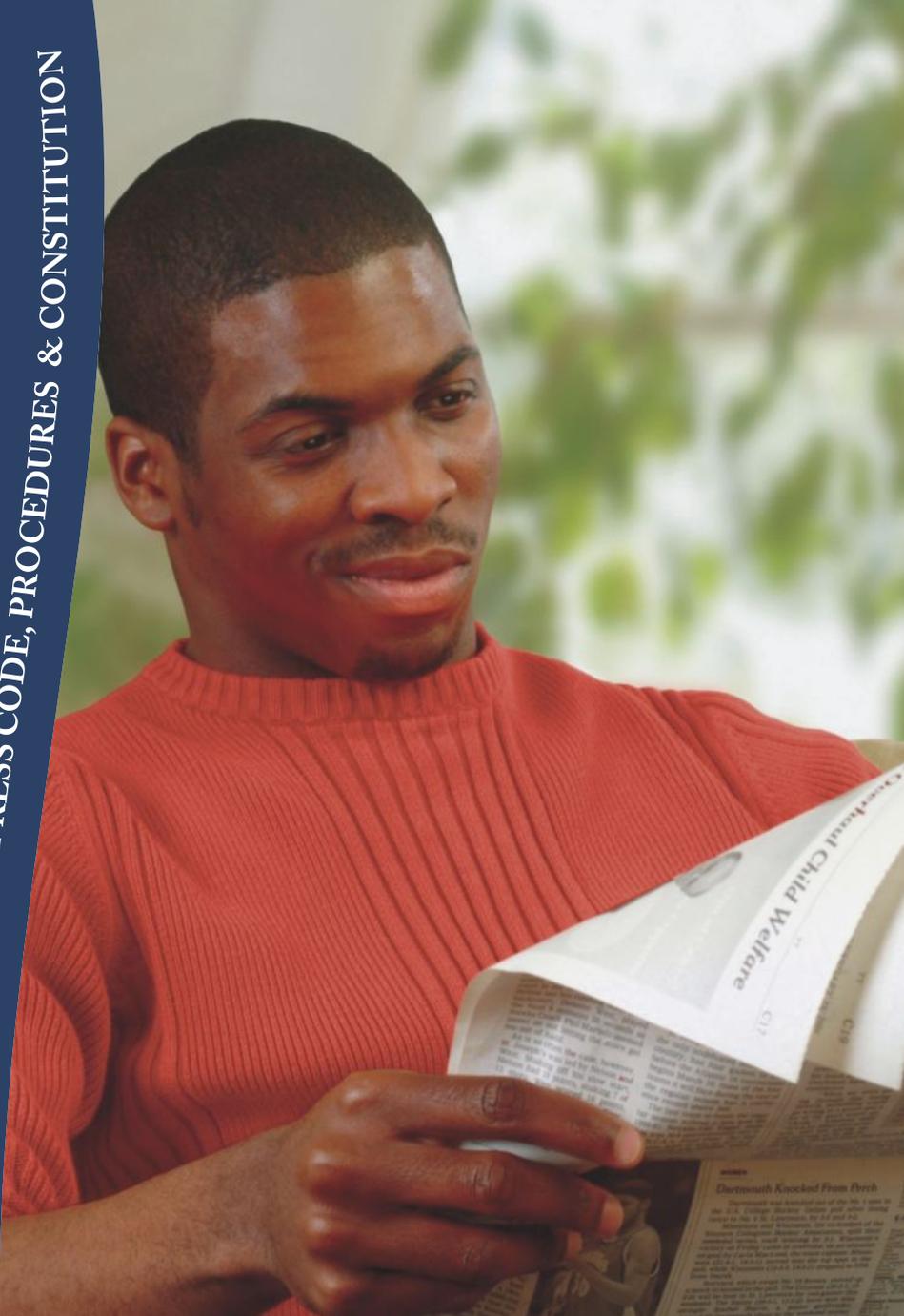


THE SOUTH AFRICAN PRESS CODE, PROCEDURES & CONSTITUTION





“ Effective self-regulation is the best system for promoting high standards in the media. ”

Declaration of Principles on Freedom of Expression in Africa, 2002.



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THIS EDITION..

This is a special edition of the Press Council of South Africa's booklet, casting forward to a revamped structure and operations that come into effect on January 1, 2013.

The first part of the booklet is about the current council and its operations, while the second - Addenda 1, 2, and 3 - is the result of three years deliberations. The work on the three documents started when the council reviewed itself and its work and published its *Review*, with its recommendations, in August 2011. This was followed by the work of the Press Freedom Commission of eminent people from various professions and led by former Chief Justice Pius Langa. The recommendations of the PFC were published in April this year.

Since then, the associations that constitute the Press Council have engaged in intensive workshops and debates on the two reports, leading to the outcomes in the addenda in the second part of this booklet.

The two parts are put together to allow for easy comparison between the current and the coming system.

The Press Council is convinced that this work will contribute to better journalism in South Africa.

September 15, 2012.

CONTENTS

Foreword	1
Press Council Members	2
Press Appeal Panel	4
The Office	6
What if I have a complaint?	7
South African Press Code and Complaints Procedures	9
Part A: South African Press Code	9
Preamble	9
1. Reporting of News	9
2. Gathering of News	10
3. Independence & Conflicts of Interest	10
4. Privacy	11
5. Dignity & Reputation	11
6. Discrimination & Hate Speech	11
7. Advocacy	11
8. Comment	12
9. Children	12
10. Violence	12
11. Headlines, Posters, Pictures & Captions	12
12. Confidential & Anonymous Sources	12
13. Payment for Articles	13
Part B: Complaints Procedures	13
1. Complaints	13
2. Conciliation and Adjudication Procedure by the Ombudsman	14
3. Adjudication Procedure of SAPAP	15
4. Variation of Procedure	16
5. Findings of SAPOM or SAPAP	16
6. Annexure A	17
Press Council of South Africa	19
Constitution	19
1. Aims and Objectives of the PCSA	19
2. Establishment of the Press Council of South Africa	19
3. Jurisdiction	20
4. Membership of the PCSA	20
5. Powers & Functions of the Council	20
6. Structure of the Press Council of South Africa	21
7. The Appointments Panel	21
8. Management Committee	22
9. The Ombudsman	22
10. Appointment of Public and Press Members to the SAPAP	23
11. Appointment of the Chairperson of the SAPAP	23
12. Persons disqualified from holding the position of Ombudsman or Chairperson of the SAPAP	24
13. Cessation of Membership	24

14. Finance	25
15. Meetings	25
16. Arbitration	26
17. Amendments	26
18. Dissolution	27
19. Seat of the PCSA	27

Addendum 1: South African Press Code 28

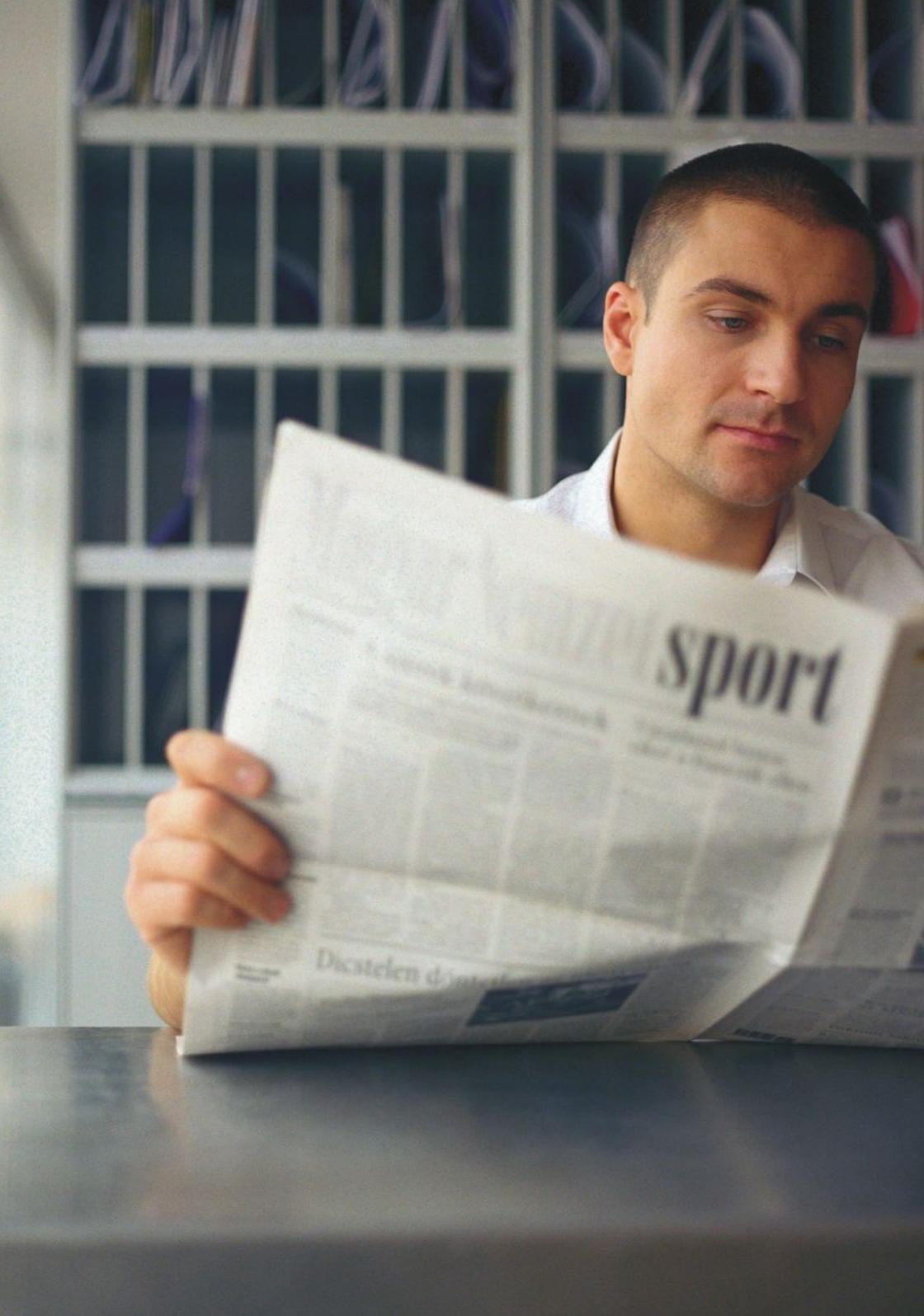
Preamble	28
1. Gathering of news	28
2. Reporting of News	28
3. Independence and conflicts of interest	29
4. Dignity, Reputation and Privacy	30
5. Discrimination and Hate Speech	30
6. Advocacy	31
7. Comment	31
8. Children	31
9. Violence	32
10. Headlines, Posters, Pictures and Captions	32
11. Confidential and anonymous sources	32
12. Payment for Articles	32

