



PRESS FREEDOM
COMMISSION

REPORT ON
PRESS REGULATION
IN SOUTH AFRICA



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Contents

Foreword	5
Executive summary	7
Introduction	11
Choice of a Regulator	17
Regulatory governance of the press	21
Children	25
The South African Press Code	31
Complaints procedures	35
Sanctions	47
Digital publishing	55
Media transformation	61
Recommendations	67
Appendix 1: Constitution of the PCSA	73
Appendix 2: Complaints procedures	87
Appendix 3: The South African Press Code	95
Appendix 4: PFC Terms of Reference	103
Appendix 5: Definitions of types of regulation	107
Appendix 6: PFC Commissioners and staff	109
Appendix 7: Public submissions register	113
Appendix 8: ANC resolutions on media regulation	117
Appendix 9: Bibliography	121



List of abbreviations

ANC	African National Congress
CCMA	The Commission for Conciliation, Mediation and Arbitration
DMMA	Digital Media and Marketing Association
HDI	Historically disadvantaged Individual
ISPs	Internet Service Providers
MAT	Media Appeals Tribunal
MDDA	Media Development and Diversity Agency
PBR	Press Board of Reference
PCSA	Press Council of South Africa
PFC	Press Freedom Commission
PMSA	Print Media South Africa
Sanef	South African National Editors' Forum
TOR	Terms of Reference



Foreword

The Constitution of the Republic of South Africa values the right of everyone to freedom of expression which, as Section 16 puts it, includes the freedom of the press and other media.

The print media fulfils an extremely critical role in the realisation of this right. The media however does not operate in a vacuum; the manner in which it goes about its work will always be of interest to the greater public. This is so because the media concerns people, is about people. It is about how their lives are touched by whatever is written and published in it. Regulation of the exercise of the media's workings will accordingly always be of interest, particularly in a democratic constitutional state that espouses the values of human dignity, equality and freedom. This is the backdrop against which the Press Freedom Commission (PFC) came into being.

The PFC was established by the South African National Editors' Forum and Print Media South Africa, in the wake of a review, published in August 2011, of the manner in which the Press Council of South Africa conducts its self-regulatory processes.

The PFC was constituted as an independent body of persons of standing with a mandate to find the most efficient and effective regulatory system for the print media in South Africa.

The initiative comes at a time when the life of the present Press Council is coming to an end. Of note also are the criticisms levelled at the functioning of the regulatory system currently applied and the resolution by the African National Congress in 2007 to request Parliament to investigate the desirability of a statutory Media Appeals Tribunal for the print media.

In the pre-constitutional era, the South African government has, at times, taken steps to involve itself with newspapers by way of legislation. The apartheid government had a provision on the statute book according to which it could, at any time, institute statutory press control. This measure was withdrawn in 1993 at the instance of the Press Council. The government also closed down pro-democracy newspapers in 1977, namely: *The World* and *Weekend World*. Under the emergency regulations of 1985, *New Nation* and *South* were closed down for three months in 1987. In 2004 there was an attempt by government to withdraw the exemption of newspapers from the Films and Publications Act 1996. After negotiations with the government by PMSA and Sanef, the exemption in favour of newspapers under the Ombudsman was not removed.





The operative system in South Africa is self-regulatory, and has been for many years. The State plays no role in the regulatory processes.

The PFC approached its work conscientiously and diligently, the main consideration being to give to South Africa a press regulatory system that is, at all levels, consistent with the ideals of freedom in our country but that is, at the same time, efficient and effective.

As a Commission, we have taken to heart the numerous submissions and representations that have been made to us, including those made to the PCSA task team. We have also considered the functioning of a number of regulatory systems abroad. To that end, members of the Commission visited a number of jurisdictions to gain first-hand knowledge of their systems. Finally, we have engaged in intensive and comprehensive discussions among ourselves.

We believe that this Report, which is the end product of all these investigations and deliberations, constitutes the ideal regulatory system for the South African print media.

I thank all the members of the Commission for their unflagging dedication to the task we had to do. Their enthusiasm, energy and collegial spirit knew no bounds. The staff who supported this effort deserve no less praise. The Report would not have been produced without their enormous contribution. Much credit should also go to the University of Johannesburg for the premises and other facilities afforded unstintingly to the Commission throughout the period of its existence.

Justice Pius Langa

Chairperson of the Press Freedom Commission

April 2012





Executive Summary

The Print Media SA (PMSA) and the SA National Editors Forum (Sanef) set up the Press Freedom Commission (PFC), a body of nine persons selected from outside the media community, as part of the media organisations' work to review the system of press regulation in South Africa. Chaired by Honourable former Chief Justice of South Africa Pius Langa, the independent PFC was inaugurated in July 2011 with the task to complete its work and submit its report by March 2012.

According to the Terms of Reference, the primary objective of the PFC was to ensure press freedom in support of enhancing our democracy which is founded on human dignity, the achievement of equality and the advancement of human rights and freedoms. The secondary objective was to research the regulation of specifically print media, locally and globally. Self-regulation, co-regulation, independent regulation and state regulation were examined.

From the expansive studies conducted, the PFC concludes that an independent co-regulatory mechanism, not including state participation, will best serve press freedom in the country. This will also enhance the role, accountability and responsibility of the press in the promotion of the values of a free and democratic South Africa, and in upholding the rights, dignity and legitimate interests of the people.

To be an effective and responsible regulatory system, this mechanism must manifest administrative fairness and institutional independence from the industry it is to regulate. It must also ensure optimal accessibility by removing the waiver requirements of complainants and removing the characterisation of the complaints procedure as arbitration.

Hence, the Commissioners recommend a system of co-regulation that is independent of government, composed mostly by persons drawn from various sections of the public outside of the press industry. This is designed to ensure the system's independence from the subjective inclinations and sentiments of the press profession and business. The preference for this mechanism is in response to the expressed public dissatisfaction with the current system and with the public's rejection of government involvement in press regulation.

Independent co-regulation can be defined as: a system of press regulation that involves public and press participation with a predominant public membership but without State or government participation. It is accountable to the public.



For considerable sections of the public, a vexing issue of the current regulatory system is the perceived ineffectiveness of the sanctions applied against press infractions. The Commissioners recommend a revised regime of sanctions based on a hierarchy of infractions and their corresponding sanctions. The report introduces a scale of “space fines” for offences pertaining to content of the press and “monetary fines” for guilty publications that flout the summons and rulings of the Ombudsman.

A critical and new dimension that the PFC introduces into the regulatory framework is the subject of how the press must handle children and issues concerning children. This section provides an elaborate guide on protecting the dignity, rights, privacy, image and interests of children. The report therefore expands and improves the provisions on children in the current Press Code.

The Commission considered the issue of “media transformation” (structural and content) because significant sections of the society consider it important in the overall democratisation of the new South Africa, and view ownership as having an influence on content. The PFC’s recommendations include considerations for content diversification, skills development and training, a media charter and support for community newspapers.

In fulfillment of these proposals, the PFC has recommended significant changes in the governance of the PCSA, in its composition and appointment processes, in the Appeals Panel, as well as in the Complaints Procedure. The Commission also makes proposals to the Press Code for strengthening ethical standards.

Thus, the Commission’s recommendations:

- Widen the role of the public in the regulatory system by proposing that there are more members of the public (7) than media industry (5) in the PCSA;
- Similarly strengthen the participation of the public in the Appeals Panel by increasing the number of public members above that of press members;
- Widen accessibility by limiting the Public Advocate’s sole power of deciding what complaints are eligible for hearing;
- Widen accessibility to the adjudicating system by expunging the waiver requirement of complainants;
- Strengthen public access to the regulatory system by widening the basis of third party complaints;
- Strengthen the protection of children and their rights, dignity, privacy, image and interests;
- Strengthen the Press Code with regard to the right of reply and on court reporting;
- Revise the regime of sanctions based on a hierarchy of infractions



and their corresponding sanctions, with a scale of "space fines" and "monetary fines"; and

- Suggest considerations for content diversification, skills development and training, a media charter and support for community newspapers.





Report on Press Regulation in South Africa





Introduction

1. The history of self-regulation: Press Councils

Press or Media Councils are the most prominent mechanism in democracies to deal with the mistakes committed by the media. Self-regulatory structures are offered by the media themselves with the aim of being avenues of redress for people who have complaints.¹

The first press council is generally seen as the Swedish Court of Honour, founded in 1916, which began its work during the First World War. The court was founded amidst the damaged confidence in the Swedish press, due to attempts by both sides in the war to buy influence. The Swedish Court of Honour had three distinguished journalists presiding over judgment of their peers when a member of the public complained.

The newspaper, and not the individual writer, was held to account. In its early years, the body also took up industrial issues, such as employee grievances, disputes between companies and the like.² The Swedish example was followed by other Scandinavian countries; over the decades that followed similar councils spread across Europe.³ In the late 1960s several press councils were spread in the states of the USA, modelled after the British Press Council.⁴

The 1990s was notable for the spread of press councils, which can be attributed to the collapse of the Soviet Union which resulted in the opening of the media terrain over much of Eastern Europe.⁵

Press councils have not developed in all regions. In the US, for example, the concept has not taken hold as there is now only a council in one state. A National News Council was set up in 1973 and lasted for only 11 years. The reasons for this council's short life span can be attributed to implacable opposition from parts of the US media: many US journalists view media councils as an infringement to media freedom.

