the future. This is also an opportunity for learners to learn not to be merely consumers of media but to participate and in-so-doing have young ones who can think for themselves and less formed by the views of the media. This is a way and an opportunity for the media to give back to society.

## ADDENDUM 17: REG RUMNEY'S SUBMISSION TO THE PCSA

### A Media Appeals Tribunal: Proposals, Perceptions, and Practicalities

13

Version 1.1

*All men pretend the licentiousness of the Press to be a publick Grievance, but it is much easier to say it is so, than to prove it, or prescribe a proper Remedy; nor is it the easiest Grievance to Cure.*

— Daniel Defoe, 1704, *Essay on the Regulation of the Press*.

Rumney, R.W. August 24 2010

#### 1. Introduction

The role of a researcher is to provide light, not heat: hence it is not the intention of this paper to provide fuel for an increasingly fiery public argument about the proposed introduction of a Media Appeals Tribunal. Most recently the Tribunal has been seen by news media organisations and commentators as part of a new aggressive attitude towards particularly Press freedom, the debate around it coinciding with public and news media concern about the Protection of Information Bill and the arrest in public in Rosebank, Johannesburg, of a journalist who had recently published an article alleging political influence on a property deal by the Commissioner of Police. The ABC for its part, has expressed surprise at the sharp reaction by the news media.

My view is that any debate about regulation and Press freedom needs to be:

- Evidence based, in the sense that policy prescriptions should not be based on perception and belief alone.
- As dispassionate as possible to avoid rhetoric (in the popular sense of the word).
- Seen in the context of the role the news media plays in promoting the aims of the constitution (as well as abiding by the constitution).
- Take into account in the broadest possible way the effect on the country, including the economy, of any changes to the status quo.

In the process of examining the issue of a Media Appeals Tribunal (which in journalistic style I will refer to as "the Tribunal" rather than the abbreviation MAT), I will examine the history and status of the proposal for a statutory form of regulation, its source and its rationale; the status quo, that is the present self regulatory system and its rationale; and the political, economic and legal issues that arise. Finally, I will respond with my own proposals, based on observations of the current system and criticism of that system.

Where possible I will adopt an Appreciative Inquiry approach, because it is more likely in my view to arrive at positive answers than the usual perhaps over critical stance. Appreciative Inquiry normally is used in the context of organizational sustainability, but in my view this can be transferred to institutions. This approach "is deliberately called the appreciative approach, not the affirmative approach or the positive approach or the uncritical approach. [It] is about choosing the elements of a situation that we want to work with; it is not about a Pollyannaish refusal to recognize the fact that

## A Media Appeals Tribunal: Proposals, Perceptions, and Practicalities

good and not-so-good are mixed in unequal proportions in everything we experience". In a sense, this approach is about recognizing different realities and negotiating a common reality.<sup>1</sup>

### 2. *Proposals and practicalities*

#### i. Polokwane Resolutions

The proposal to institute a statutory Media Appeals Tribunal (MAT) arose at the 52nd African National Congress in Polokwane. The proposal needs restating to get an idea of the thoughts around the Tribunal.

The relevant section of the Polokwane resolutions, "The Communications and The Battle of Ideas", (appendix 1), proposes that the principle and implementation of a tribunal be investigated. Repetition of the six points that make up the proposal is unnecessary. Suffice it to say that the document stresses the Tribunal should be seen in the context of "the need to balance the right to freedom of expression, freedom of the media, with the right to equality, to privacy and human dignity for all."

Importantly, the document expressly states the print media is the target of such a tribunal, and that whether "such a MAT be a statutory institution, established through an open, public and transparent process, and be made accountable to Parliament" should be investigated. "Remedial measures" to promote the human rights of all South Africans should be considered, but these are not spelled out.

The Communications and The Battle of Ideas section appears to advocate that the Tribunal adjudicate over complaints against the print media in the same way as the Complaints and Compliance Committee of ICASA does in broadcasting. It says Parliament should establish the Tribunal, and that the media and other stakeholders should be consulted.

Notably, the Polokwane resolutions are vague, and cite broad principles rather than any supporting research on the state of the news media that would justify changing the status quo or introducing new legislation.

#### ii. ANC NGC Document

A more recent document, ANC 2010 Discussion Document: Media Transformation, Ownership and Diversity<sup>2</sup>, has a wide-ranging discussion of the news media, looking at among others, issues of media diversity, ownership, and control. This is worth detailed, critical discussion, not for the sake of fault-finding but for clarity.

The document has a long section on the Media Appeals Tribunal, though early on it mentions the self-regulatory process of the Ombudsman and the appeal panel of the SA Press Council only to apparently dismiss it as self-serving.

<sup>1</sup> Elliott, C. 1999. Locating the Energy for Change: An Introduction to Appreciative Inquiry, International Institute for Sustainable Development. <http://www.iisd.org/gi/locating.htm>, last accessed August 25 2010.

<sup>2</sup> Discussion Document: Media Transformation, Ownership and Diversity. ANC National General Council, 20-24 September 2010. Durban.

#### A Media Appeals Tribunal: Proposals, Perceptions, and Practicalities

It has to be said that the document refers frequently to the aims of the Constitution, and professes to desire that policy is aligned with the constitution. It also raises some interesting points, especially in its conclusions, and at times asks questions that deserve considered answers. There is discussion, for example, of the possibility of a charter for the print industry, and the possibility of mainstreaming a more serious, development journalism in journalism education. But the document is testimony to the fact that length does not equal depth. By way of illustration of the lack of research on the news media, one can mention points number 58 to 61.

*58. cursory scan on the print media reveals an astonishing degree of dishonesty, lack of professional integrity and lack of independence. Editorials distancing the paper from these acts and apologies which are never given due prominence and mostly which has to be forced through the press ombudsman are not sufficient in dealing with this ill.*

*59. As South Africans we know the full meaning of unregulated power and unbridled capitalism of the barons experienced by other societies through time. The abuse of positions of power, authority and public trust to promote narrow, selfish interests and political agendas inimical to our democracy. This points to the fact that the problem of what is called 'brown envelope' journalism. This type of rot is a much more serious problem than the media is willing to admit.*

*60. This phenomenon may run even deeper than meets the eye is what has now become like permanent briefing sessions between faceless leaders within the ranks of our Alliance and some journalists about discussions taking place in confidential meetings. These relationships are probably more than just ordinary media sources inside our organizations, but possibly involve payment arrangements.*

*61. The tendency of dismissing any criticism of the media as an attack on press freedom results in the media behaving like a protection racket and leaves no space for introspection. For its own credibility, and in order to be at the forefront of determining the agenda for change and not against change, we have a responsibility to assist the media need to shape up.*

It is possible that the news media in general is sensitive to criticism and lacks introspection, though not even anecdotal evidence is advanced. The question must be asked whether a "cursory scan" of the extraordinarily wide range of print publications is sufficient to base public policy on; where the logic lies in the "abuse of positions of power, authority and public trust" automatically leading to widespread "brown envelope" journalism; and what kind of intellectual rigour phrases such as "possibly (my italics) involve payment arrangements" or the mystifying comparison of the media to a "protection racket" betoken.

"The ANC discussion document presents no evidence in support its call for a Media Appeals Tribunal (MAT). Instead it opts for assertion and rhetoric. The document unambiguously accuses the media of irresponsible and unfair reporting. However it could be accused of doing the very thing that it condemns, making unsubstantiated accusations."<sup>2</sup>

<sup>2</sup> MMA calls for evidence based reasoning in debate about Media Appeals Tribunal, [http://www.mediamonitoringafrica.org/index.php/news/entry/mma\\_calls\\_for\\_evidence\\_based\\_reasoning\\_in\\_debate\\_about\\_media\\_appeals\\_tribunal/](http://www.mediamonitoringafrica.org/index.php/news/entry/mma_calls_for_evidence_based_reasoning_in_debate_about_media_appeals_tribunal/)

## A Media Appeals Tribunal: Proposals, Perceptions, and Practicalities

### iii Commercial Realities

Unhappiness about the way that the news media operates should not be used as a means to condone control. "Commercial imperatives and sensationalism must not be at the expense of the public interest and a diversity of views."<sup>4</sup>

The document is symptomatic of much of the discussion of the Press in recent weeks and months in that it is fundamentally hostile to, and deliberately dismissive of, a market-based system of the Press and of audience. Seeking to increase readers is equated with unscrupulous sensationalism.

*79. There can be no real media freedom if commercial imperatives start to impact directly on the content on a day-to-day basis. Where the bottom-line dictates content in the pervasive manner and editors are held on a leash, the consequence is that advertisers, marketers and some politicians determine news and analysis, and stories are sometimes spiked at their behest."(ANC Discussion Document)*

Indeed, editors and ordinary journalists are aware of the distorting effect of commercial pressures, as a book by Guardian Journalist Nick Davies, *Flat Earth News*, illustrates<sup>5</sup>. Davies writes extensively about the increasing harm to journalistic standards of money pressures. The ANC discussion document – and perhaps journalistic critics like Davies – go too far in contending that journalists have no power at all, and in painting a picture of the news that is unremittingly bleak. This is contradicted by the Deputy Minister of Transport and SACP member Jeremy Cronin, writing in *Umkhelenzi Online* in support of the Tribunal:

"There are many positive features in our media. There are thoughtful commentators and plenty of professional journalists. There is much lively public phone-in participation on our radio stations and an impressive array of local community broadcasters."<sup>6</sup>

Indeed, Cronin echoes conservative views: "Editors of most serious newspapers get regular letters complaining of declining standards and dumbing down. The letters hark back to a time when news was impartial, editorials independent, opinions judicious, and the world taken seriously."

There never was a golden age and newspapers in the past were dull, obsequious and boring.<sup>7</sup> This illustrates not only the need to do research on the situation, but how contested and contestable issues of "quality" and "newsworthiness" are. The documents also go too far in believing that audiences have no power, either in choosing to buy a particular news product, or in making meaning of that news product. It has long been an accepted notion in media studies that audiences are active participants rather than passive recipients in the communication process. While journalists may choose encode a message in a particular way, they cannot control the way that the message is later decoded in different social contexts. These days, thanks to new media technologies like the Internet

<sup>4</sup> *Ibid*

<sup>5</sup> Davies, N. 2000. *Flat Earth news: an award-winning reporter exposes falsehood, distortion and propaganda in the global media*. London: Chatto & Windus.

<sup>6</sup> <http://www.sacp.org.za/main.php?include=pubs/umsebenzi/2010/vol9-15.html>

<sup>7</sup> Simon Jenkins *The Guardian*, Friday February 8, 2008



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and mobile phones, that line between producers and consumers of news is increasingly becoming blurred as "citizen journalists" contribute to the news production process.

### iv. Legal issues

The document has a separate section on the media appeals tribunal, which again makes some interesting points, but several points in favour of establishing a tribunal are illogical or wrong or do not necessarily support the establishment of a tribunal. So for instance, point 93 notes that "Many laws restrict what can be published but not the behaviour of journalists, and there are few legal remedies for inaccurate reporting."

The law cannot solve every problem; ordinary citizens could respond that there are no legal remedies for inaccurate opinions or the behaviour of political researchers either. Point 94, while correctly highlighting a problem of a lack of legal aid for libel cases, falsely states: "There is no statutory regulation of the Press". Establishing a publication does not require a licence<sup>5</sup>, but "regulation" is another word for legal rules, and it should be stressed that the Press – and broadcasting for that matter – are regulated by a number of laws, both in the common law and in the statutes. The Press is also "subject to the scrutiny of Chapter 9 institutions such as the Human Rights Commission (SAHRC)"<sup>6</sup>.

This is no small matter, for the introduction of a statutory tribunal will add a new set of laws governing the Press and quite possibly the broadcast media. The question to be posed is: Should a new set of laws be passed, or should efforts not be made to ensure the effective implementation of laws already on the statute books or in the common law? If aggrieved individual members of government of the ANC, for instance, are not suing for defamation, *crimen injuria*, or seeking protection in terms of privacy laws, why are they not doing so?

Noting the entirely voluntary system that obtains now, the document goes on to say, "There continue (sic) to be a need to strengthen self-regulation by the press." This is a more logical prescription for a system of self-regulation than the introduction of a statutory add-on. However, elsewhere it is clear that statutory intervention is being looked at.

The document continues in its correct observation that the aggrieved party has to waive his or her rights to go to court for the complaint to be accepted by the Press Ombudsman. If the complainant disagrees with the Ombud's verdict, there is no possibility of legal redress, the document asserts. The author or authors of the document believe this to be "untenable". The document appears to advocate that the Tribunal then would supplement the present self-regulatory system, rather than replace it. However, the Tribunal's authority would supersede that of the self-regulatory system.

### v. Ombud criticism

The document judges the present self-regulatory system insufficient and desires a fair and just "balance" between the interests of the media and the aggrieved party, saying the media is often the aggressor. And it proposes that instead of the Press Ombud being a former journalist he or she

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<sup>5</sup> Brand, R.