Addendum 2: Complaints Procedure 32

1. Complaints	32
2. Negotiation procedure by the Public Advocate	34
3. Adjudication by the Ombudsman	34
4. Adjudication by the Appeals Committee	35
5. Hearings	35
6. Variation of Procedure	36
7. Findings of the Ombudsman, Adjudication Panel, the Chair of Appeals and the Appeals Panel	37
8. Hierarchy of sanctions	37
9. Records	38

Addendum 3: Constitution of the Press Council of South Africa

Preamble	40
1. Establishment of the Press Council of South Africa	40
2. Aims and Objectives	41
3. Powers and functions	41
4. Composition of Council	42
5. Structures and officers of the Council	44
6. Eligibility for membership of Council and of the Panel of Adjudicators	
7. Cessation of membership	47
8. Finance	48
9. Meetings	49
10. Amendments	49
11. Arbitration	50
12. Seat of the PCSA	50
13. Dissolution	51



Sport

Dicstelen d'intellect

FOREWORD

The media in South Africa, supported by the guarantees of freedom of expression and of the media in the Constitution, have established self-regulation as the means of dealing with press misdemeanour and ethical and professional lapses on the basis that this is the only mechanism through which constitutional principles can be protected and pursued. This, of course, is in addition to the laws which apply to all citizens. Any other mechanism is dictated to, or influenced by, views and policies of governments, the administration, etc. And those views and thus the judgments and decisions that arise from them are far removed from the professional editorial principles of public interest, publishing without fear or favour and the pursuit of truth and accuracy that underpin the conduct of the press.

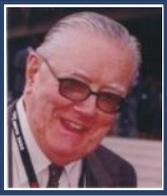
Self-regulation of the print media in South Africa - a separate body operating on similar principles, the Broadcast Complaints Commission of SA, has been set up for the electronic media - is carried out by the Press Ombudsman and Appeals Panel under the overall administrative control of the Press Council. This body, which succeeds the Founding Bodies Committee, has been broadened to include greater public representation and will in future deal more publicly with press issues, though it does not intrude on the functions of the Press Ombudsman and the Appeals Panel.

South Africa is thus the direct opposite of countries where governments and other institutions try to exercise control over editorial content generally by seeking to punish editors and journalists for publishing stories that embarrass them, or disclose conduct that politicians, officials, business persons and others wish to keep secret. When they can get away with it, countries set up statutory press councils where officials or others, generally those who support the incumbent regime, have the power to adjudicate on the shortcomings or "transgressions" of the press and impose punishment.

Raymond Louw
Chairperson

Press Council of South Africa

Press Representatives:



Raymond Louw

Chairperson, South African National Editors' Forum
Editor & Publisher of Southern Africa Report. Former editor of the Rand Daily Mail and renowned media freedom campaigner.



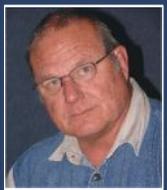
Amina Frense

South African National Editors' Forum
News Assignments Editor at the South African Broadcasting Corporation where she has held several editorial positions since 1994 when she joined the organisation. Amina has been in television broadcast journalism for many years.



Moegsien Williams

Newspaper Association of South Africa
Moegsien was editor of The Star and Editorial Director of Independent Newspapers. Over the years he has worked on both community and commercial newspapers around the country. He is now the editor of New Age.



Graeme Campbell

Graeme is editor of Streeknuus in Mpumalanga and serves on the Management Committee of the Forum of Community Journalists (FCJ).



Silke Friedrich

Magazine Publishers Association of South Africa
Silke is a Business Manager at Avusa Media Limited. She was Editor of Longevity magazine for six years, following a stint on the Sunday Times Magazine.



Mahmood Sanglay

Association of Independent Publishers
Mahmood Sanglay is President of the Association of Independent Publishers, the body that looks after the interests of small, independent and grassroots media in South Africa. He is a director of Muslim Views, published in Cape Town.

Press Council of South Africa

Public Representatives:



Bewyn Petersen

Deputy Chairperson

A Cape Town resident who is a securities dealer for a private client fund manager. He has been employed in the financial services industry for over 16 years.



Kenneth Sililo Mubu

Director: African Relations at the University of South Africa, Pretoria



Siboniso Nyatikazi

An educator in KwaZulu-Natal. He has teaching qualifications from the University of Natal (BA) and the University of Zululand.



Dr Lindsay Clowes

Lecturer in the Women's and Gender Studies Programme at the University of the Western Cape.



Ina du Bruyn

A business consultant in the Western Cape with extensive experience in marketing and strategic business planning.



Clyde Broster

Alternate member

Recently-retired school teacher, formerly Head of English at various high schools in the Cape.

Press Appeals Panel



Judge Ralph Zulman

Chairperson

Recently retired judge of the Supreme Court of Appeal, having been a judge for close to 20 years.

Public Representatives:



Simon Mantell

A Cape Town Chartered Accountant and founder of a premium biscuit factory.



Ethel Manyaka

Author, journalist and consultant specialising in publishing and community projects.



Dr Peter L. Coetzee

Owner of a real estate company and a recording studio in Cape Town. He is a lecturer, theologian, seminar speaker, workshop presenter, writer, songwriter, music arranger/producer and trainer.



Brian Gibson

A former journalist who, after a spell in public relations, has specialised in issues management for over 20 years.

Press Appeals Panel

Press Representatives:



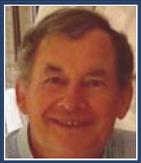
Susan Smuts

Susan is legal editor of the Sunday Times and editor of the Sunday Times Zimbabwe edition.



Peter Mann

Chief Executive Officer of the largest PR consultancy in the country. Peter is a former journalist with over 15 years experience.



Neville Woudberg

Deputy Chairperson

Neville edited the Evening Post and Weekend Post in Port Elizabeth for 21 years before retiring as the longest-serving editor of a daily newspaper in South Africa.



Franz Krüger

Krüger is a senior lecturer in the postgraduate journalism programme at Wits University, specialising in radio, ethics and sub-editing.



Gerda Kruger

Gerda is the Executive Director for Communication and Marketing at the University of Cape Town.



Lizeka Mda

Lizeka is Customer Services Manager in the Circulation Department of Independent Newspapers Gauteng and was formerly the Deputy Editor of City Press and before that editor of Sawubona magazine.

The Office



Joe Thloloe

Press Ombudsman

Over 50 years' experience in print and broadcast journalism.



Johan Retief

Deputy Press Ombudsman

Over 10 years' experience in print journalism and Media Ethics. Author of *Media Ethics: An Introduction to Responsible Journalism (OUP, 2002)*



Khanyi Mndaweni

Case Officer

Experienced in administration in the media and other industries



Millicent Gumede

PA to the Press Ombudsman

“ Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy ”

Declaration of Principles on Freedom of Expression in Africa, 2002.

What if I have a complaint?

If you believe a newspaper or magazine has not lived up to the South African Press Code on page 7, you may lodge a complaint by letter, fax or e-mail with the Press Ombudsman within 14 days of publication of the relevant story. The Ombudsman's office will assist those who require help to put their complaints in writing.

State the name and date of the publication and the reasons you believe it was out of line. It would speed up the process if you also sent us a copy of the article that gave rise to the complaint.

STEP 1. The Ombudsman will informally try and resolve the issue amicably between you and the publication.

STEP 2. If there is no resolution after Step 1, the Ombudsman and two members of the Press Appeals Panel – one a press representative and the other a public representative – will listen to both sides at a formal hearing. Decisions will be by majority vote.

STEP 3. If either party is not satisfied with the decision, it may take the matter on appeal to the chairperson of the Press Appeals Panel, Judge Ralph Zulman, formerly of the Supreme Court of Appeal. The judge also hears the appeal with a public representative and a press representative in the Appeals Panel. There is no appeal beyond this level.

NB:

- We will not start the process until you assure us that you will not later take other legal steps against the publication – we don't want people who pretend to use the self regulation system only to extract the defence of the publication and then try and use the information against it in the courts.
- If there is a valid reason for laying the complaint later than the 14 days' deadline, we will accept it.
- See the Complaints Procedures on page 13.



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South African Press Code and Complaints Procedures

PART A: SOUTH AFRICAN PRESS CODE

In operation from
October 15, 2011

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 day, a role whose centrality is recognised in the South African Constitution.

Section 16 of the Bill of Rights states that:

- (1) "Everyone has the right to freedom of expression, which includes:
 - a) Freedom of the press and other media;
 - b) Freedom to receive and 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 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.

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 & Conflicts of Interest

- 3.1 The press shall not allow commercial, political, personal or other non-professional 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 & 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 & 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 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 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; and
- 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 interviewed, 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, or have been charged with 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 & 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 & 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.

PART B: COMPLAINTS PROCEDURES

It shall be of the essence of the adjudication proceedings that:

- Complaints be considered and adjudicated upon within the shortest possible time after the publication of the matter giving rise to the complaint;
- Complaints be considered and adjudicated upon in an informal manner; and,
- Whenever possible, the Ombudsman and SAPAP and the parties will strive for a speedy and amicable settlement.

1. Complaints

1.1 "Complainant" shall mean and include any person who 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.

1.2 The "respondent" in respect of a complaint shall be the proprietor of the publication which may delegate its editor or, in his or her absence, an assistant editor or other suitable editorial representative of the member concerned, to act and appear in its stead in respect of any complaints dealt with either by the Ombudsman or the SAPAP.

1.3 A complaint shall be made as soon as possible, but not later than fourteen days after the date of the publication giving rise to the complaint. The Ombudsman may on reasonable grounds accept late complaints if in his or her opinion there is good and satisfactory explanation for the delay.