Similarly, France does not have a council and has similar sensitivity to any infringement of free speech. In the rest of Europe councils are common. The British example has been followed by its former colonies, for example Australia, New Zealand, India and SA.⁶



2. The history of the SA Press Council

The industry body, the Newspaper Press Union, set up the Press Board of Reference (PBR) in 1963 to regulate the press. The formation of the PBR was an attempt by the industry to curb the apartheid government's threat to set up a statutory council.⁷

The relationship between the government and English press was marked with hostility, which reached heightened tensions with coverage of the 1960 Sharpeville massacre (where the police opened fire on protestors) which attracted high levels of critical international media coverage.⁸

In the years that followed, the mandate of the PBR Board was tightened as government pressure increased.⁹ In the latter 1980s, the SA Media Council was seen to have little credibility as it was perceived to be doing the government's "dirty work".¹⁰

In 1997, the SA Press Council was changed to the Press Ombudsman's office with the aim of signalling a change from the discredited concept of a press council. In 2007, the structure of the self-regulatory system in South Africa changed again, returning to the name of press council while still retaining an Ombudsman's position and with the additional mandate to defend media freedom.¹¹

Since the formation of the PBR in 1963 to the present PCSA, the body has changed several times in name and structure driven by the intention to keep away undue government interference. The council evolved according to the politics of South Africa. When the political dispensation changed, the dynamics around the council changed, characterised by the desire to "create a different body with real credibility, suited to the new democratic order".¹²

In 2007 the New Zealand Press Council conducted a worldwide survey and listed 87 countries with press councils. 87 percent of these countries adopted self-regulatory methods similar to South Africa's.¹³

3. The formation of the PFC

The South African media landscape has been dominated by a few groups since inception. With the English media generally owned by English mining capital and the Afrikaans by Afrikaans-speaking capital as well as government, black media struggled to survive.

For the majority black population, they found themselves subjects of media with little input. News about blacks was in the main negative: troublesome cattle rustlers, killers and followers of superstitious beliefs. Words

Introduction

used to describe them, such as bantu and native, were found to be derogatory but little could be done as the white owners were comfortable with the terminologies.

A view took hold that with freedom must come the ability to change these stereotypes. Content of the SA media would reflect the full spectrum of the lives of all people: the good, the bad and the ugly of everyone.

The advent of freedom in 1994 brought hopes of change all round. Media ownership would change and with it, it was hoped, would come change in coverage. Some change in ownership took place but the most visible change was in editorial control, where many black editors and other senior editorial executives moved into positions of responsibility.

From the euphoria days of 1994 and celebratory coverage, the media maintained its role of watchdog over those who exercise power on behalf of the greater voting public. And as the new government settled in and some dirt started being unearthed, complaints emerged of an untransformed media that still saw the ruling party as the enemy.

At its conferences in 2002 and 2007, the African National Congress resolved to change the landscape of the South African media. The changes envisioned encompassed such issues as (continued) white ownership, control and domination of particularly print media. The concerns also included content, as well as redress for the public when either untrue, unfair or damaging stories had been wrongly printed (see Appendix 8 for the relevant ANC resolutions).

The resolutions called for the investigation of the desirability of the creation of a Media Appeals Tribunal (MAT), whose form and powers were, at best, loosely defined. Around 2010, a big debate raged in the country over whether the resuscitation of the call for the MAT was part of a bigger attempt by the ANC to muzzle the press in particular. This was because the Protection of State Information Bill was also on the table at the time.

This then thrust the issue of press regulation into the spotlight.

The PCSA and the Ombudsman's Office both came in for sharp attacks after the ANC resolutions, accused of being toothless and ineffectual. The PCSA, coming to the end of the first five years in its revamped form, which included public members, and spurred on by the controversy, decided to review all its operations, its constitution, the Press Code, its complaints procedures and the composition of its constituent bodies.

The PCSA Review received a total of 58 submissions. The outcome of this exercise was a number of recommendations and improvements to staffing, the complaints procedure and the Press Code. It also reiterated the sanctity of a form of self-regulation that however included public representatives in equal numbers to the press members.

Print Media South Africa (PMSA) and the South African Editors' Forum (Sanef), however, felt the PCSA exercise, while valuable, was inadequate

as it fell short on two levels. Firstly it was the PCSA looking at itself. Secondly, the review mandate was to strengthen self-regulation and not to look at other possible regulatory options.

PMSA and Sanef then decided to initiate the creation of a body of independent people from outside the media, chaired by a reputable judge (retired) and representing a number of different SA stakeholders as well as having an international component.

4. The work of the PFC

Thus the Press Freedom Commission (PFC) was born, with nine Commissioners who included the former Chief Justice of SA Pius Langa as Chair. The other Commissioners were His Grace Anglican Archbishop of Cape Town Thabo Makgoba (Faith), Dr Phil Mtimkulu (Academia), Advocate Anshal Bodasing (Law), Advocate Kobus van Rooyen SC (Law), Futhi Mtoba (Business), Derick Elbrecht (Labour), Santie Botha (Business and Marketing) and Professor Kwame Karikari (International-Ghana) (see Appendix 6 for short biographies).

The PFC started its work in July 2011 with a lifespan expected to last nine months. Its work was greatly facilitated by the generosity of the University of Johannesburg which offered premises at almost no cost.

A draft of the Terms of Reference (TOR) had been done by PMSA and Sanef but this was overhauled by the PFC to include the following:

"The Primary Objective of the PFC: To ensure press freedom in support of enhancing our democracy which is founded on human dignity, the achievement of equality and the advancement of human rights and freedom, and

"The Secondary Objectives of the PFC: In support of our primary objective, the PFC will research the regulation of specifically print media, locally and globally. Self-regulation, co-regulation, independent regulation and state regulation will be examined." (See Appendix 4 for the full TOR and Appendix 5 for definitions of the different regulatory systems)

These TOR meant the mandate of the PFC was broadened to include looking at all forms of possible regulation of print media.

The research and investigation into the different forms of regulation took the following forms:

- Going through the PCSA Review Report and the 58 written and oral submissions on which it was based;
- Desktop research of other countries and their regulatory frameworks such as Angola, Botswana, Kenya, Malawi, Mozambique, Namibia, Rwanda, New Zealand, Australia, Brazil, Canada, Netherlands, Sweden, US, France and Italy;

- Visiting four countries – Tanzania, India, UK and Denmark – and interaction with regulators, editors, political parties, civil society entities and trade unions in those countries;
- Calling for written submissions from South Africans;
- Holding public hearings to take oral submissions from those who had or had not made written submissions;
- Reading and discussing the contents of the nearly 230 submissions received from the public and organisations (see Appendix 7 for list of public submissions);
- Discussions amongst Commissioners around the issues raised in written and oral submissions;
- Sessions with experts such as the Ombudsman and experts on issues such as digital publications and the UK media scene.

The PFC's work came at a time of heightened public awareness of press regulation given the debate sparked by the ANC decisions as well as the enquiry into the hacking scandal in the UK where journalists had hacked illegally into people's voicemails to steal information.

The latter in particular focused the public's mind on the possible abuse of freedom of the media to invade people's privacy in ways that were purely criminal. The seeming inability of the UK's self-regulatory Press Complaints Commission to take any action against the papers involved raised a number of questions around the efficacy of the self-regulatory framework in general. This is because the PCSA is based on the UK model.

5. How the PFC conducted itself

The Commission was guided in all its deliberations by the principles of Section 16 and Section 36 of the SA Constitution which state the following:

"Section 16. Freedom of expression.

- (1) Everyone has the right to freedom of expression, which includes
 - (a) freedom of the press and other media;
 - (b) freedom to receive or impart information or ideas;
 - (c) freedom of artistic creativity; and
 - (d) academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to:
 - (a) propaganda for war;
 - (b) incitement of imminent violence; or
 - (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm."

“Section 36. Limitation of Rights.

- (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:
 - (a) the nature of the right;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the relation between the limitation and its purpose; and
 - (e) less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.”

In reaching its conclusions and recommendations the PFC synthesised all the information at its disposal. This included the research, what was learnt from international visits, inputs through submissions, the outcome of the PCSA Review and sessions with experts. The PFC reached unanimity on all recommendations.

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- 1 Kruger, F. 2009. *Media courts of honour – self-regulatory councils in Southern Africa and elsewhere*. fesmedia Africa. pg. 7. http://fesmedia.org/fileadmin/files-fesmedia.org/Krueger__MediaCourtsOfHonour__2009.pdf
 - 2 Kruger, F. 2009. pg. 17.
 - 3 Kruger, F. 2009. pg. 17.
 - 4 Campbell, A. 1999. *Self-regulation and the media*. Federal Communications Law Journal. Vol 51. Pg. 746.
 - 5 Kruger, F. 2009. pg. 17.
 - 6 Kruger, F. 2009. pg. 18.
 - 7 Kruger, F. 2009. pg. 29.
 - 8 Kruger, F. 2009. pg. 29.
 - 9 Kruger, F. 2009. pg. 29.
 - 10 Kruger, F. 2009. pg. 29.
 - 11 Kruger, F. 2009. pg.29.
 - 12 Kruger, F. 2009. pg. 29.
 - 13 Kruger, F. 2009. pg. 17.