<sup>6</sup> Dawes, N. Mail and Guardian Online. <http://www.mg.co.za/article/2010-08-05-petty-power-tightens-media-screws>, last accessed August 25, 2010.



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should be "an independent person who looks at the media from the layman's perspective". The present situation it says, "... poses an inherent bias towards the media with all interpretations favourable to the institution and the other party just have (sic) to understand and accept the media way which is grossly unfair and unjust".

The document says that Parliament should start and drive the process, through public hearings, and consider whether the Tribunal should be a statutory independent institution accountable to Parliament. Again, a comparison is made with rulings made through the Complaints and Compliance Committee of the the Independent Communications Agency of SA (ICASA).

### vi Political pressures

While the Tribunal surfaced at the Polokwane ANC conference, it would be a mistake to think of it as a phenomenon of the administration of President Jacob Zuma and those associated with him. Former president Nelson Mandela as leader of the ANC expressed concerns about the role of the news media at the ANC's 50<sup>th</sup> national congress in 1997.<sup>10</sup> However, Mandela also famously remarked that, "A bad free press is preferable to a technically good subservient press".<sup>11</sup>

The moves to establish statutory regulation were started under the previous administration and were closely associated with the succession battle. One spur for the early threats to bypass self-regulation seems to have been *Sunday Times* expose of the Health Minister in Thabo Mbeki's Cabinet, Manto Tshabalala Msimang.<sup>12</sup>

To acknowledge that some people have tangible disillusionment, and that even those of us close to the news media have reservations about some journalism, doesn't necessarily mean that the news media is failing, in general or in particular. A sense of history may come to our aid here.

### vii News media quality

Certainly in terms of freedom of expression, the news media is in a much better situation right now than it was for hundreds of years. One has to agree with Kobus van Rooyen, who chaired the Publications Appeal Board in the 1980s, when he writes, "We live within a new constitutional paradigm of freedom of choice." (Van Rooyen, 2007) On this score, one has then to ask, in the light of the criticisms voiced by the ANC discussion document, whether this freedom is abused. An appreciative inquiry approach, and a closer inspection of the news media may well come to different conclusions from the grim picture often painted of the South African Press. Scathing references to tabloids, for a start, do not show any awareness that the domestic variety may differ from their foreign counterparts, or that tabloids – despite the criticism they often deserve – may resonate more closely with the everyday lived experiences of the majority of this country than do the broadsheets.

How good or bad is the news media in terms of competence or social responsibility? Is individual experience being generalised to the entire news media? The ANC discussion document, and much of the debate so far, has implicitly centered on the "social responsibility" function of the role of news

<sup>10</sup> 50th National Conference: Report by the President of the ANC, Nelson Mandela, 15 December 1997

<sup>11</sup> <http://allafrica.com/stories/200206170312.html>

<sup>12</sup> Berger, G. November 07 2007. Fifth estate, not the state. Converse online Mail & Guardian column.

## A Media Appeals Tribunal: Proposals, Perceptions, and Practicalities

media, which is normative. While this is a dominant view, it is not the only one. Views of the role of the news media range from the liberal or libertarian through to the authoritarian (Kruger, 2009).

*With libertarian dispensations such as in the USA enormous formal leeway exists for the expression of all manner of views and claims. These allow for situations of entirely voluntary individual adherence to general normative frameworks. As prevails in the USA, publications are free to follow or ignore the canon of facticity, objectivity, etc. that characterises the ideology of most news practice in that country. Thus, the New York Times "self-regulates" in terms of ethical standards widely found in the industry, while the National Enquirer is pretty much free to follow its own standards and definitions of journalism. The idea is that the free market indirectly "regulates", with consumer choice and advertising dollars determining what prevails. In such dispensations, it is only the courts (or in broadcasting, the licensing authority) which can apply sanctions (post-publication) to media houses or individual journalists concerning content which exceeds boundaries like defamation or vulgarity.<sup>13</sup>*

### viii Confusion of issues

Discussion of the Tribunal and its rationale should not confuse issues. In the discussion document referred to earlier, much ado is made about ownership and diversity. Whatever the problems here, real and perceived, it is a complex issue, and the Tribunal will not solve them. A tribunal may work to achieve some things, but it cannot solve issues of diversity of voice and opinion, news media ownership, and a host of other issues. Regulation, to work, has to be designed to achieve specific effects, surely? Or is it symbolic in this case?

"... the question of media ownership as such is not a matter for a tribunal. The democratisation of the media and the fostering of a diversity of voices is a battle to be fought on other terrains."<sup>14</sup>

### ix Need for research

A major problem is the lack of information about the possible model for a tribunal. It is hard to criticize what seems to be at this stage the skeleton of an idea that has not been properly fleshed out, though a central feature that can be discerned. This is that a body would be appointed by, and accountable, to Parliament.

The casual use of the word "media" in almost all of the debates is of concern, though it is popular shorthand for the "news media". It underlines the link between freedom of expression and regulation of the Press. "Media" is all-embracing. I raised some of the problems that this could lead to in a column for the Media Online.

<sup>13</sup> Berger, G. 2009. The struggle for press self-regulation in contemporary South Africa: charting a course between an industry charade and a government door-nat. Paper presented to conference "Communication and Media: Past, Present and Future", Sacomm, 16-18 September 2009

<sup>14</sup> Cronin, J Do we need an independent media tribunal?  
<http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71639?nid=191240&sn=Marketingweb-detail>, last accessed August 24 2010

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*According to [Comrade Blade Nzimande's] prepared speech at the SACP's 89th Congress (reported in Abdul Milazi's blog), he is annoyed by the constant stream of news about ANC Youth League president Comrade Julius Malema.*

*"It is news in which the clowning of a single demagogue fills pages and pages, while real issues that affect workers are left unreported."*

*Well, who else could he be talking about but Comrade Julius?*

*And this illustrates a point about the Media Tribunal. Isn't calling someone a clown the kind of smear that could get a journalist pulled before the media tribunal? And if the newspaper simply reported the fact that Comrade Nzimande called Comrade Malema a clown, wouldn't they, rather than Comrade Nzimande, still be liable? After all, it's a Media Tribunal, aimed at the media, not at individuals.*

*How would a media tribunal work unless it targeted individuals as well as news organisations?*

*If I wrote a blog alleging all sorts of things about Comrade Nzimande would I be liable for prosecution? A media tribunal could go after the Internet Service Provider, but what if the service provider was in the US? Would censorship of the Internet be on the cards?*

*And how would foreign news media be treated? Would the Media Tribunal expect to prosecute, say, The Economist Magazine?<sup>15</sup>*

Again, appropriately enough the writer of a blog has satirically opined that a media tribunal should not stop at newspapers but go after plays, hip-hop lyrics, academic essays, etc.<sup>16</sup>

### x Punitive measures

The counter argument is that the Tribunal is not aimed at individual free speech or even individual journalists, but at the owners of news organisations. It has been explicitly suggested that news organizations be fined rather than individual journalists. I have pointed out that the organization would have the right to discipline the individual journalist if it was fined, so that while the journalist would not have to incur an immediate loss of income, they would in a sense be punished. However, ANC spokesperson Jackson Mthembu's view is that individual journalists could be fined or even jailed<sup>17</sup>.

A larger question is how punitive measures would be instituted and against which publications, which throws into relief the difference between a purely statutory body and a self-regulatory body. The ambit of the Press Ombud established by the Press Council is those print publications who are members of Print Media South Africa. A statutory body that is an add-on would presumably be confined to adjudicating on those. Could a statutory body "shadow" the self-regulatory body? What would be the point of this? Would the existence of a statutory body not make self-regulation

<sup>15</sup> <http://www.themedialonline.co.za/themedial/view/themedial/en/page1351?oid=53664&n=Detail&pid=1>

<sup>16</sup> <http://www.mg.co.za/article/2010-08-11-media-tribunal-why-stop-there>

<sup>17</sup> <http://www.mg.co.za/article/2010-07-23-big-stick-to-beat-crani-journalists>, last accessed August 25 2010

pointless? Perhaps one should look at broadcasting regulation, since this seems to have inspired the idea of a tribunal. The ambit of the CCC is the statutory, broadcasting equivalent of the Press Council, but its ambit is broader. It can entertain complaints directly, especially when against a broadcaster, such as a radio station, that is not a member of the National Association of Broadcasters (the equivalent of Print Media South Africa) and therefore does not come under the BCCSA.

It has been observed that self-regulation in Southern Africa has generally been instituted in reaction to threats of statutory regulation (Bussiek 2008). If self-regulation is seen as an insufficient defence, should it not be disbanded rather than co-opted into a statutory system? The position of at least one editor is that of non-co-operation with a statutory body: "I just don't want to be a part of any meetings whose object is to make my country less of a democracy. If I go, and if other editors go, it will merely legitimise what the ANC wants to do anyway — they'll be able to say they "consulted" the media. But not, at least, with me. This is not Vichy."<sup>18</sup> An ex-editor opposes "collaboration," drawing on history to suggest that this will not help fend off censorship<sup>19</sup>.

#### xi Unintended consequences

There are issues of regulatory impact and unintended consequence, both on the news media as a part of a functioning democracy, and as an industry. A lot depends on how the Tribunal operates. A tribunal that is perceived to be censoring news could have the unintended consequence of boosting the credibility of alternative media forms. Unintended consequences are by definition unknowable in advance, but proper research would identify some of the possible problems and pitfalls. Again, proper, extensive research into the news media environment, including the role of the Ombud and the Ombud system, could establish whether more than self-regulation is needed, or look into ways of strengthening the system of self-regulation.

#### xii Further legal issues

The arguments around the difficulties of accessing justice either through the Ombud or through the law also need to be weighed. The Ombud exists to bypass the legal system for speedy redress. It is by its nature not a legal process, though the head of the Press Council appeal panel is a retired judge. Suggestions are that complainants would, it seems, would be able to go to the Tribunal if they are dissatisfied with the ruling of the Press Council appeal process. However, the reason for the waiver is to prevent complainants using the Ombud and appeal process as a form of discovery (Brand, P 97). No news organization would want to submit to the informal hearing if it served to strengthen a legal case.

The perception that civil action against defamation is "costly, prolonged and often inconclusive," as advanced by Cronin<sup>20</sup>, needs to be examined. It is certainly not true that civil actions by those in government or the ANC are never successful. Robert McBride, former Ekurhuleni police chief, won R150 000 in damages, plus most of his legal costs, from the Citizen newspaper for allegations

<sup>18</sup> <http://www.businessday.co.za/articles/Content.aspx?id=116753>

<sup>19</sup> <http://www.businessday.co.za/articles/Content.aspx?id=117623>

<sup>20</sup> <http://www.sacp.org.za/pubs/umsebenzi/2010/vol9-15.html>, last accessed August 25 2010

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relating to his actions during apartheid.<sup>21</sup> The argument that access to the law is difficult for the poor, and that legal aid is non-existent, can be countered in the same way at that relating to the deficiencies of self-regulation. Just as the answer to those deficiencies is improving self-regulation, not supplanting it, so legal problems must have legal solutions. If access to legal aid needs to be improved for reasons of justice, then so be it. Sidestepping the law is vigilantism. However, as is clear, again from Cronin's defence of the Tribunal<sup>22</sup> and complaints by those in power, that not only the poor but also high-profile individuals would be able to use the Tribunal if they felt aggrieved.

### xii International comparisons

It is tempting to look overseas to find examples for and against statutory regulations, but while global indices of media freedom are numerous, international comparisons of regulatory systems are hard to come by.

Some commonalities have been observed where self-regulation is present.

"Rarely are either ombudsmen or press councils universally loved. Journalists and media organizations chafe at findings they believe restrict their absolute independence or second-guess their professional work. Governments send out warning signals against what they see as too much independence, and sometimes set up their own councils masquerading as independent bodies. Complainants from the public protest and even go to court when findings against the media do not lead to punitive enforcement."<sup>23</sup>

"Some see them as part of the permanent plot of governments against press freedom; some see it as a PR ploy of owners to avoid State regulation; and a few look upon it as a fantasy of utopians."<sup>24</sup>

### xiii Repression concerns

The arguments against the replacement of self-regulation with statutory regulation are that self-regulation is like the canary in the coal mine. If its life is snuffed out it is a sign of moves to control news media.

"Where there has been state regulation of the media we have seen that this has been the beginning of a slippery slide towards repression of the media." Parliament cannot provide adequate safeguards against state control of the tribunal, given the dominance of the ANC.<sup>25</sup>

<sup>21</sup> <http://www.timeslive.co.za/local/article328807.ece/McBride-wins-defamation-case-against-newspaper>, last accessed August 25 2010

<sup>22</sup> *Ibid.*

<sup>23</sup> Ristow, B. 2009. *Sword and Shield: Self-Regulation and International Media*, A Report to the Center for International Media, [http://fesmedia.org/fileadmin/files-fesmedia.org/CIMA\\_Self-RegulationReport\\_2009.pdf](http://fesmedia.org/fileadmin/files-fesmedia.org/CIMA_Self-RegulationReport_2009.pdf)

<sup>24</sup> Bertrand, C.J. Making the Media Accountable: The Role of Press Councils, <http://www.presscouncil.org.au/pcsite/apcnews/nov56/claude.html>, last accessed August 25 2010.