1.4 The complaint shall be made to the Ombudsman either in person, by telephone or in writing. "Writing" shall include cable, telegram, telex, e-mail and fax messages. Where a complaint is made other than in writing it shall be confirmed forthwith in writing or the Ombudsman's office

shall assist the complainant to do so. Upon the receipt of a complaint by the Ombudsman, the Ombudsman shall be entitled to request from the complainant a copy of the material published giving rise to the complaint, and the complainant shall be obliged to forward such a copy to the Ombudsman forthwith.

- 1.5 The Ombudsman shall not accept a complaint:
 - 1.5.1 Which is anonymous or which, in his or her opinion, is fraudulent, frivolous, malicious or vexatious and which *prima facie* falls outside the ambit of the Code;
 - 1.5.2 Where at any stage of the proceedings legal action is threatened or is considered by the Ombudsman to be a possibility, unless the complainant in writing waives any right to claim civil relief of whatsoever nature directly or indirectly related to or arising out of the complaint;
 - 1.5.3 Which is directed at a newspaper outside his or her jurisdiction.
- 1.6 Where the Ombudsman has accepted a complaint and the respondent offers to settle the matter complained of by way of publication or otherwise, which in the opinion of the Ombudsman constitutes a reasonable and sufficient offer of settlement of such complaint, the Ombudsman may withdraw his or her acceptance of the complaint.
- 1.7 Where the Ombudsman declines to accept a complaint on any of the grounds specified in rules 1.3 or 1.5 or withdraws his or her acceptance of a complaint under rule 1.6 the complainant may, within seven days, with full reasons, request the Chairperson of SAPAP to review the Ombudsman's decision. In the event of the Chairperson overruling the Ombudsman's decision, the matter shall proceed in terms of rule 2.

2. Conciliation and Adjudication Procedure by the Ombudsman

- 2.1 Upon acceptance of a complaint by the Ombudsman, he or she shall immediately notify the respondent in writing of the complaint, giving sufficient details to enable the respondent to investigate the matter and respond.
- 2.2 The Ombudsman shall forthwith endeavour to achieve a settlement.
- 2.3 The Ombudsman shall hold discussions with the parties on an informal basis with the object of achieving a speedy settlement. Legal representation is permitted.
- 2.4 If the complaint is not settled within 14 days of its notification to the respondent, the Ombudsman may, if it is reasonable not to hear the parties, decide the matter on the papers.
 - 2.4.1 Where the Ombudsman decides to hold a hearing, the Ombudsman shall appoint a public and a press member of the Appeals Panel to adjudicate the matter with him or her at the hearing.

- 2.4.2 Decisions shall be by a majority vote.
- 2.4.3 Legal representation shall be permitted at hearings.
- 2.5 Within 7 days of receipt of the decision, any one of the parties may apply for leave to appeal to the Chairperson of the SAPAP and the grounds of appeal shall be fully set.
- 2.6 The application and grounds must be filed at the Ombudsman's office.
- 2.7 The Ombudsman shall inform the other party of the application for leave to appeal and shall advise the party that he or she may file a response to the application for leave to appeal within 7 days of receipt thereof.
- 2.8 If the Chairperson is of the view that there are reasonable prospects that the SAPAP may come to a decision different from that of the Ombudsman or the Ombudsman with members, as the case may be, the Chairperson shall grant leave to appeal.

3. Adjudication Procedure of SAPAP

- 3.1 Where leave to appeal is granted in terms of rule 2.8, the Ombudsman shall place before SAPAP all the documentation that he or she had before him or her and the Ombudsman shall also inform both parties of the date and venue of the hearing before the SAPAP.
- 3.2 The Chairperson of SAPAP shall appoint one press member and one public member from the persons appointed in terms of clause 10 of the Constitution to hear the appeal with him.
- 3.3 The Chairperson shall determine a date, time and venue for adjudication of the appeal, which shall be heard as soon as possible after receipt by him or her of the documents referred to in rule 3.1.
- 3.4 It shall not be obligatory for either party to appear personally before the SAPAP, but they are entitled to attend and to address the SAPAP which is, in any case, entitled to question them on the matter: provided that a respondent is not under a duty to disclose the identity of an informant.
- 3.5 The Chairperson may request the parties to appear personally. The Chairperson may advise parties that, in the circumstances, an adverse inference may be drawn from failure to comply with such request without good cause.
- 3.6 The parties shall be entitled to legal representation when appearing before the SAPAP.
- 3.7 If the SAPAP finds against a respondent who is present, the respondent shall be given an opportunity to address the Tribunal in mitigation of any order that may be made.
- 3.8 The hearings of the SAPAP shall be open to the public unless the identity of a rape victim, a victim of sexual violence, a child, or a victim of extortion is at issue.

4. Variation of Procedure

- 4.1 The Ombudsman or Chairperson of the SAPAP may, if satisfied that no injustice will result, and upon such conditions as he or she may impose:
 - 4.1.1 Extend any time period contemplated in these rules;
 - 4.1.2 At any stage require any allegation of fact to be verified on oath;
 - 4.1.3 Call upon the parties to a dispute to furnish such further information as he or she may consider necessary.

5. Findings of SAPOM or SAPAP

- 5.1 The SAPOM or SAPAP may uphold or dismiss a complaint or appeal, as the case may be.
- 5.2 If a finding is made against a member of PMSA or a publication that has voluntarily become subject to the jurisdiction of the SAPOM and SAPAP, the SAPOM or the SAPAP, as the case may be, may make any one or more of the following orders against the proprietor of the publication:
 - 5.2.1 Caution or reprimand a respondent;
 - 5.2.2 Direct that a correction, retraction or explanation and, where appropriate, an apology and/or the findings of the SAPOM or SAPAP be published by the respondent in such manner as may be determined by the SAPOM or the SAPAP, as the case may be.
 - 5.2.3 Order that a complainant's reply to a published article, comment or letter be published by the respondent;
 - 5.2.4 Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of SAPOM and/or SAPAP.
- 5.3 In the reasons for the decision and/or sanction the SAPOM or SAPAP is entitled to criticise the conduct of the complainant in relation to the complaint, where such criticism is warranted in the view of SAPOM or SAPAP.
- 5.4 The Ombudsman shall cause any findings, reasons for a finding and/or requirements of a tribunal to be sent to the complainant and to the respondent who shall comply with the SAPOM or the SAPAP's orders or directives, if any.
- 5.5 The Ombudsman shall keep on record all findings and reasons for findings by the Ombudsman or SAPAP.

5.6 The records referred to in rule 5.5 shall be public documents except insofar as those documents are privileged in terms of the Promotion of Access to Information Act 2000, identify a rape victim, a person who has been sexually assaulted , a child, or a victim of extortion.

Annexure A

Our Complaints Procedures states: “The Ombudsman shall not accept a complaint...where at any stage of the proceedings legal action is threatened or considered by the Ombudsman to be a possibility, unless the complainant in writing waives any right to claim civil relief of whatsoever nature directly or indirectly related to or arising out of the complaint.”

This waiver is designed to avoid tribunal-hopping and to prevent a publication having to answer twice on the same complaint - to us and then later to the courts or other tribunals. We thus give you a choice of tribunal upfront. If your goal is to clear your name quickly and cost-effectively, you would choose our system. If it is other relief you seek, you might choose another route to suit your goal.

Waiver

I, _____, the undersigned, hereby agree to submit my complaint and any dispute arising from my complaint for adjudication to the SA Press Ombudsman (“the Ombudsman”) subject to the SA Press Code and Complaints Procedures of the SA Press Council.

I accept the decision of the Ombudsman, or in the event of an appeal, the decision of the Press Appeals Panel as final and binding.

Furthermore, by submitting my complaint for adjudication to the Ombudsman I waive my right to approach a court of law or any other tribunal to adjudicate upon my complaint or any dispute arising from my complaint submitted to the Ombudsman.

Signature

Date

“ Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination ”

Declaration of Principles on Freedom of Expression in Africa, 2002.

Press Council Of South Africa

Constitution

1. Aims and Objectives of the PCSA

- 1.1 To promote and preserve the right of freedom of expression, including freedom of the press, as guaranteed in section 16 of the Constitution of the Republic of South Africa;
- 1.2 To promote and to develop excellence in journalistic practice and ethics and to promote the adoption of and adherence to those standards of practice and ethics by publications that are associated with it;
- 1.3 To promote the concept of press self-regulation and to set up the office of the Press Ombudsman and South African Press Appeals Panel;
- 1.4 To accept a Press Code of Conduct enforced by an independent non-statutory, mediating and adjudicating structure aimed at introducing procedures for expeditious and cost-effective adjudication, in the absence of a settlement, of complaints against publications published by members of the Print Media Association of South Africa ("PMSA") and other publications that subscribe to the Press Code.
- 1.5 To promote public awareness of the existence of the Press Ombudsman and Press Appeals Panel and to create an understanding of their function and purpose;
- 1.6 To collaborate with other press councils and related organisations here or abroad and to facilitate or organise meetings and conferences with other press councils or related institutions here or abroad;
- 1.7 To undertake such other tasks as are necessary to further the objectives of the Council;
- 1.8 Generally, to promote the principles forming the basis of the South African Press Code.

2. Establishment of the Press Council of South Africa

- 2.1 To achieve the objectives set out in paragraph 1 of this Constitution, there is hereby established a juristic person to be known as the Press Council of South Africa (PCSA) which shall exercise the powers, functions and duties conferred and imposed by this Constitution.
- 2.2 Without derogating from the generality of paragraph 2.1, the PCSA, for the purposes of the proper exercise and performance of its powers, functions and duties under this Constitution, shall be capable in law of instituting or defending or opposing legal proceedings of whatever nature, or purchasing or otherwise acquiring and holding and alienating or otherwise disposing of movable

or immovable property or any other real right or interest, of entering into contracts and concluding agreements, and generally, of performing such other acts and doing such other things as juristic persons may by law perform and do, subject to the provisions of this Constitution.