Choice of a Regulator

1. Background

Newspapers function within a social context and have the duty to inform the public in a truthful and balanced manner and also respect the rights of members of the public in the process. To ensure the public has readily accessible mechanisms to file complaints, in a large number of countries the print media has agreed to set up its own private systems of complaint adjudication.

Often the public is drawn in with the press to adjudicate complaints. This amounts to press regulation by agreement, involving public and press participation without any involvement from government. The PMSA has also done this, and the SA system has in various forms been operational since the early 1960s.

As an alternative, some countries have a statutory framework within which press and public are represented. For Denmark and India this resulted after press groups could not agree on how the system should work. In Denmark it functions as independently as a court would: the chairperson is a judge appointed by the chief justice, there is editorial and journalist representation and representation from the education sphere. The system in India is basically the same.

In Hungary the new statutory system grants the President the power to appoint the chairperson of the council and parliament appoints the other members. This step by government has been criticised severely within European quarters.

In France¹ and the USA, with one exception,² complaints are dealt with in the ordinary court system.

In Canada each province has a complaint system which broadly accords with the South African system. In Australia the co-regulatory system between press and public has recently been under inquiry by a government-appointed commission which filed its report at the end of February 2012. In New Zealand the co-regulatory system between press and public was revamped after an inquiry in 2007.

The Media Council of Tanzania has been functioning successfully since 1995 as a self-regulatory system with public representatives representing professional bodies but no government involvement. It monitors the media and adjudicates on disputes, with provision for imposing fines.



Other European countries with co-regulatory systems between press and public include Finland, Norway, Sweden, Iceland, Holland, Belgium, the UK, Ireland, Spain, Switzerland and Germany.³

2. Requirements for an effective and independent system

When the press sets up its own mechanism, it is important that it should function as an independent adjudicating entity, which complies with the requirements of a fair and independent rule-maker⁴, even though funded by the press. The fact that it is so funded would not, in itself, lead to the system being legally suspect.

It is the distance from the founding body, the manner in which officials and adjudicators are appointed, the style (objectivity) in which decisions are taken and motivated, and the chairing of the appeal body by a retired judge⁵ which gives a regulatory structure independence and standing.

The Commissioners believe that the decision to format the SA regulatory system as an independent co-regulatory system meets these criteria. The number of public members who will for the first time be more than press representatives, in both Council and the Appeals Panel, the recommendation that the PCSA move to premises away from the PMSA, the creation of an Appointments Panel that will be responsible for all appointments and which is dominated by the public, and the chairing of the Appeals and Appointments Panels by a retired judge, all go towards ensuring the independence of the PCSA.

The system is also in accord with international practice, especially the African Charter on Human and Peoples' Rights and the Declaration of Principles on Freedom of Expression in Africa. The declaration acknowledges the right of the press to set up effective systems of complaints adjudication.⁶ The African Charter has been ratified by South Africa. The Constitutional Court has stated that "the ratification of an international agreement by Parliament is a positive statement by Parliament to the signatories of that agreement that Parliament, subject to the provisions of the Constitution, will act in accordance with the ratified agreement."⁷

3. Some essentials for an ideal and effective independent co-regulatory system

- 3.1. Administrative fairness: An effective complaints mechanism must, in terms of Section 33 of the Constitution, be reasonable and procedurally fair. Any

Choice of a Regulator

conclusion reached must be one that an independent decision-maker could reasonably have reached in a fair procedure.⁸

- 3.2. Independence: The mechanism must be independent in the sense that members would apply the Press Code objectively and fearlessly, as judicial officers would. It is common, internationally and locally, for members of a profession to participate in disciplinary matters within that profession.
 - 3.2.1. More public members should sit on appeals panels: three public, one press plus the Chair of Appeals.
 - 3.2.2. For decisions on whether not to entertain a complaint, the Public Advocate with at least two members (one press, one public), must come to a unanimous decision. On appeal of such a decision, the Chair of Appeals makes a decision with one public and one press member, by a majority.
 - 3.2.3. The system has to ensure optimal accessibility and this is achieved through the removal of the waiver which complainants had to sign that they would not take the same matter to court.

All these being fulfilled by the Commissioners' decisions, point to a system that is independent, effective and regulated by public and media without state involvement.

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- 1 Based on an 1881 law, which has been amended over the years
 - 2 Although some Supreme Court Justices have mentioned the possibility of Press Councils, they have not generally been used or have simply not worked. The strong protection of free speech by the First Amendment has probably been the main reason for the approach in the USA. The News Council of Washington State is the last Press Council in the USA. Also see Ritter and Leibowitz 1974 Duke Law Journal 845
 - 3 In Germany the Government has a Constitutional duty to make a contribution to the costs of running the system
 - 4 For South Africa the Press Council
 - 5 Or in some systems a senior lawyer
 - 6 It, inter alia, states: "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." And: "Effective self-regulation is the best system for promoting high standards in the media"
 - 7 See *Glenister v President of the Republic of South Africa & Others* 2011(3) SA 347(CC) at para [96]
 - 8 Cf *Sidumo & Another v Rustenburg Platinum Mines & Others* 2008(2) SA 24(CC) at para [110]



Report on Press Regulation in South Africa





Regulatory governance of the press

1. Introduction

The Bill of Rights in the Constitution is the cornerstone of SA's democracy. This is where the right to freedom of expression, in particular freedom of speech, access to information and a free media derive their protection from.

Freedom of the press implies limited or no State involvement and that is why there is an expectation that an organisation such as the PCSA should be proactive and effective in its efforts to maintain and improve journalistic standards of print media. The Commissioners felt the ability of the PCSA to meet its obligations and fulfil its tasks would be through an effective mechanism with monitoring and research capability integrated into its system. This would include adequate financial, technical and human resourcing of the PCSA.

In its "Listening to SA campaign" the PFC requested responses from the public in respect of the four most well-known forms of regulating the media.

These include self-regulation, co-regulation, independent regulation and statutory regulation. (See Appendix 5 for the definitions)

The Commissioners analysed each one of these in conjunction with the responses received from the public via the oral and written submissions. The overwhelming majority preferred a model that characterised a form of regulation that involved public members and the press without state involvement, where press members were not dominant. It also looked at models from the international experience and matched the analysis to the Bill of Rights in the SA Constitution.

The public expressed concern that the current regulatory framework did not provide credible oversight of the conduct of journalists, editors and publications. It was felt the existing system tended to compromise adequate scrutiny of media intrusions into the entrenched democratic values; human dignity, equality and freedom as enshrined in the Bill of Rights. Effective regulation, therefore, should be a guide towards the prevention or reparation of damages caused by negligent reporting and publication, it was felt.



Thus, if print media has become the custodian of freedom of expression, as it asserts in the preamble of the Press Code that the “press hold these rights in trust for the country’s citizens”, then it assumes and inherits a special responsibility to ensure compliance to the rights and responsibilities of freedom of the press.

The Commissioners, having taken all these into consideration, chose the independent co-regulatory system between the public and the press, but in which public members are in the majority in key decisions areas. The public members would be chosen in terms of specified criteria, ensuring that there are 50 percent women members and that scarce and important skills are represented in the overall pool.

Due to the technical nature of the affiliation of media associations that make up the media representation, the PFC limited its investigation to the composition of public representation on the Press Council.

The Commissioners emphasised that it was important that appointments to Council be open and transparent. The public must be informed about the candidates and the selections to be made. This must be done through publicising vacancies, names and demographics of candidates and how the structure works. This information should be publicised in the PCSA’s own print and digital publications as well as similar publications of PMSA members.

In line with this, the Commissioners looked at the following and made a number of amendments and recommendations:

- Constitution of, and appointment criteria and procedures for the PCSA and the Ombudsman
- Independence of the PCSA and the Adjudicating System
- Funding of the PCSA
- Staffing of the PCSA

2. The PCSA constitution, appointment criteria and procedures

The constitution is an enabling mechanism that provides for the establishment of an efficient administrative framework for the organisation. The Commissioners accepted the amendments to the constitution proposed by the PCSA task team as they make for a more efficient body, would improve the standards of journalism and create more public confidence in the press.

In addition, the Commissioners recommended the following in the internal governance of the PCSA:

Regulatory governance of the press

- 2.1. The number of public members be increased from six to seven, and the number of press members be reduced from six to five.
- 2.2. The number of public members to sit on an Appeals Panel be increased from one to three, thus making the Appeals Panel five instead of three.
- 2.3. Only one press member to sit on the Appeals Panel at any given hearing.
- 2.4. An Appointments Panel be established, chaired by a retired judge, to preside over the appointments of PCSA members, adjudicating members, Appeals Panel members, and senior staff members of the PCSA such as Ombudsman and Public Advocate.
- 2.5. A deputy chairperson of the PCSA be elected from amongst PCSA members and this be done in terms of Section 4.6. of the new constitution.
- 2.6. No press employee should serve on either the adjudicating or appeals panels.