<sup>25</sup> Interview with Ayesha Kaje of the South African Freedom of Expression Institute, <http://allafrica.com/stories/201008230350.htm>, last accessed August 24 2010

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"We should be looking at regulations not with ourselves as incumbent governments in mind but looking at worst-case scenarios - what if your worst enemy were in government and were to use the laws that you have put in place against you?"<sup>26</sup>

Ironically, this position is supported by Cronin, who says the ruling party can abuse its majority in Parliament to appoint "a bunch of lapdogs".<sup>27</sup>

The best arguments for self-regulation rest perhaps not so much on how it can defend against regulation but how it is part of an accountability process that gives the news media credibility by improving the quality of journalism.

#### xiv Politics and Counter-proposals

The problem with the situation at present is that there is a hardening of attitudes and a climate of no compromise. The perception may have arisen among editors that the news media cannot be expected to help fashion a rod for their own backs, or whatever idiom may serve, by "collaborating" on a statutory media tribunal, and that resistance, passive or otherwise, is the only path away from censorship. On the other hand, the media tribunal is now not only on the political assembly line, it has become part of key players' political credibility. ANC Youth League leader Julius Malema has declared it will happen and SACP secretary general Blade Nzimande has defended it vigorously, with his deputy defending it too, though perhaps less vigorously. President Jacob Zuma has come out in support of the Tribunal.

The ANC has been surprised by the reaction of the domestic news media to the proposal, but the reaction of the international news media to the idea of tribunal and the Protection of Information Bill should be sobering. The publicity surrounding the proposals and the perceptions of threats to Press freedom is tarnishing South Africa's international brand, so carefully burnished by the World Cup. This will have unpleasant economic implications.

#### xv ANC Solutions

What is the way out of this impasse?

From the ANC's side, Guy Berger has recommended practical steps, in that the ANC should, according to his Converse column<sup>28</sup>,

<sup>26</sup> Ibid

<sup>27</sup> "Jeremy Cronin: Do we need an independent media tribunal" Retrieved August 24, 2010 from <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=191240&vi=Marketingweb+detail>

<sup>28</sup> How the ANC can re-think the press impasse, <http://www.mg.co.za/columnist/guy-berger>, last accessed August 2010

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- a) Foreground the stated problems that the Tribunal was intended to address, and discuss these – not the tribunal "solution"
- b) Publicly remind those ANC members who treat the tribunal as already decided upon, that it is an old resolution calling for an investigation which is also now up for revision
- c) Decide at the coming ANC conference to drop the idea of parliament as the appropriate body to investigate the ills that for which a tribunal was presented as the prescription. A probe by any state body will only perpetuate the suspicion and the controversy. Instead, the ANC conference should resolve for the party to conduct the study itself.
- d) Ensure that any such investigation is rigorous and empirical in identifying what the ANC existing discussion document sees as "problems". This needs to go beyond the generalisations and unsubstantiated rhetoric currently in the document.
- e) Acknowledge openly when the ANC's own investigation reveals – as it must – that there are many non-tribunal ways to improve the quality of journalism,
- f) Acknowledge openly when the study reveals – as it must – that introducing a statutory tribunal for the press would require nothing less than changing the Constitution
- g) Recall that the party has consistently committed itself to the constitutional clauses on free speech and media freedom
- h) Conclude that the tribunal proposal will not fly, and invite the press to engage in talks about other issues like ownership, ethics and improved self-regulation. They will find a willing partner.

#### xvi News media solutions

One has to ask then, what is the equivalent position for the news media?

Firstly, a start could be made on improving the functioning and image of the Press Council itself, building on what it already does well. It must be recognized, and has apparently been already, that efforts to beef up the functioning of the existing self-regulatory system are not an admission of defeat, but strategic. In the US there is evidence that pressure from government commissions of inquiry into the news media did lead to improvements in responsibility.<sup>29</sup>

There is nothing wrong with the Ombud lobbying for self-regulation, as he already has done, and it might be better to present the arguments for self-regulation to the public rather than the attack attempts to regulate externally, which seems defensive.

#### xvii Self-regulation models

Frans Kruger and Hendrick Bussiek have, separately, surveyed self-regulation in the region and internationally. Bussiek (2008, P.2) finds "self-regulation now seems to be very much part of the furniture of the media set-up in the region". Kruger quotes Wakeham (1998) in advancing the practical benefits of self-regulation. Aside from being "flexible and accessible", self-regulation it is argued, contrary to what might be imagined, is more effective than external sanctions<sup>30</sup>.

<sup>29</sup> Feighery, G. 2009. Two Visions of Responsibility: How National Commissions Contributed to Journalism Ethics, 1963-1975. Journalism and Communication Monographs: Association for Education in Journalism and Mass Communication.

<sup>30</sup> Kruger, F. 2009. Media Courts of Honour - Self-regulatory Councils in Southern Africa and elsewhere, fesmedia Africa series. [http://fesmedia.org/fileadmin/files-fesmedia.org/Kruger\\_MediaCourtsOfHonour\\_2009.pdf](http://fesmedia.org/fileadmin/files-fesmedia.org/Kruger_MediaCourtsOfHonour_2009.pdf)



*A core argument Wakeham used was that self-imposed rules have greater moral authority than any that could be imposed from outside. The code used by the PCC was "imbued with all the moral authority of a document written by editors themselves for editors", he said, and covered issues like accuracy that could not be dealt with in law. He described the code as a set of responsibilities that applied over and above an editor's legal duties. "I suspect that laws – or a statutory Code – would inevitably be seen not a baseline from which to make editorial judgements (which is what a voluntary Code is) but as a straitjacket to try and get out of," he argued. A judgment by an editor's peers would have more weight than a damages award. This could become a marketing tool, he argued, pointing to France, where newspapers wore fines imposed on them as a "badge of honour". They were feeding on the assumption that the fines were only imposed because the newspaper had some interesting material, he said. An adverse judgment, by contrast, "is an admission by an editor that he or she has broken the rules which he or she frames and agreed to abide by." (Wakeham, 1998). (Kruyer, 2003, P 14).*

Neither Kruger nor Bussiek pronounce any one model superior, and it would be a mistake to do so. Similarly, in looking at the international situation, it is a mistake to "cherry-pick". The history of each country and region makes a "one-size-fits-all" strategy an impossibility. As is discussed previously, international comparisons are anyway not easily found.

xvii Non-starters

Some actions should be ruled out. Punitive actions, such as fines, rather than corrections could be considered, but editors are unlikely to agree to this, and there are severe practical problems, such as the procedure for deciding on the quantum of the fine and the likelihood of publications not paying if the amount is regarded as excessive with the inevitable necessity of resort to the law. For reasons already mentioned, non-exclusive access to the complaints resolution process, i.e. if you don't like Ombud's ruling you can go to court, is unlikely to be accepted.

xviii Practical steps

There are, by contrast, practical steps that can be taken\*

- a) If the Ombud office is to do its job well, justice must not only be done but be seen to be done. The Ombud now has a website, but more can be done to "market" the services of his or her office to the public. This could include public meetings, and the equivalent of paid ads with the full Press code, as well as a more prominent display of information about how to contact the Ombud. A communication strategy needs to be devised,
- b) Do journalists themselves know the content of the Press code? Workshops in newsrooms to educate practitioners about the Code would be an option,
- c) An analysis of the effect of the Codes and the Ombud system so far, and regular updates of this research, should be widely publicized so that the public can see what the system is doing,
- d) Easier access to the Ombud and speedier resolution of complaints seem an unexceptional goal, and



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- e) There is no reason, other than convenience, for the Press code to be a static document. The Press Council can and should regularly invite recommendations from the public for its improvement, and incorporate such recommendations.

All the above will probably entail greater capacity in the Ombud's office, and the members of Print Media SA will have to acknowledge responsibility for this.

Over and above the office of the Ombud, the Press council could consider some measures to increase credibility in the council.

At present an equal number of Press and public members are appointed, but more transparent way of choosing the public members is probably necessary. Seats could be set aside for the SA Council of Churches, a union movement representative, a representative of the committee of university principles, of the Law Society, and of civil society, for example, as well as individual members.

#### xix Beyond the Ombud

Finally, the Press Council could look at strengthening what academic Claude-Jean Bertrand calls Media Accountability Systems or M\*A\*S, of which an Ombud system is only one part.

Bertrand believes that the purpose of the M\*A\*S is threefold:

1. To help journalists serve the public better,
2. To help journalists form a profession, feel solidarity among themselves,
3. To help them recover public trust and thus public support to resist political and economic pressure.

M\*A\*S could include a range of measures, including workshops and education for journalists about news media ethics.

#### xx Conclusion

The ANC is driving the introduction of a media tribunal, but has not provided sufficient detail of why it should be introduced, how it will work, or how it will operate. This makes either appreciation of what is intended difficult, and fuels suspicion of a political agenda to create an environment for a news media more sympathetic to the party. That the Press should be regulated in the same way as broadcasting is unnecessary and illogical, because the two industries are different in several respects, not the least that broadcasting is a public resource that is subject to government license.

Parliamentary regulation in a Parliament dominated by one party is not auspicious for independence of a statutory body controlling Press freedom. In any case, the perception is that the Tribunal could be the part of the environment of hostility to the Press and harm freedom of expression by replacing self-regulation with statutory regulation which may be benign now but could in future serve malign interests. Such perceptions are unnecessarily damaging to South Africa's international image and "brand". Moreover, the cost, in commercial and political terms, of introducing another layer of regulation to those already governing the news media, instead of using existing law and self-regulation, should be examined.

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Self-regulation is not perfect and can be improved, but it will never satisfy anyone, just as a free Press will never make everyone happy. Self-regulation can be seen as the canary in the coal mine of news media freedom. Moreover, the point must be stressed that South Africa's history shows that it is not journalists who should fear regulation and crimping of the news media's ability to report, but citizens, whose right to know is impeded. The business and normative case for self-regulation, along with other media accountability systems, is so persuasive that the Press should consider spending more on a range of initiatives to make the Press Council and the Ombud both more visible and more effective. It may be that this crisis could have a positive effect of making the news media, certain the Press, more sustainable, through enhancing the credibility and quality of South African news organizations through better self-regulation. The worst-case scenario would be the replacement of self-regulation through statutory regulation.

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### Appendix

Excerpt from the resolutions of the ANC 52nd national conference 2007: COMMUNICATIONS AND THE BATTLE OF IDEAS.

#### ON THE ESTABLISHMENT OF A MEDIA APPEALS TRIBUNAL (MAT)

1. Conference adopts the recommendation of the Policy conference that the establishment of a MAT be investigated. It accordingly endorses that such investigation be directed at examining the principle of a MAT and the associated modalities for implementation. Conference notes that the creation of a MAT would strengthen, complement and support the current self-regulatory institutions (Press Ombudsman/Press Council) in the public interest.
2. This discourse on the need for a MAT should be located within a proper context. It has to be understood as an initiative to strengthen the human rights culture embodied in the principles of our constitution (Constitution Act of 1996) and an effort to guarantee the equal enjoyment of human rights by all citizens.
3. It particularly relates to the balancing of human rights in line with section 36 of the Constitution of the Republic. This especially relates to the need to balance the right to freedom of expression, freedom of the media, with the right to equality, to privacy and human dignity for all.
4. The investigation should consider the desirability that such a MAT be a statutory institution, established through an open, public and transparent process, and be made accountable to Parliament. The investigation should further consider the mandate of the Tribunal and its powers to adjudicate over matters or complaints expressed by citizens against print media, in terms of decisions and rulings made by the existing self-regulatory institutions, in the same way as it happens in the case of broadcasting through the Complaints and Compliance Committee of ICASA.
5. The investigation should further consider remedial measures which will safeguard and promote the human rights of all South Africans.
6. The Media and other stakeholders, including civil society, shall be consulted to ensure that the process is open, transparent and public. Parliament will be charged with this mandate to establish this MAT, in order to guarantee the principle independence, transparency, accountability and fairness.

Available at:

[http://www.presscouncil.org.za/media/PDFs/2/PCR\\_Sub13\\_RW%20Rumney.pdf](http://www.presscouncil.org.za/media/PDFs/2/PCR_Sub13_RW%20Rumney.pdf)

**ADDENDUM 18: JULIE REID SUBMISSION'S TO THE PCSA**

UNISA

31

01 March 2011

**WRITTEN SUBMISSION TO THE SOUTH AFRICAN PRESS COUNCIL,  
FOR THE PROCESS OF REVIEW OF THE PRESS COUNCIL, PRESS  
CODE AND CONSTITUTION OF THE PRESS COUNCIL OF SOUTH  
AFRICA**

**Submitted by: Julie Reid, Department of Communication Science,  
University of South Africa (UNISA)**

Dear Mr Ombudsman,  
and members of the Press Council of South Africa

May I take this opportunity to reiterate my thanks, which I expressed to Ombudsman Joe Thibodeau at the Johannesburg Press Council hearings, for this opportunity to contribute to the review process of the Press Council.