3. Jurisdiction

- 3.1 The member publications of the associations listed in paragraph 4.2 below are subject to the jurisdiction of the Press Code and Complaints Procedures as amended from time to time by the PCSA.
- 3.2 All the associations listed in paragraph 4.2 below shall take such reasonable measures as they may determine to promote the aims and objectives of the PCSA.
- 3.3 Where a complaint is made against a newspaper or magazine which is not a member of the associations listed in paragraph 4.2 below, the Ombudsman shall approach such newspaper or magazine and inquire whether it accepts the jurisdiction of the Press Ombudsman for the settlement of the complaint.
- 3.4 In the event that the newspaper or magazine refuses to submit to the jurisdiction of the Ombudsman, he or she shall advise the complainant accordingly.

4. Membership of the PCSA

- 4.1 The Council shall consist of six members representative of the press and six members, one of them nominated alternate, representative of the public.
- 4.2 The press members shall be appointed as follows:
One member each shall be appointed by:
 - 4.2.1 The Newspaper Association of South Africa (NASA);
 - 4.2.2 The Magazine Publishers Association of South Africa (MPASA);
 - 4.2.3 The Association of Independent Publishers (AIP); and
 - 4.2.4 The Forum of Community Journalists (FCJ).
 - 4.2.5 The South African National Editors' Forum (SANEF) shall appoint two members, and in the event of a journalists' association being formed, SANEF shall relinquish one seat to the journalists' association.
- 4.3 The press members are required to be active in editorial work or reporting for a PMSA publication, or to have wide experience in this field.
- 4.4 In the event of a vacancy occurring, the organisation whose representative has left shall appoint a replacement for the balance of the term.

5. Powers & Functions of the Council

Powers and functions of the Council shall include:

- 5.1 To consider and decide upon any matter arising from this Constitution or the functioning of any office appointed in terms of this Constitution.
- 5.2 The Council shall perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental or supplementary to the achievement, pursuit, furtherance or promotion of the objects and principles contained in this Constitution, the Code or Procedures or any function considered necessary by the Council.

6. Structures of the Press Council of South Africa

6.1 The structures of the PCSA shall include:

- 6.1.1 The Appointments Panel
- 6.1.2 Management Committee
- 6.1.3 The adjudicating structures shall be:
 - 6.1.3.1 The South African Press Ombudsman ("SAPOM"); and
 - 6.1.3.2 The South African Press Appeals Panel ("SAPAP").

7. The Appointments Panel

- 7.1 The aim of the Appointments Panel is to appoint the Press Ombudsman, the Deputy Ombudsman, members of the public to the PCSA, the members of the Appeals Panel and the chairperson of the Appeals Panel.
- 7.2 During the last year of the term of office of council members, the council shall request the Chief Justice of South Africa to appoint a judge to chair the Appointments Panel.
- 7.3 The sitting council shall appoint at least three council members to assist the chairman of the Appointments Panel to select members of the next council.
- 7.4 The Appointments Panel may determine the procedure for the selection of members of the council.
- 7.5 The Appointments Panel shall dissolve immediately upon completion of the appointment(s) for which it was constituted.
- 7.6 The public members of the PCSA shall be appointed for a term of five years from persons who have applied for or have been nominated for the posts in response to advertisements placed in the press.
- 7.7 In the event of a vacancy occurring for any reason, an appointments panel shall be requested by the PCSA to select a replacement for the balance of the term, if possible from the previous

applicants or nominees.

8. Management Committee

- 8.1 The Council may appoint a Management Committee to run the daily affairs of the PCSA;
- 8.2 The Management Committee shall consist of one press member, one public member and the chairperson of the PCSA.
- 8.3 The Management Committee shall be entitled to represent the PCSA in all matters assigned to it by the PCSA.
- 8.4 The Council may amend or set aside any decision of the Management Committee provided that no third party is prejudiced by the alteration of a decision of the Management Committee.

9. The Ombudsman

- 9.1 Qualifications:
The Ombudsman shall:
 - 9.1.1 Be a citizen of and permanently reside in the Republic of South Africa;
 - 9.1.2 Have extensive press editorial experience at a senior level;
 - 9.1.3 Have the capability to adjudicate matters independently and fairly; and
 - 9.1.4 Be a person who is committed to fairness, freedom of speech, the free flow of information and is committed to the Press Code of the PCSA.
- 9.2 Powers and functions:
The Ombudsman shall manage the office of the Press Ombudsman and he or she shall independently deal with and attempt to settle or otherwise adjudicate, in the latter case with two members as defined hereunder, complaints against publications that fall under the Ombudsman's jurisdiction, as determined from time to time by the PCSA.
- 9.3 The Ombudsman may initiate a discussion in the Press Council into any matter based on or arising from the Press Code.
- 9.4 Where no public or press member is available to sit on a matter, the Ombudsman may co-opt a person who, in his or her opinion, has appropriate experience to fill that of the public or press member, as the case may be.
- 9.5 Appointment:
The PCSA shall determine any advertisement relating to the appointment of an Ombudsman or the Deputy Ombudsman..

- 9.5.1 The PCSA shall determine the terms and conditions of the appointment of the Ombudsman.
- 9.5.2 The qualifications and functions (9.1.1-9.4) related to the Ombudsman shall apply to the appointment of the Deputy Ombudsman.
- 9.5.3 The Ombudsman shall allocate such duties and tasks to the Deputy Ombudsman as he/she considers necessary and appropriate in the circumstances.
- 9.6 The office of the Ombudsman is in Johannesburg and the hearings will take place in Johannesburg, unless the Ombudsman decides to hold a hearing elsewhere when he/she considers it appropriate to do so.

10. Appointment of Public and Press Members to the SAPAP

- 10.1 The PCSA shall advertise for eight positions from among members of the public and eight positions for press members to SAPAP on such terms and manner as it considers necessary.
- 10.2 The public members are required to have a keen interest in communications, social and political issues and have a serious interest in the furtherance of the communicative value of the printed media as founded in the freedom of expression guarantee of the Constitution of the Republic.
- 10.3 The press members are required to be active in editorial work or reporting for a PMSA publication, or to have wide experience in this field.
- 10.4 The appointments are made by the Appointments Panel for a term of five years and reasonable fees plus costs are paid to public members per hearing day.
- 10.5 The press and public members who have been appointed to the Appeals Panel may not sit on an appeal in the matter they dealt with at the level of the Ombudsman.
- 10.6 A press member who is in the employ of a publication which is owned by a respondent in a matter may not sit on such a matter.
- 10.7 Where a public or press member is not available to sit on an appeal, the Chairperson or Acting Chairperson may co-opt a member who, in his or her opinion, has appropriate experience to fill that of the public or press member, as the case may be.
- 10.8 The office of SAPAP shall be in Johannesburg and hearings shall be held in Johannesburg, unless the Chairperson decides that it is appropriate to hold a hearing elsewhere.

11. Appointment of the Chairperson of the South African Press Appeals Panel

- 11.1 The Appointments Panel shall appoint the Chairperson of the South African Press Appeals Panel.

- 11.2 The PCSA advertises the post of Chairperson of SAPAP in a manner which it deems fit.
- 11.3 Qualifications of the chairperson:
 - 11.3.1 The Chairperson must have senior experience within the field of law.
- 11.4 The term of appointment shall be for five years and is part-time.
- 11.5 The remuneration is by way of a retainer, a daily hearing fee plus costs.
- 11.6 One of the eight public members, who have senior legal experience, shall be appointed to act as chair when the chair is not available.

12. Persons Disqualified from Holding the Position of Ombudsman or Chairperson of the South African Press Appeals Panel

- 12.1 A person shall not be appointed as Ombudsman or Chairperson of the Press Appeals Panel if such person:
 - 12.1.1 Does not, in the opinion of the Appointments Panel, have the requisite experience or capability;
 - 12.1.2 Has any financial interest in the media or is in the employ of the media;
 - 12.1.3 Occupies a seat in a provincial or national legislative body;
 - 12.1.4 Is an office bearer of a political party or movement or is in the employ of the Public Service;
 - 12.1.5 Is an unrehabilitated insolvent;
 - 12.1.6 Was convicted of an offence after 1992, whether in the Republic or elsewhere, for which such person has been sentenced to imprisonment without the option of a fine.

13. Cessation of Membership

- 13.1 A person shall cease to be the Chairperson, Ombudsman or a member if:
 - 13.1.1 He or she resigns;
 - 13.1.2 He or she becomes incapable for whatever reason of fulfilling his or her duties; provided that if a dispute arises between the incumbent and the PCSA in this connection, the matter will be resolved by an arbitrator appointed by the Chair of the Johannesburg Bar

Council in a manner which he or she deems fair;

13.1.3 He or she is declared insolvent by a court or is found guilty of an offence listed in Schedule I or II of the Criminal Procedure Act 1977.

13.1.4 Any member who becomes ineligible to hold the post in terms of the criteria for appointment to the post shall automatically cease to be a member as from the date of such ineligibility.

13.2 The Council may, by a two-thirds majority at a general meeting, suspend or terminate the membership of any member if such a member has brought the good name of the PCSA into disrepute or if such member has omitted to attend two consecutive meetings in a year without good cause acceptable to the Council.

13.2.1 At least 21 days prior written notice of such a meeting of the Council must be given to all members of the Council.

13.3 Such a resolution must be taken by a two-thirds majority of all the members of the Council and may be taken only at a meeting where at least two-thirds of the members are in attendance.

14. Finance

14.1 The annual reasonable expenditure of the SAPOM and SAPAP shall be met by the PCSA in terms of an annual budget prepared by the Ombudsman's office.

14.2 Public members of the PCSA will be remunerated per meeting and their costs for attending meetings will be paid by the PCSA.

14.3 The remuneration for the public members and the Chairperson shall be determined by the PCSA at the beginning of its term and an annual increase of at least the official inflation rate (CPIX) shall also be determined at this stage.

14.4 All costs of the Chairperson and the public members of the PAP in connection with the adjudication or appeal shall be paid by the PCSA.

14.5 The Chairperson of the Appeals Panel and the Ombudsman shall be entitled to business class flights.

15. Meetings

15.1 The Council shall hold as many meetings per year as the Chairperson deems necessary or where three members require the Chairperson to hold a meeting on a specific matter, he or she shall do so

within 21 days.