3. Independence of the PCSA and adjudicating panels

The Commissioners deduced from the oral and written submissions that interaction of complainants with the Ombudsman office exposed serious weaknesses that led to erosion of the public's confidence in the system.

This review of the independence of a free press is aimed at enhancing and advancing the quality of journalism and, through that, generating public interest and confidence in the PCSA. This is because shoddy journalism leads to perceptions, rightly or wrongly, that the PCSA is biased towards media owners and overall commercial interests.

Despite these impressions, expressed also in the oral and written submissions received, the current model of self-regulation of print media is in fact independent and free from government and industry interference and control.

However the test of durability and independence of the independent co-regulatory system, as an alternative to courts, is going to be the level of satisfaction that complainants receive in how their issues are handled both at adjudication and appeals levels.

This can be enhanced through a transparent nomination and selection process, wherein candidates are tested for their understanding of constitutional principles which include the fundamentals of the press in general

and the Press Code in particular.

Many critics raised the geographic proximity of the PCSA to the PMSA as a major impediment of its independence and motivated a physical separation of these offices. The Commissioners recommend that the location of the PCSA should be consistent with enhancing its independence or perceptions thereof from its funders, the PMSA.

The Commissioners felt the cumulative effect of the amendments, with more public representatives and a further recommendation to move offices of the PCSA to neutral territory and the removal of press employees from adjudicating and appeals panels all combine to enhance the independence of the PCSA.

4. Funding of the PCSA

The Commissioners decided that the present funding model by the industry was appropriate. The recommendations of geographic distance from PMSA, the quality and calibre of PCSA members and of members of the adjudicating and appeals panels, and competent staffing, would all serve to mitigate the perception of irksome financial dependence.

5. Staffing of the PCSA

The Commissioners recommended that all PCSA appointees must show at least proficiency in media matters and extensive knowledge of public affairs, including children's and women's rights. Due care must also be taken through the selection process and shortlisting that the following are not appointed: an office bearer of a political party, an insolvent person, a convicted criminal or a member of the civil service.

The Commissioners further recommended that the mandate of the PCSA be extended to monitoring and research, and production of editorial material analysing trends and developments in the field of journalism. This implies more staff besides the Ombudsman, deputy Ombudsman, Director and Public Advocate proposed by the PCSA review.



Children

1. Introduction

What type of print media system do we envisage within a free and democratic South Africa? What should the ultimate goal of this system be? What parameters and or values should characterise such a system? More specifically, how should this system deal with children? These are some of the questions raised during the "Listening to South Africa" campaign.¹

2. Brief background

In its Preamble, the SA Press Code locates its locus of control within Section 16 of the Bill of Rights as it pertains to freedom of expression, which includes other rights.² Writing from the "children's" perspective, citing this constitutional provision without additional reference to Section 28 (2), which states that "a child's best interests are of paramount importance in every matter concerning the child" leaves a gap in the Preamble. If the print media views children as key in the future of a cohesive, democratic South Africa, and wants to accord children their constitutional rights, the Preamble must close this gap and cite Section 28.2.

3. Issues at hand

The environment of publishing is rapidly changing and these advances, especially in social media and digital publishing³ in general, call for special attention to be paid towards their potential harm on children. Chief amongst the concerns raised by the Films and Publications Board (FPB) and others⁴ are the possible consequences of the harm of pornography to children.

- 3.1. A significant number of presenters suggested the definition of "child pornography" be broadened to be in line with the Films and Publications Act. The FPB held that "child pornography, sexual abuse, exploitation of children and exposure of children to sexually explicit material has reached unimaginable proportions".⁵



The Commissioners are, however, satisfied that the definition of “child pornography” in the Press Code need not be amended. The definition is based on the definition in the Films and Publications Act and allows for no exemption based on art, drama, science, documentary nature of the material or public interest. What the Commissioners do however recommend is that the publication of explicit sexual material should not be permitted (as in the past, under the heading of “Reporting of News” in the old Press Code) but that there should not be an exemption based on public interest, as was the case in the past. In the paragraphs which deal with privacy and children further protection of children is dealt with.

The Commissioners agreed that with the rapid advances in technology, the scale of what children nowadays have to deal with on a regular basis, and the decisions they must take in life, are enormous. Furthermore, that the positive technological advancements have also led to children being commodified and presented in the media in the main in a pathological manner rather than as holistic individuals with positive attributes.

3.2. The Commission received calls for children’s rights to be entrenched within the fabric of society in line with the UN Children Rights, the African Charter on Human and Peoples’ Rights and the Bill of Rights in the SA Constitution; all of which are tools intended for the protection of children.

In support of this suggestion and acknowledging that special care needs to be taken to protect children, the Commissioners agreed that the Press Code needs to include a clause that states that the rights of children and the young shall be respected and protected by the press.

The Commissioners also agreed that respect and protection of children entails reporting them holistically and ensuring that their voices and the stories that affect them do not portray them solely as victims or solely negatively; and that further care should be taken not to demean children because of their class and race. For example, the Commissioners noted the tendency to portray malnutrition, immuno-compromised status and neglect with photos of African children; when a positive portrayal of a child is needed, a child of European descent is depicted.

3.3. The Commissioners agreed that an inappropriate portrayal of children did not only refer to class and race or victims, but that in whatever is published the child’s best interests should be of paramount importance. They agreed to reflect this intention or vision by including in the Preamble to the Press Code a section from the Bill of Rights in the South African Constitution (Section 28.2) and commit the press to taking special care in gathering and reporting findings about children. The Commissioners have a vision of a cohesive South Africa in which children live as children. Inclusion of this section will not only restate the Constitutional provision in the Press Code

but will provide the press with a further moral and ethical framework as regards children which is currently not reflected in the Press Code.

The German Press Code⁶ in Section 11 stipulates "The Press will refrain from inappropriately sensational portrayal of violence, brutality and suffering". In the appendix of the report by the OSCE⁷ on page 93 their commission states "... it was extremely important that reports about sex crimes should be scrupulously constructed. Any details beyond the most basic, no matter how small, could identify a victim to someone who did not know of the crime. The purpose of the code was to ensure that this could not happen and that victims maintained anonymity they deserve".

- 3.4. These two excerpts from Europe read in conjunction with Section Three of the "Editors' Codebook⁸ on Children" deals with the right to dignity and privacy of children as well as their protection from being exposed to excessive violence and brutality and suffering. The Commissioners agreed, also citing personal anecdotes and research from local examples as well as some from Ghana and Tanzania, that exceptional care must be exercised when reporting violence and crime as these have lasting traumatic effects on all especially on children.

Children are not the main "consumers" of print media but in a country where efforts are made to increase the level of literacy, most children are encouraged by their schools to read newspapers and compile news in their weekly scrap books. Excessive coverage of violent crime could result in unintended consequences of emotional trauma as opposed to developing an interest in reading. The Commissioners agreed that a clause be included to the effect that the press should refrain from sensational reporting of violence and crime.

- 3.5. Related to this section, Commissioners further agreed that the anonymity of children should be maintained at all levels in matters relating to crime and violence in particular. This calls for a vigilant press that exposes these ills and active citizenry. The caution is, however, this should not be at the cost of children, their privacy and dignity. The Commissioners agreed to include a further clause on the anonymity of children when they are victims of crime.
- 3.6. The Commissioners also agreed to the inclusion of a clause that laments the under-reporting and/or minimising of the impact of substance abuse amongst children.

4. Synthesis

The current Press Code does not adequately cover the need for protection and respect, and anonymity for children who are exposed to harm due to brutality in society. There is thus a need to insert into the current Press Code, clauses that fill this identified gap.

In sum, from the discussions above, these are the shortfalls of the current Press Code:

- In the South African Press Code section on children (Review: Section 9 page 86), the section starts with "Definition of Child Pornography". This starting point is flawed as it feeds into the perception of children as pathological and as victims. The Commissioners suggest starting with the Preamble, to locate in this vision or ideal a commitment to the respect and protection of children's constitutional rights on an equal basis to freedom of expression. These rights are linked and inseparable⁹ but the Commissioners strongly advocate that in the current environment children need to be accorded this privileged place in the Press Code.
- In addition, the section on Children should be predicated by positive clauses to reflect children in a positive and holistic manner and that the press endeavour and commit itself to giving holistic coverage of children and children's issues.
- That new sub-sections be included in section 9. These sub-sections include issues of holistic coverage of children, bringing the voices of children into the stories covered, taking exceptional care in reporting children, anonymity of children in crime reporting, portrayal of children and on reporting substance abuse.

5. Recommendations

All of the above changes are reflected in the amended Press Code (see Appendix 3): in the Preamble and in Section 8 on Children.

The Commissioners believe that the children's best interests will be paramount if the above recommendations are accepted and the Press Code is amended accordingly.

¹ The Press Freedom Commission held public hearings in Cape Town, Durban and Johannesburg in January 2012 to hear what South Africans recommended as the best methods to regulate print media in South Africa. The hearings were a campaign called "Listening to South Africa".