My written submission comes in a rather peculiar format I am afraid. I wrote an opinion piece for my column on the online newspaper, *The Daily Maverick*, about my suggested changes for the improvement of the Press Code (see ADDENDUM A). I am submitting this column, as it was published online; although I realise it will not be written as eloquently as most of your other submissions, due to the context for which it was intended (a newspaper column). I believe that it nonetheless described precisely what changes I suggest for the Press Code and the operation of the Press Council.

Although I have included the column below, as it appeared online, this is the link where it can be accessed:

<http://www.thedailymaverick.co.za/opinionista/2011-02-25-for-a-better-press-council-don-leave-out-the-little-guy>

In summary, the suggestions that I make in this column are two-fold. First, that the limitations on the definition of complainant in Part B, point 1.1 of the Press Code be lifted, so that the council can accept third party complaints. My reasons for this are outlined below. Second, that the Press Council increase its advocacy in order to raise public awareness about the Press Council and the complaints procedure.

The result of these two actions may be that the Press Ombudsman receives a larger number of complaints from a variety of people, and not necessarily only from people who are directly effected by the content of a newspaper story. I realise that this reform may cause a few practical problems at the office of the Ombudsman with regard to handling the influx of complaints. In order to manage the sudden influx of third party complaints I would suggest that these complaints are dealt with differently to first party complaints.

Obviously, the Press Council should give priority to first party complaints, and these should be dealt with as a matter of urgency so that an individual who is trying to clear their name can do so quickly. Therefore, first party complaints should be dealt with immediately and on an individual basis.

However, third party complaints (complaints submitted by people who are not directly affected by the content of a newspaper story, but who wish to complain nonetheless) could potentially be dealt with on a quarterly or bi-annual basis. For example, each time the Ombudsman receives a third party complaint about *Newspaper X*, such a complaint can be archived. At a specified time (perhaps two to four times each year) the Adjudication Panel and/or Ombudsman and/or Appeals Panel/person(s) and/or Press Council representative, and the editor of *Newspaper X* could discuss all of the archived complaints against the publication in question in one sitting, instead of dealing with each third party complaint individually / separately. This could potentially address the difficulty surrounding the capacity of the Ombudsman's office to manage third party as well as first party complaints.

Again, thank you for the opportunity to make suggestions in the Press Council's process of review. If you would like to discuss any of the matters which I have outlined in this submission, please do not hesitate to contact me.

Kind regards



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ADDENDUM A:

**By Julie Reid**

### **For a better Press Council - don't leave out the little guy**

It's not surprising public attendance at the Press Council hearings around the country has been so poor – not when awareness of the organisation's existence is so low, and the definition of those people entitled to submit complaints so narrow. Addressing these constraints shouldn't be difficult and the current review process makes it the perfect time to do so.

As regular readers of this website will no doubt be aware, a series of public Press Council hearings have been held around the country. The purpose is to listen to public opinion on revisions to the Press Code, the complaints procedure to the Press Ombudsman and the constitution of the council.

Ombudsman Joe Thloloe says a number of organisations, such as civil society groups and academics, have already made submissions for improvements to the Press Council and code. "We have achieved great depth in the review process, but now we are looking for breadth," said Thloloe. This is the chance for the general public to have its say in how the council should operate.

Disappointingly, public attendances at the first hearings has been low. On the first day in Johannesburg last week only three individuals were from the general public, while the rest of the small group of attendees were journalists, academics and representatives from civil society groups. The second day of the hearings boasted an even lower attendance. News reports said the next leg in Port Elizabeth was just as poorly attended. Because the Press Council's current review process is widely seen as a means to stave off attempts by the ANC to institute a media appeals tribunal, the poor public attendance concerns media professionals and the Press Council.

Thloloe was at a loss to explain the poor turnout, and likened the matter to voting. "How do you explain why people don't vote? We can't explain why people are apathetic," he said. According to Thloloe, the low public attendance could not be attributed to a lack of communication about the hearings from the Press Council. They had been advertised widely in all media. Thloloe said, "Any South African who claims not to know about the Press Council hearings has not been in South Africa recently." I do not agree.

I am an avid newspaper reader, television news watcher, Twitter-holic and actively involved with various media organisations. Apart from a very small article in the Times newspaper a few weeks ago, I have not encountered a single advertisement of the Press Council hearings over the past few months. As one journalist complained, the dates of the hearings were not advertised on the Press Council's website. I only found out about the dates of the hearings through sending a series of emails to the Press Ombudsman's office. The contradiction between how Thloloe describes the public's awareness of the hearings and the reality is obvious.

It brings me to my first suggestion of how to improve the Press Council: Advocacy. Some commentators have said the lack of public participation indicates the public doesn't have any grievances with how the council currently functions. But realistically, one can't help feeling that the "ordinary man (or woman) on the street" does not know anything about the Press Council, has perhaps never even heard of it, and also, simply does not care. And here I ask, why should he or she care?

A select few civil society groups and academics had their say at the hearings, giving varying, contradicting and intricate suggestions on how to improve the complaints procedure. These well-researched suggestions must be taken into account. Nonetheless, all this still ignores the absence of the voice of the "man on the street". All intellectual concerns about whether or not to drop the waiver, monitor the press, distinguish between the law and ethics, or giving the Press Council more "teeth" by instituting fines for newspapers that breach the code, ignore one simple point: The public is effectually excluded from the entire process by the very code itself.

I am referring to the complaints procedure of the South African Press Code, Part B, point 1.1, which defines the complainant as "any person or body of persons which lodges a complaint, provided that such person or body of persons has a direct, personal interest in the matter complained of". Does anyone else see the problem with this definition?

Let us assume for a moment that we are talking about an ordinary member of the public who does actually know about the Press Council and is aware of the complaints procedure. If this individual sees something in the press which they feel is a case of poor quality journalism, according to the Press Code's definition of complainant, they may not lodge a complaint, unless they are personally implicated by the press story in question. The result is that largest majority of South Africans would feel that the Press Council's complaints procedure is only relevant to well-known public figures who are reported on by the press. If I know that I am never going to be in the public eye, I also know that I will probably never have the need to lay a complaint with the council, so why would I be concerned with the hearings? The process simply is not relevant to the largest portion of South Africa's citizens. But it should be, and can be.

Because the Press Code's definition of "complainant" is so limiting, newspaper journalists effectively get away with a lot more than television or radio journalists do. The Broadcasting Complaints Commission of SA defines the complainant as: "...any individual or any association, body, corporation, institution, political party, organisation or movement, society, union, or any office-bearer duly nominated in writing to represent such association, body, corporation, institution, political party, organisation or movement, society or union for the purposes of pursuing the complaint". Basically, that means that anyone can complain about anything that they see on television or hear on radio. The Advertising Standards Authority puts things more simply, but with the same meaning: "Any person can lodge a complaint with the ASA regarding the content of an advertisement". So if I can complain about what I see on television, what I hear on radio, or the content of an advert, why can't I complain about what I read in the press?

I posed this question to Thloloe when he mentioned there had been calls for the Press Council to play a monitoring role. But, he asked, how does the Press Ombudsman's

office, with a limited number of staff and resources, monitor the content of almost 700 publications every day? Simple, I said. Get the public to do the monitoring for you. There may be only a few people working in the ombudsman's office, but thousands of people read the newspapers every day. By increasing advocacy and changing the definition of complainant, you effectively make the newspaper readers the monitors of the press. This would increase press accountability exponentially. If a journalist knowingly disregards ethics and writes a shoddy piece about a particular individual, the journalist currently knows without a doubt that there is only one person in the country who can complain about the matter to the ombudsman. That is not terribly scary. But if the same journalist receives widespread public complaints, the situation changes. This journalist and the editor may be more careful, thus improving the quality of journalism. It's a natural cycle.

We can start to contextualise the craziness of this hiccup in the Press Code by looking at those of some other countries. The New Zealand Press Council Complaints Procedure states that the "...Council may consider a third party complaint (i.e. from a person who is not personally aggrieved) relating to a published item". The complaints procedure of the German Press Council states: "Anyone is entitled to complain generally to the German Press Council about publications or proceedings in the German press". In Australia, "only directly affected individuals can lodge a complaint under the Privacy Standards for the Print Media". But that's understandable because it operates within the context of personal privacy having been breached by the press, which is not necessarily the case with regard to the South African press code, which in turn, offers no explanation to the limitations on the definition of the complainant.

The definition of "complainant" in the South African Press Code excludes the little guy. At one of the hearings a Twitter user tweeted the following question: "Where is the poor in all of this?". Although I did not want to say it at the time, the answer is: Nowhere.

On 22 February the National Council of SPCAs announced that an LG advert showing a young girl spraying a spider with shaving foam in order to "rescue" her terrified parents from the offending spider, had been withdrawn from television. This happened after ASA had received the organisation's complaint, and those of 10 individuals, regarding the concern of the cruel killing of living creatures. (I am glad the SPCA does not see what I do to spiders.) The individuals who lodged a complaint in this scenario illustrate the point that advertisers are accountable to the public, while newspapers are accountable only to those whom they choose to represent. If ASA had to operate according to the same logic as the Press Council, only the spider-actor that appeared in the offending LG advertisement would have been able to lodge a complaint about the advertisement.

When journalist Mandy de Waal exposed how Sunday Times, AFP, Sapa and TimesLIVE grossly misrepresented the content of an interview with U2 singer Bono, I was furious about the obvious display of shoddy journalism. I was also disturbed by how the story had been picked up by the BBC, because the story that was subsequently carried to an international audience contained misrepresentations constructed by a South African journalist who had it wrong, which is embarrassing. I was so upset, I was even tempted to email a written complaint about the matter to the Press Ombudsman. But I did not because I could not. I am not Bono.

In a more serious scenario, at the Johannesburg Press Council hearings, only two members of the public attended on day two. They complained about the representation of the Muslim community in the press and cited a number of examples where journalists had unjustifiably linked South African Muslim communities to terrorist groups and criminals. Deputy press ombudsman Johan Retief asked them to complain to the council so that the matter could be investigated. But if we are going to play by the rules of the Press Code then these men can not actually complain, because of the limiting definition of complainant.

In response to such arguments, the Press Council says it has accepted limited third-party complaints in the past, for example from Media Monitoring Africa. But in doing so the council has effectively broken its own rules. Also, MMA is an "in-the-know" organisation designed specifically to deal with media-related issues and, therefore, is not necessarily representative of the "man on the street". In South Africa we are going through a complex period of identity (re)construction. This applies for almost all ethnic, cultural and social communities. Why can't groups or members of particular communities have a say or lay complaints about how they are collectively represented in the press? From a semiotic perspective, this is a very sensitive time in our history, and the press has an important role to play.

Thus, I propose a two-step solution to improve the Press Council and the way it works. First, increase advocacy and raise public awareness of the council, what it does and how to lay a complaint with the ombudsman. Second, remove the limitations on the definition of complainant in the press code.

The Press Council's office is accepting written submissions for suggestions of how to reform the Press Code, complaints procedure and the Press Council's constitution until 15 March 2011. I will be submitting this column. **FAM**

*Julie Reid is an academic and media analyst at the department of communication science at Unisa. She tweets about media issues regularly at @jbireid*

Available at:

[http://www.presscouncil.org.za/media/PDFs/5/PCR\\_Sub31\\_Julie%20Read.pdf](http://www.presscouncil.org.za/media/PDFs/5/PCR_Sub31_Julie%20Read.pdf)

## ADDENDUM 19: MUSA CAPITAL'S SUBMISSION TO THE PFC



14 February 2012

Dear Mr Makfanya, chairman of the South African National Editor's Forum, Justice Pius Langa, chairperson of the Press Freedom Commission, and Raymond Louw, chairperson of the Press Council of South Africa

### **The ombudsman process: procedurally flawed**

As a representative of an organisation that has spent some 13 months dealing with the ombudsman's office on a number of complaints in respect of journalism as practised by The Citizen, Sunday World, and City Press, I would like to add my voice to those who believe the Ombudsman process is not serving the purpose for which it was designed.

Specifically, I refer you to an open letter on the Press Council's website written by Raymond Louw, then chairman of the South African Press Council and entitled "Comparison of the Press Ombudsman system and the ANC's proposed Media Appeals Tribunal".

Mr Louw states variously that: "The concept underlying the Ombudsman system were [sic] that it would speed up the process of adjudication, enabling complainants to achieve a speedier outcome than would have been possible if they had taken their complaints to the courts," and "The Press Council imposes a simple choice: take your case to the courts and contend with the costs, delays and potential risk or take the complaint to the Ombudsman where it will be dealt more speedily."

My personal experience has been that the Ombudsman process is very slow indeed – and certainly no faster than court action would have been. The slowness of its processes and operations directly contributes to reputational damage to complainants, simply because factually incorrect information and blatant lies by journalists are left in the public domain for months (in our case, close to a year) while the Ombudsman process takes its meandering course.