- 15.2 The quorum for a meeting shall be six members and resolutions shall be taken by majority vote except in so far as this Constitution requires otherwise. The Chairperson shall have a casting vote where the votes are equal.
- 15.3 Meetings of the Council may be held in person or by telephone or video conference or other appropriate electronic communications system or a combination thereof: provided that proper notice of such a meeting was given to all members and a quorum is in attendance.
- 15.4 Minutes shall be kept of the proceedings of meetings by one of the members elected at a Council meeting as secretary.
- 15.5 Unless all the members agree, a Council meeting shall be held within seven days' written notice by the secretary or the chairperson.

16. Arbitration

- 16.1 In the event of any dispute (including a dispute relating to membership costs, or the budget prepared by the Ombudsman, or the costs of SAPOM and SAPAP) within the PCSA relating to any matter arising from functions of any member or office-bearer, the PCSA shall appoint an arbitrator to resolve the problem and where the parties cannot agree on the arbitrator the Chair of the Johannesburg Bar Council shall be approached to appoint an arbitrator.
- 16.2 Each association which has appointed a representative in terms of 4.2 of this Constitution shall bear the costs of its representative carrying out the *bona fide* functions.
- 16.3 The cost of the arbitrator shall be shared equally by the disputing parties, except in any dispute with the Ombudsman, in which case the cost of arbitration shall be borne by the Council.
- 16.4 The decision of the arbitrator shall be final and binding.

17. Amendments

- 17.1 Any amendment to this Constitution, the Code or the Procedure shall require the approval of two-thirds of the members of the PCSA voting either personally or *in absentia*.
- 17.2 No amendment shall be effective unless at least 21 calendar days' written notice of a proposed amendment was given to all members.
- 17.3 Votes submitted *in absentia* shall be in writing, signed by the relevant member and be recorded for or against the proposed amendment. No further amendments of the proposal may be made at such meeting unless a two-thirds majority of the Council is present at the meeting and votes for

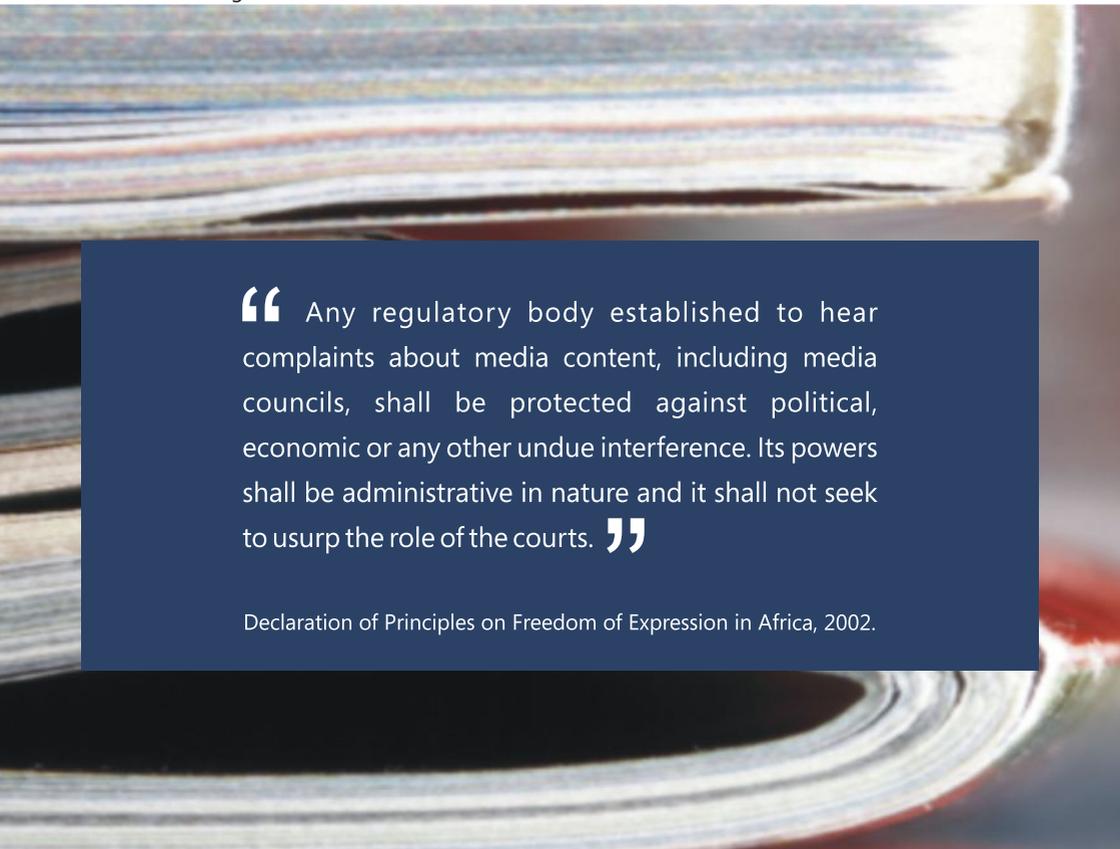
such further amendment.

18. Dissolution

- 18.1 The PCSA may, after each term of the Press Ombudsman, terminate the existence of SAPOM and SAPAP.
- 18.2 A resolution to dissolve the said system must be passed at a special meeting called for this purpose, by a two-thirds majority of the members present, which two-thirds majority shall be not less than a simple majority of the total membership.
- 18.3 Not less than 21 days' notice shall be given of any such meeting and such notice shall give particulars of the purpose for which the meeting is called.

19. Seat of the PCSA

- 19.1 The seat of the PCSA shall be in Johannesburg and meetings shall be held in Johannesburg, unless the management decides otherwise.



“ Any regulatory body established to hear complaints about media content, including media councils, shall be protected against political, economic or any other undue interference. Its powers shall be administrative in nature and it shall not seek to usurp the role of the courts. ”

Declaration of Principles on Freedom of Expression in Africa, 2002.



Addendum 1: 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 day, a role whose centrality is recognised in the South African Constitution.

Section 16 of the Bill of Rights sets out that:

1. *“Everyone has the right to freedom of expression, which includes:*
 - a) *Freedom of the press and other media;*
 - b) *Freedom to receive and 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 press strives to hold 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 always striving for truth, avoiding unnecessary harm, reflecting a multiplicity of voices in our coverage of events, showing a special concern for children and other vulnerable groups, and acting independently.

We adopt the following Press Code:

1. Gathering of news

- 1.1. News should be obtained legally, honestly and fairly, unless public interest dictates otherwise.
- 1.2. Press representatives shall identify themselves as such, unless public interest or their safety dictates otherwise.

2. Reporting of News

- 2.1. The press shall take care to report news truthfully, accurately and fairly.

- 2.2. 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.
- 2.3. 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 opinion, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.
- 2.4. 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 stated in such report.
- 2.5. A publication shall seek the views of the subject of 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. Reasonable time should be afforded the subject for a response. If the publication is unable to obtain such comment, this shall be stated in the report.
- 2.6. A publication shall 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.
- 2.7. Reports, photographs or sketches relating to indecency or obscenity shall be presented with due sensitivity to the prevailing moral climate. A visual presentation of explicit sex shall not be published, unless public interest dictates otherwise.
- 2.8. Journalists shall not plagiarise.

3. Independence and conflicts of interest

- 3.1 The press shall not allow commercial, political, personal or other non- professional 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. Dignity, Reputation and Privacy

- 4.1. The press shall exercise care and consideration in matters involving the private lives and concerns of individuals. The right to privacy may be overridden by a legitimate public interest.
- 4.2. The press shall exercise care and consideration in matters involving dignity and reputation. The dignity or reputation of an individual should only be overridden in the following circumstances:
 - 4.2.1. The facts reported are true or substantially true;
 - 4.2.2. The article amounts to fair comment based on facts that are adequately referred to and that are true or substantially true;
 - 4.2.3. The report amounts to a fair and accurate report of court proceedings, Parliamentary proceedings or the proceedings of any quasi-judicial tribunal or forum; or
 - 4.2.4. It was reasonable for the article to be published because it was prepared in accordance with acceptable principles of journalistic conduct and in the public interest.
- 4.3. 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 and it is in the best interest of the child.
- 4.4. 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, and only if it is in the public interest and it is in the best interest of the child.

5. Discrimination and Hate Speech

- 5.1. Except where it is strictly relevant to the matter reported and it is in the public interest to do so, the press shall avoid discriminatory or denigratory references to people's race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth or other status, nor shall it refer to people's status in a prejudicial or pejorative context.
- 5.2. 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 that amounts to:
 - 5.2.1. Propaganda for war;
 - 5.2.2. Incitement of imminent violence; or
 - 5.2.3. Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

6. Advocacy

A publication is justified in strongly advocating its own views on controversial topics provided that it treats its readers fairly by:

- 6.1. Making fact and opinion clearly distinguishable;
- 6.2. Not misrepresenting or suppressing relevant facts; and
- 6.3. Not distorting the facts.

7. Comment

- 7.1. 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.
- 7.2. 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.
- 7.3. 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.

8. Children

The Bill of Rights (Section 28.2) in the South African Constitution states: "A child's best interests are of paramount importance in every matter concerning the child."

- 8.1. The press shall therefore exercise exceptional care and consideration when reporting about children under the age of 18. If there is any chance that coverage might cause harm of any kind to a child, he or she shall not be interviewed, photographed or identified unless a custodial parent or similarly responsible adult consents, or a public interest is evident.
- 8.2. Child pornography shall not be published.
Child Pornography is defined in the Film and Publications Act as: 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 parts of the body of the person in a manner or circumstance which, in context, amounts to sexual exploitation.
- 8.3. The press shall not identify children who have been victims of abuse, exploitation, or who have been charged with or convicted of a crime, unless a public interest is evident and it is in the best interests of the child.

9. Violence

Due care and responsibility shall be exercised by the press with regard to the presentation of brutality, violence and suffering.

10. Headlines, Posters, Pictures and Captions

- 10.1. Headlines and captions to pictures shall give a reasonable reflection of the contents of the report or picture in question.
- 10.2. Posters shall not mislead the public and shall give a reasonable reflection of the contents of the reports in question.
- 10.3. Pictures shall not misrepresent or mislead nor be manipulated to do so.

11. Confidential and anonymous sources

- 11.1. The press has an obligation to protect confidential sources of information.
- 11.2. The press shall avoid the use of anonymous sources unless there is no other way to deal with a story. Care should be taken to corroborate the information.
- 11.3. The press shall not publish information that constitutes a breach of confidence, unless a legitimate public interest dictates otherwise.