Children

- 2 See Section 16 (1) and (2) of the Bill of Rights. Section 2 lists the exclusions to the rights listed in 16 (1)
- 3 Jannie Momberg, head of Digital Publishing from Media 24
- 4 The Jewish Board of Deputies on page 6 and paragraph 84 of their submission; The Children's Right Group; Centre for Constitutional Rights (De Klerk Foundation)
- 5 FBP written submission page 5 paragraph 4.1.2
- 6 Der Deutschen Presserats, 2001
- 7 Organisation for Security and Co-operation in Europe: The Media Self-Regulation Guidebook, Vienna 2008.
- 8 By Beales. 2001 Revision. www.editorscode.org.uk
- 9 Makgoba T: "The Truth will set you Free". Op Ed in the Cape Times, August 2011.





Report on Press Regulation in South Africa





The South African Press Code

1. Introduction

The Press Code is a tool for governing ethical behaviour among journalists. At the PCSA Review and during the hearings the following concerns were raised about the Press Code and the Ombudsman: shoddy journalism, not affording people the right of reply, unnamed sources, inaccuracies, unprofessionalism, writing blatant lies, not adhering to the Press Code, sensationalism, bias, plagiarism, defaming people.

At the "Listening to SA" hearings journalists in their individual capacities as well as members of institutions were amongst the people whose submissions were not complimentary of the media. An editor made a submission on plagiarism which, he pointed out, was becoming a scourge in the industry. He said that for the South African media as a whole to be taken seriously and to act as an effective watchdog, it needed to have clean hands and an impeccable or unimpeachable reputation.¹

A submission by a university journalism department weighed in expressing the view that "there were worrying indications that many ordinary citizens are dissatisfied with the way in which the commercial press goes about its daily business." It called on the press to "accept the blame and (must) engage in self-examination."²

There were further examples of how the media was perceived in both the written and oral presentations. Quotes included: "Many journalists in our experience do not have the ability to accurately record a statement verbatim"³ "Over the last two years, newspapers have committed what one regards as kindergarten mistakes"⁴ and "Lazy and ill-bred journalists and editors continue to publish diabolical allegations without taking reasonable steps to verify their accuracy"⁵. Concerns were expressed about inferior journalism; declining standards; and inaccurate and irresponsible reporting.

2. Continuous non-compliance with the existing Press Code

These complaints above touch on the Press Code. The question which



needs answers is: where does the problem of poor journalism arise from considering the fact that journalists of today are supposed to be better equipped than their predecessors? Figuratively speaking, in the past journalists were recruited from the streets and thrown into the deep end in the newsroom without any training. Journalists learned and improved themselves on the trade, or rather on the beat. Despite this, complaints against the media were minimal. Today it is a requirement that aspiring journalists have a tertiary education.

Some universities and technikons offer a degree in journalism, communications and media studies. In addition to this, the publications that have employed them offer in-house training. However these have not served to minimise the problem of non-adherence with the existing Press Code.

3. The PFC and the Press Code

The PCSA Review was a positive step in addressing the problems which have plagued the media. The PFC, in reviewing the Press Code, did not aim to rewrite every clause of the PCSA's reviewed Press Code but simply to complement and strengthen the work already done. Commissioners believe that strengthening the Press Code will lead to an improvement in the quality of journalism.

Amongst the submissions presented to the PFC either orally or in writing, some touched on how the Press Code could be revamped in order to give it substance. Some, from journalists and academic institutions as well as from individuals, offered other suggestions on how to improve the standard of journalism, including:

- The PCSA should continue to have regular meetings with student journalists and their teachers – to explain its role and rulings on complaints.
- Journalists should be trained not only as writers and reporters, but as professional media practitioners: ones who understand and respect the rules and the readers.
- The PCSA should monitor press standards, proactively investigating possible breaches of the Press Code, report regularly on Press Code compliance and have a range of remedies to sanction breaches.
- Teaching of the Press Code and ethics should be made compulsory modules in journalism schools.
- The PCSA should continue to regularly visit newsrooms and talk to journalists about the standard of journalism.
- The Ombudsman's reports to editors, currently done at Sanef national meetings, should also be discussed at regional Sanef meetings and other journalism gatherings for broader participation. In Tanza-

The South African Press Code

nia, for example, the editors' forum and Media Council of Tanzania hold regular meetings where editors are reminded of the ethics of journalism, newspapers are reviewed and common errors highlighted.

4. Recommendations

The public hearings showed the gravity of the problems faced by the press. Though the criticisms were harsh and hurting, they were still positive.

The Commissioners recommend the adoption of its revised version of the Press Code (see Appendix 3).

Its amendments include: three new articles on Reporting of News; a section on Court Reporting; the combining of the sections on Dignity, Privacy and Reputation; a new article in the Comment section; and a reworking of the Children section with a change of focus and additional guidelines.

The Commissioners believe these amendments not only strengthen the Press Code but also provide additional detail (eg. the section on Court Reporting) to guide journalists in how to do their work ethically and without error.

Besides making these amendments to improve the Press Code, the PFC makes the following recommendations to improve the standard of journalism:

- Newly recruited journalists should be required to familiarise themselves with the Press Code;
- There should be regular consultation between tertiary institutions teaching journalism and the newspapers;
- The PCSA should endeavour to visit all the journalism departments every three years;
- Journalists should be tested regularly on their knowledge of the Press Code;
- Journalists should have a check-list which would guide them in adhering to the Press Code when writing their stories;
- Senior journalists should be available in the newsroom to assist junior colleagues;
- The Ombudsman should continue to visit newsrooms more regularly to talk to journalists about the Press Code and common mistakes and the types of problems he/she deals with.
- The PCSA and editors should have regular meetings even outside Sanef ones to ensure the PCSA reaches a wider pool;
- The PCSA should encourage visits by members of the public to newsrooms in order to acquaint themselves with how journalists process their stories and the constraints they work under;



Report on Press Regulation in South Africa

- Journalists must be informed of the consequences of any breach of the Press Code;
- The Press Code should be revised regularly to be in tandem with the changing environment in which it operates; and
- Legal practitioners should be invited to newsrooms to explain legal aspects of the Press Code to journalists.

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- 1 Barney Mthomboti
 - 2 The Journalism Department of Stellenbosch University
 - 3 Oral presentation by the Democratic Alliance, January, 2012
 - 4 Oral presentation by Themba Sepotokele, January 2012
 - 5 Oral presentation by Morgan Phaahla, January 2012





Complaints procedures

1. Introduction

In its Review, the PCSA stated that it had sought legal advice about the nature of its complaints procedure. The advice that it was given and which it accepted was that the nature of the complaints procedure was that of a private arbitration and thus it took on all the characteristics and consequences of a private arbitration.

The Commissioners recommend that the press complaints procedure is both accessible to the public and free from the perception of bias towards the press. In order for the new press complaints procedure to have these qualities the Commissioners recommend that:

- The use of the system of private arbitration to govern the press complaints procedure is inappropriate;
- The waiver is not a useful or necessary component of an effective complaints procedure;
- Third party complaints may be accepted in line with the requirements of Section 38 of the South African Constitution; and
- The composition of the members of the Press Council as well as the panels hearing the complaint and at the appeals stage is modified so as to ensure that complainants and the public in general have confidence in the legitimacy of the Press Council.

This chapter will focus on a discussion around the press complaints procedure and the system used to govern that procedure. The PFC's recommendations on the composition of the Press Council are discussed elsewhere in this report.

2. Complaints procedure proposed by the PCSA

The notion of the complaints procedure being characterised as a species of private arbitration is a novel one for the PCSA. Prior to the 2010/2011 review process the concept of the complaints procedure functioning as a private arbitration had never been suggested as the preferred model of dispute resolution by the PCSA. The amended complaints procedure, as described by the PCSA Review,¹ is as follows:



- Negotiation stage: At this stage the Public Advocate negotiates on behalf of the complainant in the hope of obtaining a speedy settlement with the publication concerned. If this cannot be achieved, then the matter will proceed to the next stage of the process.
- Arbitration stage: The Public Advocate refers the unresolved complaint to the Ombudsman for arbitration, and this process takes the form of a "private arbitration".² Once the Ombudsman has received the papers, he or she may decide that, based on the complaint and the response from the publication, he or she may make a ruling on the papers. Alternatively, the Ombudsman may choose to convene a full hearing if he or she believes that the hearing of evidence is warranted.³ In terms of the Review, there would be no legal representation at this stage of this process.
- Appeals stage: The Appeals Committee is the final arbiter of the complaint. If either party is dissatisfied with the outcome of the arbitration phase, he or she may approach the Chair of Appeals for leave to appeal. If leave to appeal is granted, two members of the Panel of Adjudicators will sit with the Chair as an Appeals Committee. Once again, if consensus amongst the members of the Committee may not be reached, the majority will prevail. The Press Council Review recommends that no legal representation should be allowed at this stage either.
- The entire process is subject to review in the High Court. However, the grounds of review are very narrow (similar to the grounds on which decisions of the Magistrates' Courts may be reviewed) and are limited to (a) misconduct on the part of members of the committee; (b) gross irregularity in the conduct of the proceedings; and (c) a review on the basis of an award that was improperly obtained. Generally speaking, this means that the aggrieved party to the procedure is not able to review the merits of the matter.