It appears that the slowness is partly due to a lack of procedural rigour and I will return to that point later. Much more disturbing, however, is the fact that unethical journalists and editors quite deliberately exploit the lack of procedural rigour, knowing that if they draw the process out as much as possible, their printed malice towards an organisation or individual will have plenty of time to do the destructive harm they intend it to before the Ombudsman rules against them.

Please note that I am not complaining about the Deputy Ombudsman, Dr Johan Retief, whom I have met and whose integrity I do not question.

Please also note that in two of the four complaints we have referred to Dr Retief, he has ordered an apology to my company from the newspapers concerned (The Citizen and Sunday World). So I am not writing this letter to you because I am aggrieved at the Ombudsman's findings.

What I am drawing your attention to is that unscrupulous journalists have found a way to exploit the Ombudsman process in order to serve their own agendas.

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Reg no: 2009/0178707

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I believe that the loopholes in the Ombudsman process that they're exploiting could be closed to a very large extent by the establishment of clear and even-handedly imposed deadlines for complaints, responses, hearings, and rulings. But, beyond the administrative issue, there is the moral and ethical issue of the calculated distortion of a self-regulatory process by journalists and their editors. If the industry doesn't have the will or mechanisms to address it, then one imagines that it is inevitable that the media's own members will bring down on the industry the external regulation it so fears.

The facts of my company's interactions with the ombudsman are as follows.

**1. Complaint against City Business (The Citizen): Headline "FSB raids Musa Capital" (13 January 2011)**

28 January 2011		Complaint lodged by Musa Capital, through its PR agency, Headlines
1 February 2011		The Ombudsman forwards the complaint to the editor of The Citizen and requests a response within 14 days
1 and 2 February 2011		The editor, Martin Williams, and journalist, Barry Sergeant, respond with accusations against Musa.
2 March 2011	One month later	Martin Williams asks the Ombudsman if he has read Sergeant's response
10 March 2011		The Ombudsman asks Musa for clarification
16 March 2011		Musa provides clarification
26 April 2011	13 weeks after the complaint was lodged	After a range of off-topic responses from journalist, Barry Sergeant, Dr Retief resorts to doing a draft finding and sending it to Williams, to elicit a relevant response.
		The Ombudsman receives another response from Barry Sergeant. He initially gives Musa seven days to respond to Sergeant's information, and then, because of a string of public holidays, extends the Musa deadline to 5 <sup>th</sup> May. <b>Please note that in all cases quoted in this letter to you, Musa responded within the deadlines set by Dr Retief. None of the media did.</b>
5 May 2011		Musa sends its response as requested
12 May 2011		The Ombudsman lets Musa and Williams know that he has come to an initial finding, but has some questions for both parties. He requests answers by the following day (13 <sup>th</sup> May)
20 May 2011		After requesting an extension on the deadline, Musa's answers to the questions are submitted to the Ombudsman as per the new deadline
31 May 2011		The Ombudsman notifies both parties that an informal hearing will be held, based on his 'skeleton' findings
1 June 2011		The Ombudsman makes available to both parties his skeleton findings
6 July 2011		Informal hearing takes place
8 July 2011		The Ombudsman makes his ruling. CityBusiness is reprimanded for two statements and ordered to retract them.
11 July 2011	6.5 months after the complaint was lodged	The retraction is printed



**First complaint against Sunday World: Headline "Musa Capital offices raided for missing R700 million" (16 January 2011)**

28 January 2011		Complaint lodged by Musa Capital, through its PR agency, Headlines.
1 February 2011		The Ombudsman forwards the complaint to Sunday World and asks for a response within fourteen days.
4 March 2011	More than a month later	The ombudsman again asks for a response (no deadline set)
9 March 2011	Six weeks after the original complaint was lodged	Sunday World editor, Wally Mbhele responds to the Musa complaint
10 March 2011		The ombudsman requests a response from Musa within seven days. <b>Note that no sanction was applied to Mbhele for taking six weeks to respond to the original complaint</b>
14 March 2011		Musa replies that Mbhele's reply does not address the original complaint.
29 March 2011		The Ombudsman points this out to Mbhele, noting that a proper response is 'long overdue'.
22 June 2011	Five months after the complaint was lodged	By the Ombudsman's own admission in an email, there appears to have been confusion in his office and he apologises to Mbhele for the delay in moving forward on this complaint. He distils the Musa complaint into a document to which he asks Mbhele to reply.
22 June 2011		Mbhele sets his own deadline for replying – 28 <sup>th</sup> June.
5 July 2011		Mbhele misses his own deadline by a week; replies to the Ombudsman's document.
6 July 2011		The Ombudsman asks for Musa's response to Mbhele's document.
19 July 2011		Musa sends its response to the ombudsman.
1 August 2011		The Ombudsman asks Mbhele questions based on Musa's response; no reply.
12 August 2011		The Ombudsman again requests answers from Mbhele to his questions.
12 August 2011		Mbhele replies that he has been ill and is in the process of compiling answers and expects to send them through by the end of the day.
17 August 2011		Again, Mbhele misses his own deadline; the Ombudsman again requests his answers.
31 August 2011	Seven months after the complaint was lodged	The Ombudsman notifies Musa that he has made an initial finding but can finalise it only when Mbhele supplies answers to questions he has posed. Specifically, he asks for the source of information contained in the original Sunday World article.
7 September 2011		The Ombudsman has to ask Mbhele again to answer his questions – and asks that it be by the end of the day; no reply.
12 September		The Ombudsman once again asks Mbhele to name his personal



2011		source to the ombudsman
20 September 2011		Mbhele persists in an inaccuracy, citing a document that is provenly inaccurate, and does not respond to the Ombudsman's request for a personal source
20 September 2011		The Ombudsman repeats his request for the personal source to be supplied to him, in confidence
22 September 2011		Musa replies to the claims eventually made by Mbhele regarding the report he keeps quoting, instead of giving the Ombudsman the name of his source.
27 September 2011		The Ombudsman requests additional information from Mbhele and Musa. Musa replies on the same day, also requesting rapid resolution of the complaint after eight months of delays
28 September 2011		The Ombudsman issues his finding, instructing Sunday World to apologise to Musa and to print a front page kicker to the apology; the ombudsman sends his ruling to SAQA. A number of publications run with the story that Sunday World is to apologise.
18 October 2011	Three weeks after the instruction to publish the apology	Musa asks the Ombudsman why Sunday World has not yet published either the apology or the kicker.
19 October 2011		The Ombudsman sends Mbhele an email saying that "The going practice is that, when there is no appeal, the sanction should be published in the first edition afterwards" and asking Mbhele to communicate with him as a matter of urgency
21 October 2011		The Ombudsman writes to Mbhele as follows: "I am not sure how to interpret your silence. I have made a finding, nobody has appealed, and you are now to publish that finding. That is how the system works. Please affirm that you will publish this Sunday."
26 October 2011		Again, the Ombudsman instructs Mbhele to publish the apology and the kicker
29 October 2011		Mbhele replies that he had not seen the finding, as he had been away for three weeks. <b>Please note, the dates do not tally. Mbhele states he returned to his office in "this week". Counting backwards three weeks means he would have been out of the office from the week starting 3<sup>rd</sup> October. The finding was sent to him on 28<sup>th</sup> September – the week before Mbhele left the office.</b>
29 October 2011		Mbhele sends another email to the Ombudsman objecting to the instruction to print the front page kicker and also to the wording of the text of the apology, as stipulated by the Ombudsman.
1 November 2011		The Ombudsman explains his ruling, again, but suggests that Mbhele appeal to Judge Zulman
3 November 2011		Mbhele applies for an appeal
17 <sup>th</sup> November		Judge Zulman upholds the Ombudsman's ruling.





18 November 2011		The Ombudsman instructs Mphahlele to publish "this Sunday"
20 November 2011	Ten months after the complaint was lodged	Sunday world publishes the apology and kicker

**Complaint against City Press: Headline "Fight for mine cash heats up" (11 September 2011)**

19 September 2011		Complaint lodged by Musa Capital, through its PR agency, Headlines
26 September 2011	1 week later	The Ombudsman asks City Press for a response to the complaint – by 10 October.
26 September 2011		The Ombudsman requests from Musa copies of the documentation provided to City Press reporter, Andile Ntingi
13 October 2011	One month after the complaint was lodged	The Ombudsman is obliged to ask again for a response from City Press
17 October 2011		For the third time, the ombudsman asks City Press for a response
18 October 2011		City Press promises the ombudsman it will reply on the 19 October, and misses its own deadline by six weeks
1 November 2011		The Ombudsman's office reminds City Press that it is awaiting a response
18 November		The Ombudsman writes to City Press as follows: "I had to face the complainant's embarrassing question this morning as to what is going on.  "Please note that this kind of behaviour damages the credibility of this office – something that we can ill afford."
2 December 2011	2.5 months after the complaint was lodged	City Press responds to the complaint
5 December 2011		The Ombudsman requests a response from Musa to the City Press document, saying he will make a ruling before his office closes for the December holidays
24 January 2012		Musa sends a response
10 January 2012		The Ombudsman says he has had a Christmas break and has since been ill. He hopes to give his ruling by the third week of January 2012.
17 January 2012		The Ombudsman asks for an additional document from Musa
24 January 2012		The document is supplied to the Ombudsman



Assuming the ombudsman is able to deliver a ruling on this complaint before the end of January, the complaint will have been pending for five months.

**Second complaint against Sunday World: Headline "Damning Report Bakubung were ripped off" (25 September 2011)**

6 October 2011		Complaint lodged by Musa Capita, through its PR agency, Headlines
14 October 2011		The Ombudsman forward the complaint to Wally Mbhele, editor of Sunday World
1 November 2011		The Ombudsman requests a reply from Mbhele
13 November 2011	One month after being requested to do so	Mbhele responds to the complaint
14 November 2011		The Ombudsman asks Musa to respond to Mbhele's information
22 November 2011		Musa's response is submitted
23 November 2011		The ombudsman confirms receipt of the Musa document

There have been no further exchanges from any parties on this complaint, which has now been outstanding for almost four months.

**To reiterate:**

Musa's complaint to the ombudsman about The Citizen was resolved in 6.5 months.

Musa's first complaint to the ombudsman about Sunday World was resolved in 10 months.

Musa's complaint against City Press, initiated in September, has not yet been resolved.

Musa's second complaint against Sunday World, initiated in October, has not yet been resolved.

It is evident from the information above that Wally Mbhele has been most obviously and consistently resistant to the ombudsman process. However, it is clear from all the interactions that editors and journalists simply don't bother to respond to the ombudsman until they have absolutely no other choice.



I acknowledge fully that there is a majority contingent of journalists who believe in and willingly subscribe to a system of self-regulation and, therefore, to the Ombudsman process. My personal experience of the system, however, has exposed me to the delinquent minority and has, therefore, been less than encouraging. It leads me to believe that the system is so open and fluid that journalists who despise it can flout it easily – to the cost not just of organisations such as ours but of the public that depends on the objectivity and ethics of the media in order to make responsible life judgements.

You'll forgive me, I'm sure, for asking for acknowledgement of receipt of this letter.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Will Jimerson', with a stylized flourish at the end.

Will Jimerson

Director, Musa Capital



## ADDENDUM 20: SOUTH AFRICAN COUNCIL OF CHURCHES' SUBMISSION TO PFC



### South African Council of Churches

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19 January 2012

#### **The South African Council of Churches Submission to the Press Freedom Commission**

##### **Preamble**

The South African Council of Churches appreciates the establishment of the Press Freedom Commission to be one among other community vehicles that could be utilised to enhance and guard our democracy – specifically with regard to how vital information that affects the lives of people in particular the “poor and marginalised” gets to be shared within communities in a free and unbiased or even uncensored manner.

At its inception and although the SACC had not yet come full circle to understand the intricacies associated with the Commission and its detailed mandate, nevertheless, through its Central Committee, and in a visible support of its work, The Archbishop Dr. Thabo Cecil Makgoba – the Archbishop of Cape Town, the Metropolitan of the Anglican Church in Southern Africa, the Chair of the National Church Leaders’ Consultation and one of the most senior Church Leaders in Southern Africa was appointed to represent the mind of the Church on the Commission.

##### **The resolution reads:**

*SACC Central Committee asks that the NEC investigates the nature and work of the Press Freedom Commission, its relationship to statutory bodies such as the Broadcasting Complaints Commission and the Press Ombudsman, as also with organizations such as the Freedom Commission and Transparency International. Furthermore, Central Committee appoints the Most Reverend Thabo Cecil Makgoba, the Anglican Archbishop of Cape Town, as Churches’ representative to the PFC and mandates that he reports back on its work to the SACC NEC as deemed to be appropriate”.*

##### **The Submission**

##### **The South African Council of Churches preferred stand on Media/Press Regulation:**

1. The SACC thanks the Press Freedom Commission (PFC) for the invitation to make a submission.
2. The SACC is composed of 26 denominations – from the Catholic, Protestant, Reformed, African Instituted and Pentecostal churches. Together these represent some 15 million members. The majority of these are women and children many of whom live in dire poverty in a land of plenty. These poor majorities have very minimal if any contribution in the shaping of many a statutory body in this country including the media fraternity.