12. Payment for Articles

The press shall avoid shady journalism in which informants are paid to induce them to give the information, particularly when they are criminals - except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

In operation from
January 1, 2013

Addendum 2: COMPLAINTS PROCEDURES

It shall be of the essence of the mediation and adjudication proceedings that:

- Complaints be considered and mediated or adjudicated on within the shortest possible time after the publication of the matter giving rise to the complaint;
- Complaints be considered and mediated or adjudicated in an informal manner.

1. Complaints

- 1.1. "Complainant" shall mean and include any person who or body of persons which lodges a complaint and has standing to complain in terms of the following rule:
 - anyone acting in their own interest;
 - anyone acting on behalf of another person who cannot act in his or her own name;
 - anyone acting as a member of, or in the interest of, a group or class of persons; and
 - an association acting in the interest of its members.

- 1.2. The “respondent” in respect of a complaint shall be the proprietor of the publication, which shall delegate its editor or, in his or her absence, an assistant editor or other suitable editorial representative of the member concerned, to act and appear in its stead in respect of any complaints dealt with by the Public Advocate, the Ombudsman or the Chair of Appeals.
- 1.3. A complaint shall be made as soon as possible, but not later than 20 working days after the date of publication giving rise to the complaint. The Public Advocate, who throughout the entire process (also at the Ombudsman and the Appeals Panel) will advise and assist the complainant if the complainant agrees, may on reasonable grounds accept late complaints if, in his or her opinion, there is a good and satisfactory explanation for the delay.
- 1.4. The complaint shall be made to the Public Advocate either in person, by telephone or in writing. “Writing” shall include cable, telegram, telex, SMS, e-mail and fax messages. Where a complaint is made other than in writing it shall be confirmed forthwith in writing or the Public Advocate’s office shall assist the complainant to do so before the complaint can be formally accepted. On receipt of a complaint, the Public Advocate shall be entitled to request from the complainant a copy of the material published giving rise to the complaint, and the complainant shall be obliged to forward such a copy to the Public Advocate forthwith.
- 1.5. The Public Advocate shall not accept a complaint:
 - 1.5.1. Which is anonymous; or
 - 1.5.2. Which, in his or her opinion, is fraudulent, frivolous, malicious or vexatious or prima facie falls outside the ambit of the Press Code; or
 - 1.5.3. Which is directed at a newspaper outside the jurisdiction of the Ombudsman. Where a publication does not fall within the jurisdiction of the Ombudsman, the Public Advocate will approach the proprietor or editor of the publication and request that the publication submits to the process for purposes of adjudicating the complaint.
- 1.6. Where at any stage of the proceedings it emerges that proceedings before a court are pending on a matter related to the material complained about, the Public Advocate, the Ombudsman or the Chair of Appeals, depending on status of the complaint at that stage, shall forthwith stop the proceedings and set aside the acceptance of the complaint by the Public Advocate.
- 1.7. Where the Public Advocate declines to accept a complaint on any of the grounds specified in rule 1.5 the complainant may, within seven working days, with full reasons, request the Ombudsman to adjudicate the complaint in terms of Section 3. The Deputy Ombudsman or another competent member of the Panel of Adjudicators may act on behalf of the complainant as the Public Advocate in this event. Either party may take the Ombudsman’s or the Adjudicating Panel’s ruling to the Chair of Appeals in terms of normal procedures.

- 1.8. Where, within 30 working days after the date of publication there has been no complaint, but the Public Advocate is of the view that a prima facie contravention of the Press Code has been committed and it is in the public interest, he may file a complaint with the Ombudsman for adjudication in terms of Section 3 below.

2. Settlement procedure by the Public Advocate

- 2.1. Upon formal acceptance of a complaint by the Public Advocate he or she shall immediately notify the publication of the complaint in writing, giving sufficient details to enable the respondent to investigate the matter and respond within seven working days unless a satisfactory reason is given to the Public Advocate for an extension of time.
- 2.2. The Public Advocate shall forthwith endeavour with the complainant to achieve a speedy settlement with the publication.
- 2.3. If the complaint is not settled within 15 working days of the publication receiving notice of the complaint, the Public Advocate shall refer the complaint to the Ombudsman for adjudication, unless she or he feels the time-frame needs to be lengthened because of the circumstances.

3. Adjudication by the Ombudsman.

- 3.1. The Ombudsman may, if it is reasonable not to hear the parties, decide the matter on the papers.
- 3.2. If the Ombudsman finds that the matter cannot be decided on the papers, but some aspects of a complaint need to be clarified and sees no need for a formal hearing, the Ombudsman may convene an informal hearing with the two parties.
- 3.3. Where the Ombudsman decides to hold a hearing, he or she shall convene an Adjudication Panel in which the Ombudsman is joined by a public and a press member drawn from the Panel of Adjudicators, to adjudicate the matter with him or her at a hearing.
 - 3.3.1. A person employed by a publication which is the subject of the complaint, or with any other vested interest in the matter, may not serve on an Adjudication Panel to consider the matter.
- 3.4. Both parties are expected to attend and address the Adjudication Panel, which is, in any case, entitled to question them personally or in writing on the matter. Failure by the publication to send a representative may lead to the matter being adjudicated in their absence.
- 3.5. Decisions by the Adjudication Panel shall be by a majority vote.
- 3.6. Within 7 working days of receipt of the decision, any one of the parties may

apply for leave to appeal to the Chair of Appeals and the grounds of appeal shall be fully set out.

- 3.7. The application and grounds must be filed at the Ombudsman's office.
- 3.8. The Ombudsman shall inform the other party of the application for leave to appeal and shall advise the party that he or she may file a response to the application for leave to appeal within 7 working days of receipt thereof.
- 3.9. If the Chair of Appeals is of the view that there are reasonable prospects that the Appeals Panel may come to a decision different from that of the Ombudsman or the Adjudications Panel, as the case may be, the Chair of Appeals shall grant leave to appeal.

4. Adjudication by the Appeals Committee

- 4.1. Where leave to appeal is granted in terms of rule 3.7, the Ombudsman shall place before the Chair of Appeals all the documentation that he or she had before him or her.
- 4.2. The Chair of Appeals shall appoint one press member and up to three public members from the Panel of Adjudicators appointed in terms of clause 5.6 of the Constitution, to hear the appeal with him or her. The Chair of Appeals will have discretion on the number of public members he or she invites to hear an appeal with him.
 - 4.2.1. A person employed by a publication which is the subject of the complaint, or with any other vested interest in the matter, may not serve on an Appeals Panel to consider the matter.
 - 4.2.2. Members of the Panel of Adjudicators who heard a case with the Ombudsman may not be part of a panel hearing the appeal against the earlier decision.
- 4.3. The Chair of Appeals shall determine a date, time and venue for adjudication of the appeal, which shall be heard as soon as possible after receipt by him or her of the documents referred to in rule 4.1.
- 4.4. The Ombudsman shall inform the parties of the date and venue of the hearing before the Appeals Panel.
- 4.5. Both parties are expected to attend and address the Appeals Panel, which is, in any case, entitled to question them personally or in writing on the matter. Failure by the publication to send a representative may lead to the matter being adjudicated in their absence.

5. Hearings

- 5.1. Discussions between the Public Advocate and the complainant, on the one hand, and the publication, on the other, are private and confidential and are conducted on a without prejudice basis. No person may refer to anything said at these discussions

during any subsequent proceedings, unless the parties agree in writing. No person may be called as a witness during any subsequent proceedings in the Press Council or in any court to give evidence about what transpired during the discussions.

- 5.2. The hearings of the Adjudicating Panel and of the Appeals Panel shall be open to the public unless the identity of a rape victim or victim of a sexual offence, a child under eighteen, or a victim of extortion is at issue.
- 5.3. The Public Advocate may assist the complainant at a hearing of the Adjudicating Panel or the Appeals Panel.
- 5.4. Legal representation shall not be permitted at hearings unless:
 - 5.4.1. The Ombudsman or the Chair of Appeals and all the other parties consent;
 - 5.4.2. The Ombudsman or the Chair of Appeals concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering:
 - 5.4.2.1. The nature of the questions of law raised by the dispute;
 - 5.4.2.2. The complexity of the dispute;
 - 5.4.2.3. The public interest; and
 - 5.4.2.4. The comparative ability of the opposing parties to deal with the dispute.
- 5.5. At the conclusion of a hearing, and before a Panel has reached a decision, both parties shall be entitled to address the Panel, personally or in writing, on sanctions and where appropriate mitigation.

6. Variation of Procedure

- 6.1. The Ombudsman or Chair of Appeals may, depending at which level the matter is being adjudicated, if satisfied that no injustice will result, and upon such conditions as he or she may impose:
 - 6.1.1. Extend any time period contemplated in these rules;
 - 6.1.2. At any stage require any allegation of fact to be verified on oath; and
 - 6.1.3. Call on the parties to a dispute to furnish such further information as he or she may consider necessary.

7. Findings of the Ombudsman, Adjudication Panel, the Chair of Appeals and the Appeals Panel

- 7.1. The Ombudsman, the Adjudication Panel, the Chair of Appeals and the Appeals Panel may uphold or dismiss a complaint or appeal, as the case may be. Such finding must be handed down within 21 days of the hearing of the complaint.
- 7.2. If a finding is made against a member of PMSA or a publication that has voluntarily become subject to the jurisdiction of the Ombudsman, the Ombudsman, the Adjudication Panel, or the Appeals Panel, as the case may be, may make any one or more of the following orders against the proprietor of the publication:
 - 7.2.1. Caution or reprimand the publication;
 - 7.2.2. Direct that a correction, retraction or explanation and, where appropriate, an apology and/or the findings of the Ombudsman, the Adjudication Panel, or the Appeals Panel be published by the respondent in such manner as they may determine.
 - 7.2.3. Order that a complainant's reply to a published article, comment or letter be published by the publication;
 - 7.2.4. Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of the Ombudsman, the Adjudication Panel, or the Appeals Panel.