3. Issues regarding this procedure

Based on the discussion above, the view of the PFC is as follows:

- The negotiation stage proposed by the PCSA is to be supported. It appears to be a useful mechanism for the speedy resolution of disputes.
- In so far as the rest of the procedure is concerned, the PFC's difficulty does not, in the main, relate to the mechanics of the dispute-resolution process. Its concern relates mainly to the characterisation of the proceedings as a private arbitration (although this characterisation does have some implications for the mechanics).
- The characterisation of the proceedings as a private arbitration is inapposite and has certain unwelcome consequences.

We proceed to discuss these concerns in more detail.

A person who has a complaint against the print media has to choose between two routes if he/she wishes the complaint to be dealt with. The complainant can either lay a complaint with the Press Council through the Ombudsman/Public Advocate, or the complainant may make use of the justice system and have his/her matter dealt with by a court of law.

As the PCSA review stands, if a person chooses to use the Press Council to deal with a complaint, then that person consents to a private arbitration. The PCSA review describes as its "arbitration arm" both the Ombudsman's Office and the Appeals Panel.

The complaint may be dispensed with in the negotiation phase. If it cannot be resolved on paper, it proceeds to an "arbitration" stage. The PCSA is of the view that this stage has all the necessary components to be described as a "private arbitration". It states that "The Constitutional Court has found that parties in a private arbitration 'are entitled to determine what matters are to be arbitrated, the identity of the arbitrator, the process to be followed in the arbitration, whether there will be an appeal to an arbitral appeal body and other similar matters'. In the current system, the complainant is given a choice: use the press self-regulatory system or go the route of the courts or other tribunals".⁴

4. The Lufuno judgment of the Constitutional Court

The Constitutional Court in *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and another* 2009 (4) SA 529 (CC) considered the status and effect of private arbitrations. The following aspects of the judgment are noteworthy:

- The majority judgment (O'Regan ADCJ) quoted with approval the description given to private arbitration by our courts: "The hallmark of arbitration is that it is an adjudication, flowing from the consent of the parties to the arbitration agreement, who define the powers of adjudication, and are equally free to modify or withdraw that power at any time by way of further agreement."⁵
- The Court identified certain advantages of private arbitration: it is flexible, cost-effective, private and speedy.⁶ Part of what makes the process speedy is that there often is no appeal at all from an arbitrator's award. Or, an appeal may take an accelerated form before an appellate arbitral body.
- The Court pointed out that litigation before the ordinary courts can be rigid, costly and time-consuming. Therefore, it is not inconsistent

with the values of the Constitution for parties to seek a quicker and cheaper mechanism to resolve their disputes.⁷

- The Court summed up the hallmarks of private arbitration as follows: it is consensual and it is private.⁸

The judgment of O'Regan ADCJ in the Lufuno matter, referred to above, sets out in some detail the essential features of private arbitrations. While it is true that some of the features of private arbitration, like its efficiency and cost-effectiveness, are features of an ideal press complaints procedure, the other essential features make the private arbitration and the ideal press complaints procedure incompatible.

5. The appropriateness of private arbitration in the press complaints procedure

Ordinarily, litigants would have the choice whether to have their disputes dealt with in a court of law or whether to engage in a process of private arbitration. However, sometimes a person with a complaint has no choice because the law mandates that the dispute must be handled by a specific, specialist body that was set up to deal with specific complaints.

For example, a party to a labour dispute has, in most cases, no choice but to approach the Commission for Conciliation, Mediation and Arbitration (CCMA) for relief. Except in the limited circumstances where a litigant may approach the Labour Court directly, the litigant has no entitlement to choose to ventilate his or her dispute in court (unless, of course, he or she subsequently seeks to review the decision of the CCMA).

Another example is that a person who is aggrieved by the conduct of a medical scheme under the Medical Schemes Act 131 of 1998 must avail him or herself of the complaints procedure mandated by chapter 10 of the Act. This process involves first referring a dispute to the Registrar of Medical Schemes then, if dissatisfied, appealing to the Council for Medical Schemes and then, if still dissatisfied, appealing to the Appeal Board. This process is compulsory and a litigant may not approach a High Court for relief (in the form of a review) until these steps have been exhausted.

In the Lufuno judgment (above), the court contrasted proceedings in the CCMA with private arbitrations: the former are neither consensual nor private.⁹

The Press Council has decided that a complainant will have a choice between having his/her complaint resolved in a court of law or by the Press Council's Ombudsman and arbitration arm. If a complainant chooses not to go to court, then he or she rightly chooses to abide by the complaints procedure that the Press Council has set up.

Complaints procedures

In the view of the PFC, however, it is incorrect to characterise the Press Council processes as a private arbitration process because the pre-conditions for a private arbitration are absent.

A key feature of private arbitration is that there must be consent. There are two types of “consent” at play as regards the press complaints procedure. When a complainant chooses to use a specific forum to deal with a matter that complainant voluntarily submits to its rules and regulations – and in that sense, the complainant does consent to be bound. However, the fact that a complainant has submitted him/herself to the press complaints procedure does not mean that he/she has consented in the same way in which a party to a private arbitration has consented.

In the press complaints procedure, the complainant is in no position to bargain or negotiate the terms of how his/her matter will be dealt with. The rules and procedures are presented as a *fait accompli*.

In a sense, one may view the dispute-resolution options as a spectrum. On the one side of the spectrum, at its most extreme, is the private arbitration. It is entirely consensual, and the parties determine all of the rules and procedures. On the other side of the spectrum fall those cases – such as referrals to the CCMA – where the choice of forum is predetermined by legislation. The press complaints procedure falls somewhere in the middle: the choice of forum is left to the complainant, but once there he or she is bound by its rules.

As stated, there is nothing sinister about a dispute resolution body formulating its own rules and procedures.

It is simply wrong to say that in the instance of the press complaints procedure it is a private arbitration.

Furthermore, the concept of a private arbitration is not a good fit for a process that falls within the paradigm of press freedom. The issues which will come before the dispute-resolution body necessarily engage issues which affect the broader public interest.

An added concern for the PFC is that the characterisation of the press complaints procedure as a private arbitration would have another effect on the nature of the procedure: it restricts the bases upon which the Appeal Panel’s decision may be reviewed. Section 33 of the Arbitration Act sets out the bases upon which arbitrations may be reviewed.¹⁰

As may be seen from the discussion of the SA Press Council Review, these are the grounds of review applicable to reviews of the decisions of the Appeal Committee. The overwhelming impression that we received from the public, the press and the Ombudsman’s office was that the majority of complainants seek a correction or an apology and there is no more to it. In a few cases, the complaint is more complex, and a more delicate balancing of rights may be required. It is in these few cases where a full review to the High Court may be warranted.

If a new press complaints procedure were to be established, it would be done in terms of an industry-wide agreement. The decisions of the Appeal Committee would, in our view, fall under the definition of “administrative action” in the Promotion of Administrative Justice Act 3 of 2000 (PAJA). They would constitute decisions of a “natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision which adversely affects the rights of any person and which has a direct, external legal effect.” The empowering provision would be contained in the rules establishing the new complaints procedure.

However, if the press complaints procedure were to be classified as a private arbitration, and fall under the Arbitration Act, then this would not be possible. The grounds of review would be limited to the very limited grounds set out in section 33 of the Arbitration Act.

A further concern relates to the binding nature of the award. An arbitrator’s award binds only the parties. Ordinarily this would not be a source of concern. However, the print media are private entities performing a public service. We have described in some detail earlier in our Report the very important role that the press plays as public watchdog, and in informing the public of essential information about government and society at large – exposing corruption and undertaking important investigative work.

This vital work has the effect of thrusting persons who are the subject of a printed article into the public eye. Therefore a decision by the Press Council about any wrongdoing or exoneration of any behaviour by members of the print media should be open to study by the Press Council and Appeals Panel in any future matter before them. The decisions taken by the Press Council and the Appeals Panel should also be open to scrutiny by the courts, if a party to the complaints proceedings wishes to take the matter there on a full review.

6. Conclusion on private arbitration

In conclusion, the Ombudsman’s office and the Press Council should be seen as an extension of the very public role that the press plays. The route of private arbitration appears to be a defensive and insular mechanism in the context of press freedom and the very public nature of the published word.

While the press complaints procedure should not be compulsory – and in this sense it has similarities to private arbitrations – the discussion above reveals that it should not be seen as a species of private arbitrations.

7. Recommendations

While the PFC is not in favour of the characterisation of the complaints procedure as a private arbitration, the manner of the complaints procedure should remain largely the same as it currently is.

The Ombudsman and Appeals Panel (See Regulatory governance of the press, p21) will hear complaints and keep a record of proceedings, and there shall be no lawyers present. Further, the role of the Public Advocate will be to explain proceedings to the complainant, before they commence and to advise the complainant prior to proceedings. The Public Advocate shall not be the complainant's legal representative during proceedings. This shall be the Public Advocate's role vis-à-vis the complainant throughout the process, including at the appeals stage.