3. Our ethical reflection on the need for and type of regulation; is based on our concern for how such an arrangement may contribute towards the wellbeing, interests, development and formation – socially, morally, ethically and spiritually – of our members.
4. The context in which the media and press have flourished over the past seventeen years is one of **free market globalization**. The press and media have become big businesses; driven by the demand for information but also for leisure and sensation. On the other hand, a growing culture of **consumerism** has shaped the **business values** turning commercial attraction of the press into effective consumer products.
5. The type of sensationalised information may be categorized as shaped by: (a) political outbursts (e.g. the Mandela phenomena); (b) failure of political delivery generally referred to as “corruption”; (c) political leaks and soliciting of information e.g. insider information for political and/or economic gain; and (d) general public and private scandals.
6. The context of media and press focus in South Africa currently may be categorised into four sections:
  - 8(a) political outbursts
  - 8(b) failure of political delivery frequently referred to as “corruption”
  - 8(c) political leaks and/or soliciting of sensitive political information and
  - 8(d) public and private scandals
7. All of the above indicates some loss of control in the organizational environment. This is not a new phenomenon but when media technology captures these events it is able within moments to relay these to millions with a particular local bias of a few elite owners of the industry but also this hits across the globe.
8. On the political level, leaks and the ability to solicit information may be due to inability to manage the dissemination of information. Scandals – the interest of religious communities for ages – are close to religious sensitivity because they depict what may be wrong in a particular community. So, top of media and press agenda frequently appear any discovery of bribery, extra-marital affairs of religious or political leaders.

How do we balance then the search for creativity based on sound moral and professional practice?

9. The question is how to promote creative application of journalism and media developments while holding onto moral and professional aims of journalism. Much of the problem in making a clear distinction lies with the commercial and consumer identity of contemporary media and press. Consumerism and commerce in the media largely, aim at efficiency and profitability. The problem with the consumer mentality is that the former outcome of profitability is also closely linked with entertainment and pleasure.



10. The moral matter concerns the shift in boundaries by modern media and press between public and private. Where secrecy is essential for keeping the lid on scandal, the ethical role of the media and press is to open, reveal and disclose.
11. Habermas in his discourse ethics – and a leader on the role of media in structural transformation, argues that the bourgeois – as in the past – no longer have a claim to the shaping of society. He adds to this the ideal that rationality and open discourse – free from constraint – must be allowed to shape society. But this rationality must be extended to care even for non-humans and future generations which have no claims upon society as at present.
12. This responsibility, action and purpose of the press is a power referred to as the “democratisation of responsibility”.

**The problem with self regulation**

13. However, given the past seventeen years of conflict of economic interests within South Africa – especially the globalization project – a series of practical problems have emerged in relation to responsible, professional media action. Court challenges, claims to defamation of character, incorrect interpretation of information and the soliciting of professional information for gain pose the question of moral media and/or professional journalism or both.
14. The toothless nature of the Press Ombudsman to take biting sanctions to breaches has left a sour taste in many social mouths. The ongoing “self regulatory” nature of the press and media needs a more contemporary measure – a measure that will live up to the means of vigilance and monitoring.
15. On the other hand, the SACC notes that various professional bodies are regulated by statute in South Africa. Some examples are the Health Professional Council, the Pharmacy Council of South Africa; Allied Health Professions Council; Medical Aid Schemes Council and the Nursing Council of South Africa. These are statutory bodies regulated by law with their own act.
16. The SACC believes that this is a feasible consideration for dealing with a profession that has risen due to the globalization of the market and free trade. While we believe that statutory regulation is essential, we would recommend one difference to the other bodies mentioned.
17. The SACC believes that – represented on such a statutory body (for the regulation of press freedom) should be representatives of press organization and especially those that **represent the interests of marginalized communities**, civil society organization – including representatives from the faith community. However, the SACC does not believe that government should – dealing with its own power interests – be represented on such a body.

## ADDENDUM 21: UNIVERSITY OF STELLENBOSCH JOURNALISM DEPARTMENT'S SUBMISSION TO THE PFC

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Press Freedom Commission: Written submission by the Journalism  
Department of Stellenbosch University, January 2012

(Composed by Dr Gabriël Botma, Prof Lizette Rabe, Dr Simphiwe Sesanti and Prof George Claassen).

The Journalism Department of Stellenbosch University believes in freedom of speech and of the media. Although we are not blind to the mistakes of the press in particular, we believe that self-regulation is the best way to guard against the tyranny of state power.

We therefore reaffirm our support for an official statement in 2010 by educators, scholars and researchers in journalism and media studies in South Africa which stated that we "stand for the values of media freedom, informed debate and intellectual rigour". Therefore, as educators we fear that "the cherished democratic values of freedom of expression, media freedom and the right to information are currently at risk" by the proposal for a Media Appeals Tribunal and the Protection of State Informator Bill. As educators we also express "concern about a climate of intimidation and suspicion that has included the heavy-handed arrest" of some journalists.

As educators we note with concern that "relations between the state and the media had deteriorated and that debates had taken on an antagonistic, either-or character which worsens these tensions instead of working towards solving the underlying problems". The statement continues:

One of our jobs is to prepare students to join the media industry, and we are concerned about what all these developments signal to young South Africans wishing to start a career in journalism. We take seriously our task to inculcate the values of social responsibility, independence and accountability in our students, while also stressing that these values are premised on a press that is not subject to statutory regulation or intimidation of journalists. As scholars and researchers we are not blind to the faults of the South African media. In our scholarship we will continue to point to these shortcomings and suggest ways of improving the media's democratic role. But critique can only bear fruit in an environment that allows for unhindered investigation, the gathering of sound empirical evidence, and the free exchange of ideas.

We therefore call on the public and civil society to "make their voices heard in rejecting the current threats to media freedom". In turn we undertake "to continue to prepare students for their role as citizens and as ethical media practitioners; to research alternative ways of

managing conflicts between media, state, business and civil society; and to create spaces for debate between the public and members of the media industry about the media's role in a democratic South Africa".

As far as the current process is concerned we would like to add the following comments:

If we understand the terms of reference of the Press Freedom Commission correctly, you are looking for a "gold standard in regulation" – a form of regulation that will balance the rights of the press and citizens in a free and open democracy. Does that mean that the PFC is looking for a universal standard of press regulation? Such a search would be problematic, because it would imply that media freedom is universal. As Rabe stated in 2004 ("Ten years of democracy – Media Freedom in South Africa" p.4):

....one can also deduce that there is no universal form of media freedom. All factors contributing to such a freedom – or lack of – will therefore make up the media freedom in that particular country or environment.

Especially important in this discussion is the emphasis above on a "particular country or environment". Although it is informative to examine international examples, the debate must be anchored in the South African context. Our current level of relative press freedom exists against a particular background of imperialism, colonialism and more recent state repression in the form of apartheid media restrictions and clamp-downs. Also part of the context here is the recent passing of the controversial Protection of State Information Bill by Parliament and the resultant tensions between the media and civil society organizations on the one hand, and the government on the other.

Furthermore, the Terms of Reference of the PFC states that self regulation, co-regulation, independent regulation and state regulation will be examined with reference to existing models in other countries and contexts (p.3). Is the introduction of state regulation of the print media in any form even remotely acceptable as an option to the print media? We certainly do not hope so. To argue that an acute sensitivity to state interference in the South African media should be disregarded because it is common practice elsewhere in the world, is unacceptable.

This does not mean that we are guilty of an unexamined knee-jerk reaction to media-regulation. Absolute media freedom (or freedom of speech) is not possible – for instance the media need laws and regulation to protect their commercial interests (i.e. copyright) and for the orderly use, maintenance and development of the necessary infrastructure (such as



bandwidth, frequency spectrum, telecommunications/internet cables). Some of these are public assets, and the media are part of society and part of the regulatory system that makes interaction between different interest groups possible. In their libertarian stance the media sometimes overemphasise their unique "watchdog" role and forget that they exist because there is a society and regulation.

There are worrying indications that many ordinary citizens are dissatisfied with the way in which the commercial press goes about its daily business. The press must take some blame for these sentiments and exercise self-examination, but the performance of the press should not be an issue of state regulation.

Journalists cannot hide from their responsibility as citizens and members of society. They are in fact subject to the law of the land and should be held accountable if they transgress. But not all transgressions are described by laws and regulations. To be an ethical journalist you need to be an ethical citizen as well. However, given the fact that not all people – including journalists – share the same ethical values, some form of structure should be provided by employers and the industry. And of course journalism educators, such as us, should also play a role in fostering a culture of ethical journalism.

Critics of the media, such as the ANC, often look at representations in the biggest newspapers and argue that the SA media do not reflect cultures and interests of the black majority. Since 1994 there were also a number of studies of the SA media that concluded that the media remained racist and sexist in their coverage and that they serve so-called neo-liberal capitalist interests at the expense of the poor majority. One must hasten to add, that some of these studies were apparently methodologically flawed, according to even some serious critics of the media. This however, should not deter us from seriously engaging with the numerous injustices and examples of unequal power relations in a deeply divided and unequal society.

But again we argue that these are not issues that state regulation in the form of a Media Appeals Tribunal could or should address. The concern is that arguments using ownership and representation inequalities and measurement are in fact currently misused by those interested in harnessing the power of the media for personal and party gain and not to improve the ethical performance of the media. By the same token critics who use developmentalism as media performance indicator should ask themselves why the government does not utilise existing structures, such as the SABC and the Media Diversity

Development Agency, properly rather than attacking the commercial press.

In the case of the press – and maybe many other areas of society as well – one can argue that less regulation is better than more regulation. Even good regulation can be misused and politicians and other power mongers throughout history do not have a good track record in their dealings with both the public and the media. And although the media have not always endeared itself to the public either, it goes without question that a free media do provide a proper check on the abuse of power. We feel that we should live with/endure with even those aspects of and/or sectors of the media that are unsavoury or even harmful in some respects, for the benefits to have an avenue for a large measure of freedom of expression. Just in case we need it.



Dr Gabriël Bötma  
(Chair)

Stellenbosch, 31 January 2012

## ADDENDUM 22: CHILDREN'S RIGHTS CENTRE'S SUBMISSION TO PFC

10-NOV-2011 11:50 FROM: CRC

0313076074

TO: 0114826496

P.1



# Children's Rights Centre

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353 Dr Pholeka KaSomo Street (formerly West Street), Durban 4001 South Africa P.O. Box 3630 Durban 4000  
Tel: +27 (0) 31 307 6075 Fax: +27 (0) 31 307 6074 e-mail: [info@crc-sa.co.za](mailto:info@crc-sa.co.za) website: [www.crc-sa.co.za](http://www.crc-sa.co.za)

## FAX FORM

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TO : SA PRESS COMMISSION  
DATE : 10 NOVEMBER 2011  
FACSIMILE : 011 482 6496  
FROM : CHILDREN'S RIGHTS CENTRE  
SUBJECT : SUBMISSION TO THE PRESS COMMISSION ON PRINT MEDIA  
PAGES : 5 including cover page

DEAR SA PRESS COMMISSION

ATTACHED IS SUBMISSION BY THE  
CHILDREN'S RIGHTS CENTRE TO THE PRESS  
COMMISSION ON THE REGULATION OF PRINT  
MEDIA IN SA.

MANY THANKS  
CRC

Trustees: Firoza Jagot, Shirin Youssuf Motale, Marie-Therese Naidoo, Fikile Ethne Ntshingila,  
Linda Naidoo, Nonhlanhla Mkhize, Kevashinee Pillay, Merwin Naidoo, Evashnee Naidu  
Trust Registration IT 2242/99/PMB Public Benefit Organisation Exemption No 930 008 562  
Non-Profit Organisation Registration Q59-178-NPO



# Children's Rights Centre

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To: SA Press Commission: [sapresscomm01@gmail.com](mailto:sapresscomm01@gmail.com), PO Box 47180, Parklands, 2121, Johannesburg; Fax - 0114826496. [infobill@parliament.gov.za](mailto:infobill@parliament.gov.za)

## SUBMISSION BY THE CHILDREN'S RIGHTS CENTRE TO THE PRESS COMMISSION ON THE REGULATION OF PRINT MEDIA IN SOUTH AFRICA

The Press Commission has stated that it is considering the various alternatives presented for the regulation of print media (self-regulation, co-regulation, independent regulation and state regulation).

We feel strongly that its fundamental purpose should not be the best way to 'regulate' the media, but rather how best to entrench freedom of information in South Africa. To this end we recommend that the Press Commission should follow clear principles to protect and uphold the information freedoms set out in the South African Constitution.