8. Hierarchy of sanctions

- 8.1. A hierarchy of sanctions must be developed by the Press Council according to a scale of seriousness of infractions and, when that is done, this hierarchy must be included in this sub-clause and taken into consideration in determining a fitting sanction in terms of this clause.
- 8.2. "Space fines" shall be applied by way of the amount of space imposed to be correspondent with the seriousness of the infraction.
- 8.3. Monetary fines will not be imposed as a penalty for the content of the press. However, monetary fines according to a formula determined by the Press Council and included in this sub-clause and/or suspension for a period or expulsion from the jurisdiction of the Ombudsman may be imposed as sanctions for a respondent's failure to appear for adjudication hearings and repeated non-compliance with the rulings of the adjudicatory system.

9. Records

- 9.1. The Ombudsman shall cause any findings, and reasons for a finding to be sent to the complainant and to the respondent who shall comply with the Press Ombudsman Panel or the Press Appeals Panel's orders or directives, if any.
- 9.2. The Ombudsman shall keep on record all findings and reasons for findings by the Press Ombudsman Panel or the Press Appeals Panel.
- 9.3. The records referred to in rule 9.1 shall be public documents except insofar as those documents identify a rape victim, a person who has been a victim of a sexual offence or a child under eighteen, or a victim of extortion or identify any other person whose identity is protected in the Press Code or by law.

“ Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression. ”

Declaration of Principles on Freedom of Expression in Africa. 2002



“ No one shall be subject to arbitrary interference with his or her freedom of expression. ”

Declaration of Principles on
Freedom of Expression in Africa.
2002

Addendum 3: CONSTITUTION OF THE PRESS COUNCIL OF SOUTH AFRICA

Preamble

- Reaffirming that the Bill of Rights, which includes freedom of expression, which in turn includes freedom of the press, is a cornerstone of democracy;
- Acknowledging that the South African Constitution guarantees freedom of expression and that South Africa is also party to the 2002 Declaration of Principles on Freedom of Expression in Africa, drawn up by the African Commission on Human and Peoples' Rights, which states: "Effective self-regulation is the best system for promoting high standards in the media";
- Believing that the effectiveness of self-regulation by the print media is enhanced by public participation in a co-regulatory process;
- Noting that the laws of the country allow for alternative dispute resolution through a speedy and cost-effective process; and
- Accepting that co-regulation involving exclusively the press and the public will uphold freedom of expression and the editorial independence of the press, and contribute to high standards of journalism and ethical conduct;

**We, the print media in South Africa,
therefore establish a voluntary independent
co-regulatory system involving exclusively
representatives of the press and
representatives of the public with the
aims and objectives set out in this
Constitution.**

1. Establishment of the Press Council of South Africa

- 1.1. The South African Press, through the founding industry and professional bodies named in paragraph 1.2, establishes the Press Council of South Africa ("PCSA" or "Council"), in order to achieve the aims and objectives set out in paragraph 2 of this Constitution.
- 1.2. The founding associations are:
 - 1.2.1. Print Media South Africa (PMSA), which includes:
 - 1.2.1.1. The Newspaper Association of South Africa (NASA);
 - 1.2.1.2. The Magazine Publishers Association of South Africa (MPASA);
 - 1.2.1.3. The Association of Independent Publishers (AIP);
 - 1.2.2. The Forum of Community Journalists (FCJ); and
 - 1.2.3. The South African National Editors' Forum (SANEF), which also acts in trust for a journalists' association until such an association is formed.
- 1.3. The constituent associations named in 1.2. explicitly guarantee the independence of the PCSA, so that it can act without fear or favour in the interests of a free and ethical press, and in pursuit of the aims and objectives set out below.

2. Aims and Objectives

- 2.1. To promote and to develop ethical practice in journalism and to promote the adoption of and adherence to those standards by the South African press;
- 2.2. To adopt the SA Press Code as a guide to excellent practice, and to act as its custodian;
- 2.3. To establish and maintain a voluntary independent mechanism to deal with complaints about journalistic ethics from the public against member publications of PMSA and others who subscribe to the SA Press Code;
- 2.4. To promote and preserve the right of freedom of expression, including freedom of the press as guaranteed in Section 16 of the Constitution of the Republic of South Africa;
- 2.5. To promote the concept of independent press co-regulation involving exclusively representatives of the press and representatives of the public, as well as public awareness of the existence of the PCSA's mediation and adjudication services to deal with complaints about journalistic practice;
- 2.6. To cooperate with other press councils and similar organisations in South Africa and abroad that have the same aims and objectives as the PCSA; and
- 2.7. To undertake such other tasks as are necessary to further the objectives of the Council.

3. Powers and functions

- 3.1. The Council shall have the power to consider and decide on any matter arising from this Constitution or the functioning of any office appointed in terms of this Constitution;
- 3.2. The Council shall perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental or supplementary to the achievement, pursuit, furtherance or promotion of the objects and principles contained in this Constitution, the Press Code, Complaints Procedure or any function considered necessary by the Council; and

- 3.3. The PCSA may set up a management committee and/or other sub-committees to deal with particular issues, as it sees fit.

4. Composition of Council

- 4.1. The Council shall consist of a retired judge and 12 individuals representing members of the public and members of the media. The judge shall hold no other position in the Press Council or its appeals mechanism.
- 4.2. The outgoing PCSA shall request the Chief Justice of South Africa to recommend a judge who is no longer in active service to chair the Press Council.
- 4.3. Six of the representatives shall be appointed by the Appointments Panel, as set out in 5.1. of this constitution, from nominations received from members of the public.
- 4.4. Six of the representatives shall be from the press and shall be appointed by the constituent associations as follows:
 - 4.4.1. One member by the Newspaper Association of South Africa (NASA);
 - 4.4.2. One member by the Magazine Publishers Association of South Africa (MPASA);
 - 4.4.3. One member by the Association of Independent Publishers (AIP); and
 - 4.4.4. One member by the Forum of Community Journalists (FCJ).
 - 4.4.5. The South African National Editors' Forum (SANEF) shall appoint two members, and in the event of a journalists' association being formed, SANEF shall relinquish one seat to the journalists' association.
- 4.5. In the appointments, the Appointments Panel and the constituent associations should strive to reflect the diversity of the people of South Africa.
- 4.6. After its appointment, the Council shall elect from among the members of Council a Deputy Chairperson, provided that in the event the deputy in one term is a public representative, the deputy in the following term will be a press representative, and vice versa.
- 4.7. The members of the Council shall serve for five years, but are eligible to re-apply for the positions at the end of the term. However, to ensure the necessary continuity, three press and three public members shall be appointed for two and a half years for the first term of appointment after this amended Constitution becomes operational. Thereafter, all the terms will revert to overlapping five years. At its first regular meeting, the first Council shall decide who shall serve for two and a half years and who shall serve for five years.
- 4.8. In the event of a press vacancy occurring, the organisation whose representative has left shall appoint a replacement for the balance of the term.
- 4.9. In the event of a public vacancy occurring, the Appointments Panel shall appoint a replacement, preferably from the shortlist of candidates previously considered.



- 4.10. The Director, Press Ombudsman and Public Advocate appointed in terms of 5.1.2. below shall serve ex-officio on the PCSA, without voting rights.

5. Structures and officers of the Council

The PCSA shall establish and maintain the following structures:

5.1. Complaints mechanism

- 5.1.1. The PCSA shall establish a mechanism to deal with complaints against the press. The mechanism - made up of the Public Advocate, the Press Ombudsman and their deputies, the Panel of Adjudicators and the Chair of Appeals, as enumerated below in this Constitution - offers a non-statutory avenue for the mediation and adjudication of complaints against the press. The offices and structures dealing with complaints shall act independently of the PCSA and the constituent media organisations.
- 5.1.2. The member publications of the associations listed in paragraph 1.2. above are subject to the Press Code, as amended from time to time by the PCSA, and to the jurisdiction of the PCSA's complaints mechanism.
- 5.1.3. The jurisdiction of the PCSA extends to the electronic media of member publications.
- 5.1.4. Where a complaint is made against a newspaper or magazine which is not a member of the associations listed in paragraph 1.2. above, the Public Advocate or Ombudsman shall approach such newspaper or magazine to establish whether it accepts the jurisdiction of the PCSA.
- 5.1.5. In the event that the newspaper or magazine refuses to submit to the jurisdiction of the Ombudsman, the Public Advocate or Ombudsman shall advise the complainant accordingly.

5.2. Appointments Panel

- 5.2.1. The PCSA shall request the Chief Justice of South Africa to recommend a judge who is no longer in active service to chair the Appointments Panel.
- 5.2.2. The Appointments Panel shall be responsible for the appointment of public members of the PCSA, the public members of the Panel of Adjudicators, the Ombudsman, the Director, the Public Advocate and any deputies for these officers when necessary.
- 5.2.3. These appointees:
- 5.2.3.1. Shall be citizens of and permanently resident in the Republic of South Africa;

- 5.2.3.2. Shall be committed to the values underpinning the South African Constitution, as well as to the Press Code of the PCSA; and
 - 5.2.3.3. Shall be of high standing and integrity.
 - 5.2.4. The sitting Council shall appoint up to four Council members, preferably consisting of two press and two public representatives, to assist the Chairperson of the Appointments Panel.
 - 5.2.5. All appointments of the public members of the PCSA and the public members of the Panel of Adjudicators shall be made after invitations to the public for nomination have been advertised, a shortlist compiled and interviews conducted with shortlisted candidates.
 - 5.2.6. The Director, the Ombudsman, and the Public Advocate will be appointed by the Panel after the positions have been widely advertised and it has interviewed shortlisted candidates.
 - 5.2.7. The Appointments Panel will dissolve when it has completed its task but will be prepared to reconvene to deal with any vacancies that may arise.
 - 5.2.8. In the event of a vacancy occurring for any reason, the Appointments Panel shall be requested to reconvene to appoint a replacement for the balance of the term, preferably from previously shortlisted candidates.
- 5.3. The Director
- 5.3.1. The Director shall lead the PCSA on a full-time, professional basis and will concentrate on public engagement regarding issues of ethical journalism and media freedom.
 - 5.3.2. The Director shall serve a renewable term of five years.
- 5.4. The Ombudsman
- 5.4.1. The references to the Ombudsman in this section apply to the Deputy Ombudsman as well when he deputises for the Ombudsman.
 - 5.4.2. The Ombudsman's term of office is five years, which may be renewed.
 - 5.4.3. The Ombudsman shall adjudicate matters that cannot be resolved at the earlier level of mediation.
 - 5.4.4. The Ombudsman may do so on the papers, without hearing evidence.
 - 5.4.5. The Ombudsman may also conduct a hearing, for which the Ombudsman shall convene an Adjudication Panel, in which s/he shall be joined by one press and one public member of the Panel of Adjudicators.