The newly composed Appeals Panel will operate in the same manner as the current Appeals Panel. The Commissioners agree with the recommendation of the PCSA Review that legal representation should not be allowed at the appeal stage. The past experience of the PCSA demonstrates that permitting legal representation at any stage of the proceedings tends to have the effect of undermining the goals of speedy resolution and the saving of costs. If our proposal of rendering decisions of the appellate body subject to High Court review as envisaged in PAJA, then there will be oversight by the Courts. This will offset any potential prejudice that the lack of legal representation at the complaints procedure stage might be said to cause. Furthermore, given the highly qualified nature of the panels, adequate protections for the rights of participants will exist.

When on review to the High Court, the record of proceedings of both the hearing of the complaint as well as of the appeal shall form the record for the review. This will ensure court oversight in appropriate cases.

8. Waivers

The justification for the inclusion of a waiver in the current complaints procedure has primarily been to thwart what is referred to as "fishing expeditions" or tribunal hopping by complainants, who may be looking to test the merits of their complaint.¹¹ The waiver is also designed to prevent a publication from answering twice on the same complaint.¹²

Prior to the PCSA Review, the waiver took the form of a complainant waiving his/her right "to approach a court of law or any other tribunal to adjudicate upon [his/her] complaint or any dispute arising from [his/her] complaint submitted to the Ombudsman." The PCSA Review concluded that the waiver requirement should remain, but it recommended that the

form of the waiver itself, change to reflect the fact that the Press Council "conducts itself in terms of Section 33 of the Arbitration Act of 1965".¹³ The consequences of this are that the complainant waives his/her rights in terms of Section 34 of the Constitution,¹⁴ and accepts the decision of the Ombudsman/adjudication panel as final, or if the matter goes on appeal to the Appeals Tribunal, then the decision of the Tribunal as final.¹⁵ As a result of these changes, the waiver is now referred to as the "Complainant's Declaration".¹⁶

As mentioned earlier, the PFC rejects the characterisation of the dispute resolution mechanism/complaints procedure as a private arbitration. As a result, the "Complainant's Declaration" would fall away.

8.1. Recommendation

Whether or not the dispute resolution mechanism is characterised as a private arbitration, the Commissioners recommend that there should be no waiver requirement in the complaints procedure.

The PFC has noted in its research that the requirement of signing a waiver form is non-existent in other countries with so-called high levels of press freedom: neither Denmark, Sweden, the United Kingdom nor New Zealand, for example, requires a complainant to sign a waiver form.¹⁷

A complainant should be properly advised by the Public Advocate that he/she should not commence legal proceedings once he/she has chosen to use the Ombudsman's Office to resolve his/her dispute. After all, a complainant chooses the complaints procedure of the Press Council because it is intended to be an alternative dispute resolution mechanism, designed to be a quick, cheap and effective manner of resolving a dispute. Furthermore, a court would in all likelihood not entertain a matter before it if the matter was seized before another body, such as the Press Council/Ombudsman's Office.

With regards to whether the lack of a waiver opens the door to a publication having to answer twice on the same complaint, the PFC concludes that this is not a cause for concern.

Firstly, there is, at present, a real concern that the use of waivers has a chilling effect on the use of the Ombudsman by potential complainants. The Ombudsman is meant to present the possibility of a quick, efficient, inexpensive and non-litigious alternative to proceedings in court.

Secondly, a court considering any future claim based on the same facts would have to take into account any order that the Ombudsman made, given that this would always be relevant to the extent to which the complainant's dignity needed to be assuaged.

If one takes these two considerations together, it will be unusual for a complainant who has exhausted proceedings before the Ombudsman to obtain a windfall in subsequent court proceedings. In the rare situation

where a litigant is able to claim relief both before the Ombudsman and the courts, this, in our view, is an ill which is worth bearing, in order to encourage members of the public to use the Ombudsman.

9. Third party complaints

The PCSA currently makes provision for the lodging of third party complaints in certain circumstances. What those circumstances are is not clear from the text of the Code or anywhere else. All that we are told is that third party complaints are permissible in "exceptional circumstances", when there is no risk that the person directly affected will institute litigation after the issue has been dealt with in the Ombudsman's system.¹⁸

According to the PCSA and the current Ombudsman, there have been instances when third party complaints have been accepted. For example, the SPCA and civil society organisations, representing in one instance the LGBT community, have been accepted as third party complainants. However, there appears to be no guidance or consistency inherent in rule that such complaints will be accepted in exceptional circumstances. In our view, the notion of "exceptional circumstances" in this context has two limitations:

- First, without a detailed definition of when exceptional circumstances might be said to apply, the term is vague; and
- Secondly, it may unduly limit the circumstances in which a third party complaint may be brought.

In our view, a better approach would be for the issue of standing before the press complaints procedure to mirror the text of Section 38 of the Constitution. That provision provides that the following classes of applicant may approach a competent court for appropriate relief for an infringement of the Bill of Rights:

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest; and
- (e) an association acting in the interest of its members.

9.1. Recommendations

The PFC's view is that adopting this approach to standing in the press complaints procedure will not unduly widen its jurisdiction.

Those persons falling under categories (a) and (e) above would qualify as complainants in their own right. The category described in (b) above is

important because it enables children and people without legal capacity to act to be adequately protected. It is only categories (c) and (d) which potentially widen the scope of the complaints procedure. However, it will be necessary for the question whether standing on the basis of (c) or (d) may be invoked to be determined on a case-by-case basis. If a person does not fall under categories (a), (b) or (e) and seeks to bring a complaint, he or she will need to demonstrate that it is in the public interest.

In the view of the PFC, this enquiry will necessarily entail a consideration of why the third party in question should be entitled to proceed with the complaint in circumstances where the complainant himself or herself has not brought a complaint. This enquiry will ensure that the press is not unduly inundated with spurious and vexatious claims from persons not affected by the article in question. Further, the Commissioners agree with the PCSA's recommendation that the Public Advocate may initiate a complaint before the Ombudsman.

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- 1 PCSA Review pages 54-56.
 - 2 The Public Advocate offers his or her services to the complainant at this stage. The intention is that, if the complainant so wishes, the Public Advocate will assist the complainant in formulating his or her complaint before the Ombudsman. The Public Advocate may also argue the matter on behalf of the complainant before the Ombudsman. It appears as if the Press Council is of the view that providing for assistance to the complainant by the Public Advocate will not give the complainant an undue advantage. On the contrary, the intention is to level the playing fields, since complainants generally are unfamiliar with the world of the media.
 - 3 In this event, the Ombudsman will convene an Arbitration Committee, which is made up of one public and one press representative, drawn from a Panel of Adjudicators, to sit with the Ombudsman and hear the dispute. If the Committee cannot resolve the matter by consensus, the majority will prevail. It should be noted that, in terms of the Press Council Review, the Ombudsman must make a decision whether to convene a hearing alone. However, if either the complainant or the publication believes that a full hearing is warranted, they may approach the Chair of Appeals for a ruling that the Ombudsman must convene a full hearing. It should also be noted that, in terms of this approach, the Ombudsman would also have the option of convening an informal hearing between the parties. This would arise where the Ombudsman simply requires further clarification on certain aspects of the complaint.
 - 4 PCSA Review page 50.
 - 5 *Smalberger ADP, Total Support Management (Pty) Ltd and Another v Diversified Health Systems (SA) (Pty) Ltd and Another 2002 (4) SA 661 (SCA)* at paragraph 25.
 - 6 Id at para 197.
 - 7 Id
 - 8 Id at para 198.
 - 9 Id
 - 10 It provides as follows:
 "(1) Where-
 (a) any member of an arbitration tribunal has misconducted himself in relation to his duties as arbitrator or umpire; or
 (b) an arbitration tribunal has committed any gross irregularity in the conduct of the arbitration proceedings or has exceeded its powers; or
 (c) an award has been improperly obtained,
 the court may, on the application of any party to the reference after due notice to the



Complaints procedures

- other party or parties, make an order setting the award aside.”
- 11 PCSA Review page 40.
 - 12 *Id*
 - 13 *Id* at page 49.
 - 14 *Lufuno* judgment at paras 216-218
 - 15 PCSA Review page 49. Of course, in line with the Arbitration Act, the aggrieved party could take the matter on Review to the High Court.
 - 16 PCSA Review page 81 (Annexure A of Appendix 2 to the Review).
 - 17 In fact the 2007 New Zealand rejected the argument in favour of the waiver. It stated at page 74 of its report: “We recommend the abolition of the waiver of future action against the publication as a prerequisite to making a complaint to the Press Council, because it is of doubtful legal validity and because it is of little benefit to the Press Council process. We favour complainants being required to agree not to commence legal proceedings whilst a complaint is before the Press Council.”
 - 18 PCSA Review pages 56 and 77.





Report on Press Regulation in South Africa





Sanctions

1. Introduction

From the point of view of a considerable number of people making presentations to the PFC the sanctions of the Press Council's adjudicatory system made up of apologies, retractions and corrections, are not enough. The perception is that they are not deterrent enough. Some have described these sanctions as "one size fits all".