*Information is the oxygen of democracy. If people do not know what is happening in their society, if the actions of those who rule them are hidden, then they cannot take a meaningful part in the affairs of that society. But information is not just a necessity for people – it is an essential part of good government. Bad government needs secrecy to survive. It allows inefficiency, wastefulness and corruption to thrive ... Information allows people to scrutinise the actions of a government and is the basis for proper, informed debate of those actions. (From The Public's Right to Know - Principles on Freedom of Information Legislation ISBN 1 902598 10 5 June 1999)*

We would add that secrecy allows for the exploitation, neglect and abuse of the voiceless – especially children.

### WE THEREFORE RECOMMEND THE FOLLOWING:

1. All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information.

Generally, bodies should designate an individual who is responsible for processing such requests and for ensuring compliance with the law.

Public bodies should also be required to assist applicants whose requests relate to published information, or are unclear, excessively broad or otherwise in need of reformulation. On the other hand, public bodies should be able to refuse frivolous or vexatious requests. Public bodies should not have to provide individuals with information that is contained in a publication, but in such cases the body should direct the applicant to the published source.



The law should provide for strict time limits for the processing of requests and require that any refusals be accompanied by substantive written reasons.

## **2. Appeals to a Board, Ombudsperson or Human Rights Commission**

In all cases, the law should provide for an individual right of appeal to an independent administrative body from a refusal by a public body to disclose information. This may be either an existing body, such as an Ombudsperson or Human Rights Commission, or one specially established for this purpose. In either case, the body must meet certain standards and have certain powers. Its independence should be guaranteed, both formally and through the process by which the head and/or board is/are appointed.

Those responsible for any censorship, under the Protection of Information Bill or the proposed Media Tribunal, need to be independent, clearly identified and themselves accountable.

Appointments should be made by representative bodies, such as an all-party parliamentary committee, and the process should be open and allow for public input, for example regarding nominations. Individuals appointed to such a body should be required to meet strict standards of professionalism, independence and competence, and be subject to strict conflict of interest rules.

The procedure by which the administrative body processes appeals over requests for information which have been refused should be designed to operate rapidly and cost as little as is reasonably possible. This ensures that all members of the public can access this procedure and that excessive delays do not undermine the whole purpose of requesting information in the first place.

The administrative body should be granted full powers to investigate any appeal, including the ability to compel witnesses and, importantly, to require the public body to provide it with any information or record for its consideration, *in camera* where necessary and justified.

Upon the conclusion of an investigation, the administrative body should have the power to dismiss the appeal, to require the public body to disclose the information, to adjust any charges levied by the public body, to fine public bodies for obstructive behavior where warranted and/or to impose costs on public bodies in relation to the appeal. The administrative body should also have the power to refer to the courts cases which disclose evidence of criminal obstruction of access to or willful destruction of records.

Both the applicant and the public body should be able to appeal to the courts against decisions of the administrative body. Such appeals should include full power to review the case on its merits and not be limited to the question of whether the administrative body has acted reasonably. This will ensure that due attention is given to resolving difficult questions and that a consistent approach to freedom of expression issues is promoted.

## **3. PROTECTION FOR WHISTLEBLOWERS**

**Individuals who release information on wrongdoing – whistleblowers – must be protected**

Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing. "Wrongdoing" in this context includes the commission of a

criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body. It also includes a serious threat to health, safety or the environment, whether linked to individual wrongdoing or not.

Whistleblowers should benefit from protection as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing. Such protection should apply even where disclosure would otherwise be in breach of a legal or employment requirement.

The "public interest" in this context would include situations where the benefits of disclosure outweigh the harm, or where an alternative means of releasing the information is necessary to protect a key interest. This would apply, for example, in situations where whistleblowers need protection from retaliation, where the problem is unlikely to be resolved through formal mechanisms, where there is an exceptionally serious reason for releasing the information, such as an imminent threat to public health or safety, or where there is a risk that evidence of wrongdoing will otherwise be concealed or destroyed.

#### Principles on Freedom of Information

The Children's Rights Centre supports the **Principles on Freedom of Information Legislation** as set out by ARTICLE 19 - an international NGO, that has drawn on extensive experience and work with partner organisations in many countries around the world. Members of Article 19 include the Hon. Jody Kollapen, a South African Judge. The Principles are based on international and regional law and standards, evolving state practice (as reflected, *inter alia*, in national laws and judgments of national courts) and the general principles of law recognised by the community of nations.

They are the product of a long process of study, analysis and consultation overseen by ARTICLE 19, and are published as *The Public's Right to Know - Principles on Freedom of Information Legislation* ISBN 1 902598 10 5 June 1999

#### PRINCIPLES TO PROMOTE FREEDOM OF INFORMATION INCLUDE:

1. **MAXIMUM DISCLOSURE** - Freedom of information legislation should be guided by the principle of maximum disclosure - this is in accordance with our legislation (PAIA).
2. **OBLIGATION TO PUBLISH** - Public bodies should be under an obligation to publish key information in a way that is accessible to all members of the public, including children.
3. **PROMOTION OF OPEN GOVERNMENT** - Public bodies must actively promote open government by informing the public of their rights and promoting a culture of openness within government, through Public Education. The official body responsible for public education should also play a role in promoting openness within government. Public bodies should be encouraged to adopt internal codes on access and openness.
4. **EXCEPTIONS TO FREEDOM OF INFORMATION SHOULD BE LIMITED**. Exceptions should be clearly and narrowly drawn. A refusal to disclose information is not justified unless the public authority can show that the information meets a strict three-part test:
  - the information refused must relate to a legitimate aim listed in the law;
  - disclosure must threaten to cause substantial harm to that aim; and
  - the harm to the aim must be greater than the public interest in having the information

(Based on <http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>)

## ABOUT US: THE CHILDREN'S RIGHTS CENTRE

The Children's Rights Centre is a public benefit (non-governmental, not-for-profit) organisation that contributes to the development of a sustainable child-friendly society in South Africa. This society would have child-friendly policies and practices at all levels based on the United Nations Convention on the Rights of the Child, the African Charter on the Rights & Welfare of the Child, and the South African Constitution.

It does this through awareness-raising, training, monitoring, advocacy and building a children's rights movement including children and adults as partners.

CRC has worked for over twenty years contributing to the development of a sustainable, child-friendly society in South Africa.

We are passionate about our vision of a world in which children's rights entrench children's rights, not only into the laws of our land, but also into the fabric of society, and within human relations generally.

We hold as reference points the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the South African Constitution.

### Our Board of Trustees:

Firoza Jagot, Shirin Youssuf Motale, Marie-Therese Naidoo, Fikile Ethne Ntshingila, Linda Naidoo, Nonhlanhla Mkhize, Kevashnee Pillay, Merwin Naidoo, Evashnee Naidu, Julia Zingu (ex officio, Director).

Trust Registration IT 2242/99/PMB

Public Benefit Organisation Exemption No 930 008 582

Non-Profit Organisation Registration 059-178-NPO

Signed:



JULIA ZINGU (DIRECTOR)

DURBAN

10<sup>th</sup> November 2011

## ADDENDUM 23: NATIONAL UNION OF MINEWORKERS' SUBMISSION TO PFC

Submission on the Regulation of Print Media

National Union of Mineworkers

19<sup>th</sup> January 2011

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### INTRODUCTION

1. South Africa has undergone an acute political transformation process over the past 17 years and is now undertaking a process of profound social and economic transformation. This process is imposing that we critically review sectors of society and the role they are playing in the transformation of South Africa into an ideal society which the ANC aspires, through its leadership in government.
2. Section 16 of the Constitution of the Republic of South Africa, Act 108 of 1996 provides for the freedom of the media: *"Everyone has a right to freedom of expression which includes—freedom of the press and other media; freedom to receive and impart information or ideas...."*
3. This is further supported by an extensive legislative framework that gives effect to the Constitution which amongst others, includes: Access to Information Act of 2000; Independent Communications Authority of South Africa Act of 2002; Media Development and Diversity Agency Act of 2002; Promotion of Administrative Justice Act of 2000; the Broadcasting Act of 1999 and the Chapter 9 – impartial and independent institution which supports the Constitution.
4. South Africa has developed sufficient legislative framework within which the media in general can express itself and operate fully. However, there remains a policy and legislative vacuum which creates inability in holding some section of media to account when their behaviour is questionable or even illegal.

### REGULATING PRINT MEDIA IN SOUTH AFRICA

5. The South African print media is self-regulated under the press Ombudsman – which is a body it has established and funds. According to the media, the role of the Ombudsman, the press Council and the Appeals Panel is are a self-regulatory mechanism set up by the print media to provide impartial, expeditious and cost-



effective adjudication to settle disputes between newspapers and magazines, on the one hand, and members of the public, on the other, over the editorial content of publications

6. As is the norm in countries with similar arrangement, there is no provision for recourse as the press Ombudsman has no powers to impose penalties to those it has found guilty of breaching the Codes and established ethics.
7. In its 51<sup>st</sup> conference in Stellenbosch, the ANC noted that: valuable progress has been made in transforming the media and challenging the legacy of the apartheid media discourse, but a lot still has to be done; the media itself faces major challenges with regard to equity, skills development and improvement of working conditions; and the conference further the advances that have been made by government to diversify and expand media ownership. But ownership is still in the hands of the few.
8. The 52<sup>nd</sup> conference reaffirmed the ANC Stellenbosch conference but also noted that, amongst others, (a.) the media needs to contribute towards the building of a new society and be accountable for its actions; (b.) With particular reference to print media, the ANC notes that the current form of self-regulation as expressed in the form of Press Ombudsman/Council is not adequate to sufficiently protect the rights of the individual citizens, communities and society as a whole; and (c) the print media industry is not covered by a sectoral Broad-based Black Economic Empowerment Charter.
9. The 52<sup>nd</sup> conference therefore resolved to adopt the resolution of the policy conference to establish the Media Appeals Tribunal (MAT) to strengthen, complement and support the current self-regulatory institutions (Press Ombudsman/Press Council). The context within which MAT should be understood is that of balancing the right to freedom of expression, freedom of the media, with the right to equality, to privacy and human dignity for all.

10. The 52<sup>nd</sup> conference further resolved that: the ANC must promote the school of thought which articulates media freedom within the context of the South African Constitution, in terms of which the notion that the right to freedom of expression should be elevated above other equally important rights such as the right to privacy and more important rights and values such as human dignity.

#### **Print Media Regulation Globally**

11. Similarly to South Africa, the print media in the UK are not subject to any specific statutory controls on their content and activities, other than the general criminal and civil law. The press regulates itself, through the Press Complaints Commission (PCC) - an independent, non-statutory body that is responsible for maintaining an Editorial Code of Practice and Investigating complaints into alleged breaches of the Code. By virtue of its status, the PCC has no powers to impose penalties on those it finds guilty of breaches.

12. Britain is still reeling from a phone-hacking scandal brought about by print media misconduct and the disregard for privacy, human dignity and complete lack of ethics. Even as this unfolds, leaders of print media houses are defending the self-regulatory arrangement without any interventions from the government. In a form of a statutory regulation of print media.

13. According to Lord Pattern the BBC Trust chairman insists "Statutory regulation of the press would, in my view, be more than wrong-headed. It would pose a real danger to the public discourse that underpins our democracy. So the responsibility to ensure high standards of professionalism rests with journalists, their editors and their proprietors."<sup>1</sup>

14. The Times editor, James Harding told the Leveson Inquiry into the phone hacking scandal that statutory press regulation would lead to government controls. He further said that "we don't want a country in which the government, the state, regulates the papers ... we don't want to be in a position where the prime minister decides what goes in newspapers"<sup>2</sup>.

15. According to research, across the world, governments establish agencies to regulate the media. In 2003, there were independent, central government-related

<sup>1</sup> The Telegraph, 18<sup>th</sup> January 2012

<sup>2</sup> The Guardian, 17<sup>th</sup> January 2012

regulatory bodies in 65 countries<sup>3</sup>. In some cases exercise direct control over all facets of media operations, while in sometimes they are only able to offer suggested guidelines. The government-related agencies sometimes report directly to a department or branch of government, while in other cases they operate as independent agencies that interpret and administer regulatory functions as required by law.

16. In Mexico the federal government is directly involved in the regulation of media. However, this regulatory control is slowly diminishing as the country is transitioning into open democracy. The internet and print media are not regulated or licensed by a government-related agency in Mexico. Mexican media is commercial and ownership is private and foreign.
17. In Ghana, the national government plays a minimum role in regulating media. Parliament is responsible for passing regulation and government administers such regulations. There are government-related agencies which are responsible for media regulation, however, the print media and internet have a freedom of independence<sup>4</sup> which is guaranteed by the constitution of 1992.
18. In France a press statute enacted in 1881 granted the print media freedom from government regulation by guaranteeing freedom of opinion and the right to publish. However, all other media is actively regulated apart from the internet.
19. In the USA, media regulation is developed mainly by the Federal Communications Commission, but also the Senate and the House of Commons – a legislative branch – and to some extent the Supreme Court. Media regulation in the USA follows a libertarian outlook that there should be minimal central government involved in day-to-day operations of media houses. A distinctive feature of the media industry in the USA is that the commercial marketplace should be the primary influence on the media operations and content and that there should be minimal government interference. Newspapers and the internet are not regulated by a government related agency in the USA.