5.4.6. The Ombudsman may also co-opt an assessor without voting rights to assist the Adjudication Panel with technically complex issues.

5.5. Public Advocate

5.5.1 The Public Advocate should ideally have media skills and understand the workings of the South African legal system, and have a finely tuned sense of public service and commitment.

5.5.2 The Public Advocate may serve a renewable term of five years.

5.5.3 The Public Advocate shall assist members of the public to formulate their complaints, attempt to resolve complaints amicably by liaising directly with the publication on behalf of the complainant.

5.5.4. Where the Public Advocate does not succeed in having a complaint settled within 15 working days after the complaint was lodged with a publication, he or she shall refer the unresolved dispute to the Ombudsman for adjudication as per the Complaints Procedures.

5.5.5. The Public Advocate may represent the complainant before the Ombudsman and/or the Appeals Panel.

5.6. The Panel of Adjudicators

5.6.1. The Panel of Adjudicators shall consist of eight public representatives and six press representatives, none of whom shall be members of the Council

5.6.2. The Appointments Panel shall appoint the eight public members of the Panel of Adjudicators and the constituent associations listed in 1.2 of this constitution shall appoint the press representatives.

5.6.3. Members of the Adjudication Panel who hear a case with the Ombudsman shall be drawn from the Panel of Adjudicators, as set out in paragraph 5.4.5. above.

5.6.4. The members of the Panel of Adjudicators shall serve for five years, but are eligible to re-apply for the positions at the end of the term. However, to ensure the necessary continuity three press and four public members shall be appointed for two and a half years for the first term of appointment after this amended Constitution becomes operational. Thereafter, all the terms will revert to overlapping five years. When the Panel of Adjudicators first convenes, the meeting shall decide who shall serve for two and a half years and who shall serve for five years.

5.7. The Chair of Appeals

- 5.7.1. The Chair of Appeals shall be a senior legal practitioner, preferably a retired judge, appointed by the Council on the recommendation of the Chief Justice and may be the same judge who chairs the Appointments Panel.
- 5.7.2. The Chair of Appeals shall deal with appeals against a ruling by the Ombudsman, acting with or without an Adjudication Panel.
- 5.7.3. Application for leave to appeal must be made to the Chair of Appeals, who may accept the application or refuse it.
- 5.7.4. The Chair of Appeals may also convene an Appeals Panel, in which the Chair of Appeals shall be joined by one press and up to three public members of the Adjudication Panel. The Chair of Appeals will have discretion on the number of public members to hear an appeal. Decisions of the Appeal Panel shall be by majority vote.
- 5.7.5. A person employed by a publication which is the subject of the complaint, or with any other vested interest in the matter, may not serve on an Appeals Panel to consider the matter.
- 5.7.6. The Appeals Panel may consider the matter with or without hearing oral argument or evidence.
- 5.7.7. The term of appointment of the Chair of Appeals shall be for five years and is part-time.
- 5.7.8. The Chair of Appeals shall depute a member of the Panel of Adjudicators to act as chairperson when the Chair of Appeals is not available.

6. Eligibility for membership of Council and of the Panel of Adjudicators

- 6.1. Members appointed to the Council must be persons who:
 - 6.1.1. Are of high standing and integrity with a strong interest in the press, subscribe fully to the principles of a free press and the Press Code and who shall act in the furtherance of the aims and objectives of the Council; and
 - 6.1.2. Shall be committed to the values underpinning the SA Constitution, as well as to the Press Code of the PCSA.
 - 6.1.3. Press members of the PCSA are required to be working journalists at one of the constituent associations or have wide experience in this field.
 - 6.1.4. The public members of the Council and the Panel of Adjudicators are required to have a keen sense of fairness and balance, and the skills to apply their minds to issues in the press. In addition, they are required to have a keen

interest in communications, media and in social and political issues, and be advocates of freedom of expression and freedom of the press, but may not be in the employ of the press.

- 6.1.5. The press members of the Panel of Adjudicators must have extensive knowledge of the press and its workings and shall be former or current senior journalists.
- 6.1.6. The following persons may not be appointed to any position on the PCSA or the Panel of Adjudicators:
 - 6.1.6.1. Persons under the age of 21;
 - 6.1.6.2. Any person who is not legally able to manage his or her own affairs;
 - 6.1.6.3. Any person who is disqualified from being or remaining a director in terms of any legislation with respect to the formation and management of companies;
 - 6.1.6.4. Any person who has any financial interest in the media;
 - 6.1.6.5. Any person who occupies a seat in a local, provincial or national legislative body;
 - 6.1.6.6. Any person who is an office-bearer of a political party or movement or is in the employ of the public service;
 - 6.1.6.7. Any person who is an unrehabilitated insolvent; and
 - 6.1.6.8. Any person who was convicted of an offence after April 1994, whether in South Africa or elsewhere, for which such person has been sentenced to imprisonment without the option of a fine.

7. Cessation of membership

- 7.1. A person shall cease to occupy an office of the PCSA or the Panel of Adjudicators if:
 - 7.1.1. He or she resigns;
 - 7.1.2. He or she becomes incapable for whatever reason of fulfilling his or her duties, provided that if a dispute arises between the incumbent and the PCSA in this connection, the matter will be resolved by an arbitrator appointed by the Chair of the Johannesburg Bar Council in a manner which he or she deems fair; or
 - 7.1.3. He or she is declared insolvent by a court or is found guilty of an offence listed in Schedule I or II of the Criminal Procedure Act 1977.

- 7.2. Any member who becomes ineligible to hold the post in terms of the criteria for appointment to the post shall automatically cease to be a member as from the date of such ineligibility.
- 7.3. The Council may, by a two-thirds majority at a general meeting, suspend or terminate the membership of any member if such a member has brought the good name of the PCSA into disrepute or if such member has omitted to attend two consecutive meetings in a year without good cause acceptable to the Council.
- 7.4. Such a resolution must be taken by a two-thirds majority of all the members of the Council and may be taken only at a meeting where at least two-thirds of the members are in attendance.
- 7.5. At least 21 days' prior written notice of such a meeting of the Council must be given to all members of the Council.

8. Finance

- 8.1. The Council shall establish a Finance and Remuneration Committee to consider all financial issues and the fair and proper remuneration of its staff and the remuneration of public members. The Director of the PCSA shall be a member of this Committee.
- 8.2. The Finance and Remuneration Committee shall prepare an Annual Budget for submission to the PMSA.
- 8.3. The PMSA shall cover the reasonable costs of the PCSA.
- 8.4. If the PCSA and the PMSA cannot reach agreement on the annual budget, it shall be treated as a dispute and dealt with in terms of Section 11 of this Constitution.
- 8.5. The Chair of Appeals will be remunerated by way of a retainer, a daily hearing fee plus costs.
- 8.6. Public members of the Council will be remunerated per meeting and their costs for attending meetings will be paid by the PCSA.
- 8.7. The remuneration for the public members and the Chair of Appeals shall be determined by the PCSA at the beginning of its term and an annual increase of at least the official inflation rate (CPIX) shall also be determined at this stage.
- 8.8. Where members of the Panel of Adjudicators serve on an Adjudication Panel or an Appeals Panel, their costs and a reasonable daily rate for attendance shall be paid by the PCSA.

9. Meetings

- 9.1. The Council shall hold as many meetings per year as the Chairperson deems necessary, with a minimum of four meetings per year, or where three members require the

Chairperson to hold a meeting on a specific matter, he or she shall do so within 21 days.

- 9.2. The quorum for a meeting shall be six members and resolutions shall be taken by majority vote except in so far as this Constitution requires otherwise. The Chairperson shall have a casting vote where the votes are equal.
- 9.3. Meetings of the Council may be held in person or by telephone or video conference or other appropriate electronic communications system or a combination thereof - provided that proper notice of such a meeting was given to all members and a quorum is in attendance.
- 9.4. Minutes shall be kept of the proceedings of meetings.
- 9.5. Unless all the members agree otherwise, a Council meeting shall be held within seven days' written notice by the Chairperson.

10. Amendments

- 10.1. Any amendment to this Constitution, the Code or the Complaints Procedure shall require the approval of two-thirds of the members of the Council voting either personally or in absentia, with the concurrence of the constituent associations.
- 10.2. No amendment shall be effective unless at least 21 calendar days written notice of a proposed amendment shall have been given to all members.
- 10.3. Votes submitted in absentia shall be in writing, signed by the relevant member and be recorded for or against the proposed amendment and no further amendments of the proposal may be made at such meeting unless a two-thirds majority of the Council is present at the meeting and votes for such further amendment.

11. Arbitration

- 11.1. In the event of any dispute within the PCSA or between the PCSA and its founding associations which are not capable of resolution between the parties within a period of two months, the PCSA and the associations shall appoint an arbitrator to resolve the problem and where the parties cannot agree on the arbitrator the Chair of the Johannesburg Bar Council shall be approached to appoint an arbitrator.
- 11.2. Each association which has appointed a representative in terms of 4.2 of this Constitution shall bear the costs of its representative carrying out the bona fide functions.
- 11.3. The cost of the arbitrator shall be shared equally by the disputing parties except in the case where the arbitrator decides otherwise.
- 11.4. The decision of the arbitrator shall be final and binding.

12. Seat of the PCSA

12.1. The seat of the PCSA shall be in Johannesburg and meetings shall be held in Johannesburg unless the management decides otherwise.

13. Dissolution

13.1. A resolution to dissolve the PCSA can only be passed at a special meeting called for this purpose, by a two-thirds majority of the members present, which two-thirds majority shall be not less than a simple majority of the total membership.

13.2. Not less than 21 days' notice shall be given of any such meeting and such notice shall give particulars of the purpose for which the meeting is called.

13.3. In the case of dissolution the assets will be handed back to the constituent associations.



“ Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy. ”

Declaration of Principles on Freedom of Expression in Africa. 2002





 Press
Council