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<sup>3</sup>Robert McKenzie, Comparative Media Law Journal

NUM's submission:

- Support the ANC resolutions on the regulation of print media and the Media Appeals Tribunal stipulated as follows:
  - a. The 52<sup>nd</sup> conference reaffirmed the ANC Stellenbosch conference but also noted that, amongst others, (a.) the media needs to contribute towards the building of a new society and be accountable for its actions; (b.) With particular reference to print media, the ANC notes that the current form of self-regulation as expressed in the form of Press Ombudsman/Council is not adequate to sufficiently protect the rights of the individual citizens, communities and society as a whole; and (c) the print media industry is not covered by a sectoral Broad-based Black Economic Empowerment Charter.
  - b. The 52<sup>nd</sup> conference therefore resolved to adopt the resolution of the policy conference to establish the Media Appeals Tribunal (MAT) to strengthen, complement and support the current self-regulatory institutions (Press Ombudsman/Press Council). The context within which MAT should be understood is that of balancing the right to freedom of expression, freedom of the media, with the right to equality, to privacy and human dignity for all.
- The case of the NUM and Sowetan article(7 December 2011):
  - The morality of the story is that Sowetan publishes an article with serious integrity and public opinion implications to the Union in fact with implications on its registration status if it embezzles monies owed to its members.
  - On the freedom of Press, Sowetan decides to take one side of the story and not check the view of the Union on the allegations.
  - NUM clarifies the matter to the same news paper(Sowetan), but the paper decides not to publish the clarity because the article has served the interest of the master(capitalists) in tarnishing the image of Revolutionary, caring, united, strong and ever-growing Union(NUM)



## NATIONAL UNION OF MINeworkERS

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### HEAD OFFICE

18 January 2012

To: Editor: Sowetan and Vusi Xaba

Dear Editor

1. We refer to the article published in the Sowetan on 7 December 2011 entitled "We want our Money". The article refers to unnamed miners alleging that NUM has embezzled their retrenchment packages worth R6 million.
2. To start with, the NUM and its members were neither involved nor aware of any retrenchment in 1991 of about 4000 workers.
3. The NUM knows of the mass dismissal by Doornfontein Gold Mine Ltd of its employees for participation in an illegal strike on 04 and 05 November 1991. The NUM in furtherance of its objectives and in line with its Constitution represented its members and referred the unfair dismissal dispute to the then Industrial Court of South Africa, which found in favour of the union and its then 2 800 members. The company appealed against the decision of the Industrial Court to the Labour Appeal Court which in turn confirmed the decision of the then Industrial Court. The company was ordered to pay compensation plus interest amounting to R6 million rands to the union members for their unfair dismissal. When the company finally paid out, the total amount due was R6 350 465, 75 including interest in the sum R350 355, 75 occasioned by the delay of Doornfontein Mine to comply with the Court Order.
4. The sum of R6 350 465, 75 was paid in to the trust account of the then attorneys of the union, Tshabalala Maserumule Attorneys which law firm represented the union and its members in this dispute. When the partnership of Tshabalala Maserumule dissolved, the senior partner of the aforesaid partnership was instructed by the union to retain the file and continue to handle the matter. At all material times hereto the payment was kept in separate interest bearing trust account. Consequently the claim by the unnamed

President: Senzeni Zokwana, Deputy President: Thamsanga Matsoa, Treasurer: David Macatha,  
General Secretary: Frans Boleni, Deputy General Secretary: Oupa Komane

union members that NUM embezzled their retrenchment packages worth R6 million is baseless and untrue. We demand that same be retracted with immediate effect.

5. By agreement of the members the compensation of R6 3000 000.00 was equally divided amongst the union 2600 members. Consequently, each member was paid out the sum of R2250.00. The balance of the payout was *inter alia* utilized to pay First National Bank for printing out the cheques at R10.00 per cheque. As at 26 June 2004 First National Bank, Prichard Street had printed 2397 cheques totaling R5 393 250.00 at the cost of R23 970.00. The expenditure was R5 417 220.00.
6. The union distributed cheques to the union members in the various parts of the Republic of South Africa and the surrounding then TBVC states and in Lesotho and Swaziland. Not all the union members collected their cheques timeously and the said cheques became stale. The stale First National Bank cheques which were written back to the attorneys' trust account amounted to [R1 314 000.00].
7. A system was devised to inform and trace those union members whose cheques had gone stale. As and when the union members attended at the union's regional office in Carletonville and any other office of the union to claim their payout, they would be paid out.
8. The NUM in line with its stated vision, objectives also paid out all those union members whose names were not included in the list of the applicants in the court proceedings but who had participated in the industrial action on 24 and 25 November 1991.
9. To date all union members who are eligible for the payout, have upon proper identification been paid out. Spouses and beneficiaries of some of the deceased union members have also been paid out.
10. The NUM is proud to state that the payout of the employees whose cheques went stale and have not been collected is still available for collection upon proper identification by such employee and/or his next of kin in the event that such an employee is deceased.
11. The NUM is aware of a group of some 15 union members who are part of the Doornfontein 1991 mass dismissal dispute, who were paid out their own portion of the payout and have on numerous occasions approached the union seeking to be paid once again. On all the occasions that these union members have attended the union offices they have been attended to and all their enquiries or queries addressed. These union

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members have conceded that they had been paid out. If these same members are the source of your information, it is denied that the NUM has embezzled their retrenchment packages. The NUM is aware of the fact that as and when there is a new regional coordinator appointed to the Carletonville Regional Office of the union and/or when the elective Congress of the NUM is eminent this same group of union members has unsuccessfully attempted to lodge further claims and/or that these unsubstantiated allegations surface in the media. Consequently, the vague, unsubstantiated allegations contained in the article under discussion come as no surprise to the NUM.

12. Our investigation reveals that Sibongiseni Nzale was paid out the sum of R2250.00 as per cheque number 408963 dated 19 July 1994.
13. Insofar as the allegation and statement of Minaletsisi Dithake, that there is money owed to her husband and that she cannot send her children to school, the NUM does not owe money to her. Had she had a valid claim against the NUM she would not be raising it with this group and in the media. In any event, the deliberate omission in the article to set out the full and precise details of her late husband is aimed at creating atmosphere. Had proper information and identification been furnished to your Mr Vusi Xaba, we would be able to respond to it intelligently.
14. The NUM denies that no one is prepared to talk to them. The NUM states that the President of the union, Comrade Senzeni Zokwana was at the time of the dismissal of the Doornfontein Mine members still in the employ of President Steyn Mina. The innuendo that because he is alleged to have said he did not know the terms of the payment and/or that he had allegedly said that the Carletonville Regional Office is to investigate the allegations of the said members, does not confirm the correctness of the allegations of these members.
15. We record that in an article which appeared in the City Press in May 2009 wherein Mr Sibongiseni Nzale's Industry Number C1198853 and Mr Andries Boesman's Industry number C1631926 levelled these unfounded allegations against the NUM, it was proven that they had been in 1994.
16. Based on what is stated herein before, the NUM has nothing to hide and has adequately responded to your article.
17. The NUM still prides itself in complying with its stated objectives in its Constitution, on its website and other forums. Insofar as the Doornfontein 1991 mass dismissal dispute is concerned, NUM is proud to state that it has honoured its word to its members.

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18. Should you have any queries, or should there be any union members or his or her next of kin whose cheque was written back and who has not been paid out, such members is encouraged to report to the Regional Co ordinator at the Carletonville Regional Office Mr Collin Mohala at 75 Ads Street, Oberholzer, Carletonville, 2499, P.O. Box 1522, Carletonville, 2500, Tel: (018) 787-5885/6/7 (018) 787-4610 Fax 9012) 787-2280.

Yours faithfully



Frans Baleni  
General Secretary



## ADDENDUM 24: TRUDIE BLACKENBERG'S SUBMISSION TO PFC

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T Blanckenberg to me

show details 9:21 AM (7 minutes ago)

Dear Mrs Molotsane

Thank you for the notification.

I intend to submit written comment before 1 December 2011.

Regards

Trudie Blanckenberg

## PRESS FREEDOM AND PRINT MEDIA REGULATION

The Commission's call, not only for comment on print media regulation but also in particular for views on press freedom, provides an opportunity to pay attention to the SA citizen's position and role in ensuring "press freedom in support of enhancing our democracy which is founded on human dignity, equality and freedom" (primary objective of the Press Freedom Commission).

## PUBLIC IGNORANCE IS NOT BLISS

Our environment for press freedom is dominated by the powerful positions respectively held by the media industry and by the government. Civil society, an important stakeholder in press freedom and ideally positioned to keep watch over the watchdog, is however debilitated and made vulnerable by its low level of (critical) media literacy<sup>1</sup>. This has proved to be counterproductive in terms of press freedom, as it is offering fertile ground for the idea that increased government control is required to protect citizens against an "all-powerful" press.

New media brought new platforms for citizens to air their views but this development was not accompanied by a much improved knowledge and/or understanding of "how the media work."

While the press recently introduced changes to improve its self-regulatory structure, "it remains ", in the words of the deputy press ombudsman Johan Retief, "the responsibility of the (media) industry to comply"<sup>2</sup>. Print media ownership including its emphasis on the bottom line has not changed. Practicing responsible journalism thus continues to be complicated and negatively affected by the fact that journalists/reporters in print media first of all have to serve their business owner employers.

Retief at the same time did acknowledge the role of the public in making a proper framework for press self-regulation work: "it is the responsibility of the public to complain – the press is accountable to the public and it is indeed its duty to keep newspapers and magazines on their toes". For too many citizens, lulled into a state of ignorance is bliss, it is however currently not a priority to do that. Moreover, for both the media industry and government it is convenient to let this situation continue.

In its background document<sup>3</sup> about World Press Freedom day on 3 May the United Nations Organisation has stated:

*"news consumers must have the necessary media literacy skills to critically analyze and synthesize the information they receive to use it in their daily lives and to hold the media accountable for its actions"*

and further on includes media literacy as one of the elements that serves as *"fundamental infrastructure on which freedom of expression can prevail."*

South Africa boasts a constitutional democracy but lacks a serious drive to empower civil society to play its rightful role in the press freedom environment. An increased number of informed (print) media users can make a valuable contribution to lower civil society vulnerability and to improve the balance of power in our press freedom sphere.

To make this happen we require a permanent, explicit and comprehensive national critical media literacy program – for all ages and at all levels.

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1. <http://cima.net.org/media-development/media-literacy>\*

2. <http://journalism.co.za/council-adopts-new-code-for-new-times.html>

3. <http://www.un.org/en/events/pressfreedomday/background.shtml>

Submitted by



Trudie Blanckenberg  
Stellenbosch  
tblankenberg@gmail.com  
29 November 2011

\* The term 'media literacy' refers to a person's ability to understand, analyze, and utilize the media, as well as their ability to differentiate between quality, unbiased news and opinion. Many argue that media literacy should also involve citizens' understanding of the importance of free and independent media to the stability of a democracy.

Within media development, the value of media literacy is often overlooked. Improving the level of a society's understanding of the media increases the demand for quality news over sensational reporting or 'infotainment.' Thus, for quality media to survive, a media literate population is essential.

The benefits of media literacy are applicable to both media development organizations and media for development organizations. "The basic news literacy argument is that you can't get the vaccine in someone's mouth until you get the idea in that someone's head that the vaccine is good for you," says Eric Newton, vice president of the Knight Foundation. For that message to be effective, the public needs to know which news sources are reliable, and which are not.

There are four lenses through which media literacy education can be viewed: **the general population, youths, citizen journalists, and government officials**. Each of these groups has different needs and attitudes toward the news media, and there are different ways of educating each. Yet each group's understanding of quality news is essential to the development of sustainable, valuable news media.

Equally important is each group's understanding of the news media's importance to the development of a stable democracy:

- Knowing which information to trust and how to become better informed is vital to the general public's ability to determine the direction of the democracy. A media literate citizenry is essential to building and sustaining democracy and these citizens can pressure governments to be accountable and to root out corruption.
- Similarly, by educating youths and instilling healthy habits of inquiry through media literacy can enable individuals, from a young age, to uphold the social and civic structures that will provide them future opportunities for prosperity, peace, and progress.
- Citizen journalists, who have an increasingly prominent role in the generation of the news, must understand their place within the democratic system. In places largely ignored by "traditional" media, citizen journalism allows residents not only to take control of—and responsibility for—the media coverage of their own hometowns but also to learn about and get engaged with the issues and events that matter to them. Citizen journalists can also be trained in basic journalism skills at the same time they gain media literacy training.
- Government officials, particularly in developing countries that have never had a free press, rarely understand the important role of the media to a democracy. Rather than seeing the media as an essential watchdog and pillar of the society, many officials see the press as an adversary to be confronted and controlled. Bureaucrats and elected officials should understand the important role that the news media play in society, and why it is their responsibility, as public servants, to be open and transparent to citizens and the press.