Whereas many presentations argued for maintenance of the existing sanctions regime, albeit with improvements in enforcement, many also expressed concern that "moral suasion", the basis of the status quo, was not enough.

The demand that the regulatory system must "be given teeth" was generally not accompanied by practical recommendations for the kind of sanctions that would be considered as enough "teeth" to the system. The implications of this sentiment appear to suggest that the PCSA should institute sanctions that would be punitive.

The PCSA, meanwhile, "has decided against the powers to impose fines".¹ But a "fine" was about the only concrete proposal beyond "moral suasion" recommended by presentations to the PFC. Even then, fines were to be imposed only in cases of "extreme infractions"² or "where malicious intent can be established".³

The PCSA's acceptance of the need to develop "a hierarchy of sanctions, ranging from those for minor breaches to the more serious"⁴ was echoed by a number of presentations.⁵

2. Why should there be sanctions for journalistic infractions?

As an institution in the public domain and functioning in the public's interest, the press in a democratic society has an obligation to function in accordance with the laws of the land, and in conformity with the moral/ethical values and norms of the society which it serves. The press is enjoined, as is everybody else in society, to observe the same democratic demands for the respect of everybody else's rights.



The most critical consensus from the public hearings was the recognition and affirmation that the press was a central institution in the functioning of democracy in SA. Accordingly, all the individuals, organisations, institutions and political parties expressed the position that the freedom of the press, at least as protected by the Constitution of the Republic, was non-negotiable. The Constitution provides the conditions and protections that ensure that its role as “watchdog” over the public interests can best be exercised in freedom from external controls and dictation.

How the press remains free and is able to exercise its freedom in the best interest of the public and its diverse members versus how the press respects other freedoms while playing its roles in the public interest – this is the challenge of press regulation in a democratic SA.

Regulation essentially seeks “to watch the watchdog”⁶: to make the press serve the public interest better; for the press to earn and strengthen the trust of the public; so that the press maintains credibility and reliability; for the press to be more accountable to the public and the society at large.

Sanctions ought to seek to facilitate the attainment of these values and objectives. Sanctions from regulation must improve the performance of the press while preserving its freedom. The object of regulation must not be to limit or downgrade press freedom. If and when regulation results otherwise, then it becomes an instrument for censorship.

3. What is the purpose of sanctions?

In a democratic society sanctions against press misdemeanor may derive from statutes of legislation or from rules specifically set down by the press regulatory mechanism.

The objects of sanctions for press infractions and professional misconduct set down by the press regulatory mechanism, however, must aim at:

- Correction: to have the press correct its errors and to improve on its performance in providing accurate and reliable information and knowledge;
- Accountability: to have the press account to individuals, groups, institutions and the public generally for the consequences of its outputs;
- Compensation: to compensate individuals and/or groups and institutions for any harms done them by the output of the press;
- Promoting the right of free speech: to allow or encourage individuals to exercise their right of reply, or by providing them space to defend themselves or to express dissenting viewpoints;
- Promoting higher professional and ethical standards: to have the press rectify unprofessional and unethical practices that may be harmful to public interests, public morals and sensibilities; as well as

to preserve the credibility of the press and enhance public trust.

4. Range of journalistic infractions

The journalistic offences that may be sanctioned fall into three main groups of misconduct:

- Common pardonable errors;
- Ethical infractions that demand rectification and strong acts of accountability; and
- Serious misconduct borne of malicious intent to cause damage.

These journalistic misdemeanors would include the following in a range, in descending order of severity, from:

- Common human errors, such as faulty observation, harmless omissions, wrong spellings, factual errors, wrong attribution and identification, and several others;
- Wrong conclusions, such as faulty analysis or interpretation of accurate facts and data;
- Poor ethical judgment;
- Unintentional mistakes, including genuine errors of fact, using misleading sources;
- Gross ethical transgressions, including publication of indecent material, breaching the rules governing coverage of children, portrayal of images of violence; and
- Malicious intent, including plagiarism, distortion, fabrication, calumny, defamation, or other wrongs committed with the intent to cause harm.

Detailed examples are far from exhausted here. All of these categories of infractions must generally be covered under the Press Code and in the other in-house administrative rules and management procedures of individual publishing houses. The PCSA is encouraged to augment the list and examples and designate corresponding sanctions accordingly.

5. Developing a hierarchy of sanctions

A regime of sanctions based on a detailed expatiation on the range of wrongdoings noted above would span anything from:

- Correction;
- Retraction;
- Apology;
- Rejoinder;
- Reprimands by the regulator (published);

- A range of space fines (see below); to
- Monetary fines (for recidivism); and
- Expulsion from the PCSA (in extreme cases of persistent recidivism).

5.1. Space fines or monetary fines

The PFC does not approve of monetary fines as a sanction for press offences regarding the content of publications.

The Commissioners, on the other hand, recommend “space fines” for publications guilty of offences pertaining to the content of their outputs.

The Commissioners recommend, however, monetary fines, suspension and expulsion from membership of the PCSA for extreme misconduct in relation to violations regarding compliance of administrative and adjudicatory procedures and rules of the Ombudsman system.

5.1.1. Space fines

A space fine is a penalty that demands that a newspaper found guilty of an offence uses a prescribed space in the newspaper to publish material to redress the offence. By so doing the newspaper pays a “fine” by being deprived of space which otherwise would be so used to earn revenue from advertising or to publish editorial material.

It is universally acknowledged that a newspaper loses sales revenue and readership over time when it too often uses space to publish material that exposes it to public ridicule and mistrust as an unreliable and unprofessional organ.

The amount of space so “fined” is determined by the scale of the offence committed. It may range from a few column centimetres for correcting simple errors or rendering apologies to several columns of retraction or rejoinders, to publishing a full statement by the complainant or a full report of the adjudication process or findings of the complaints procedure.

The particular space where such redress appears in the publication must be determined by the adjudication process, to the satisfaction of the complainant and to be displayed as prominently as where the original offending material appeared.

5.1.2. Monetary fines

The case against monetary fines for content has many considerations:

- To begin with, monetary fines are difficult to fix. How much; how is it to be calculated: these are complex questions if justice is to be done to both complainant and offender. Added to this complexity is the question of how payment is to be enforced, especially where the regulatory mechanism is based on voluntary membership and adjudication aims at improving professional standards and widening press freedom and responsibility and not at punitive sanctions.
- Not all newspapers are financially equal. Because of wide disparities

in the financial strengths of publications, not all papers can afford to pay the same amount and stay in business to serve the public. Yet to differentiate and levy different amounts of fines to different newspapers based on income for the same offence, will be discriminatory and unjust. Fines in this context would be open to arbitrariness.

- In a democracy, sanctions by press regulatory institutions for violations breaching professional conduct and ethics must not lead to threats to financial sustainability or the general existential survival of publications. For fines to be meaningful and not be seen to be trivialising complaints, they must be exacting enough to deter offenders and potential offenders from committing those offences in future. Yet, such levels of fines could undermine the financial sustainability of the press institutions, especially the weaker ones, and thus erode press freedom and pluralism.
- For wealthy establishments, if fines are not exacting enough to be deterrent, they could be seen as a slap on the wrist and an easy way out of public disapproval or reproach. Such newspapers lose nothing and learn no lessons by paying ineffectual fines.
- Setting monetary fines as compensation for injured individuals and institutions has a potential to make the adjudication procedure confrontational and protracted. Enforcing payment in cases of default is possible only by resort to the law courts, an action that would render the adjudication procedures of the regulatory mechanism non-viable. It is therefore best to leave monetary fines for content to the realm of the jurisdictions and preserve of the courts of law.
- Of the four democracies visited (Denmark, India, Tanzania and the UK) during the international study visits of the PFC, only Tanzania and Denmark have provision for monetary fines as sanctions for newspaper infractions or misconduct. In Denmark, this has been virtually unused. Tanzania has only used it once since 1995.
- Another important consideration is that most press infractions/misconduct are primarily speech offences. In a democracy, press offences that are so harmful as to constitute criminal liability will fall outside the jurisdiction of regulatory mechanisms and will be dealt with under appropriate criminal or other legislation. The appropriate redress of speech offences in a democracy is ensuring the exercise of the right of the offended parties to freely express themselves in self-defence, or for the offending publication to correct its errors to the satisfaction of the aggrieved. In common law jurisdictions such as South Africa's, more serious press offences like defamation may attract court actions that might include compensatory damages following tedious and costly suits – if complainants decide to resort to the courts.

5.1.3. Monetary fines in exceptional cases

However, the Commissioners propose that some monetary penalties may be imposed on publications in the following exceptional cases:

- If and when a publication fails, without reasonable or acceptable excuse, to appear before the Ombudsman following two notices of summons for hearings on complaints brought against it; and/or
- If a publication is found guilty of repeated offences over a defined number of times in defiance of the Ombudsman's rulings against it.

Such acts of recidivism may suggest contempt for the decisions of the regulator, disdain for professional standards or disrespect for the rights and sensibilities of readers and the public at large. The danger is that if not addressed, these kinds of misbehavior will lead to weakening the regulator's authority and credibility, and make a nonsense of the whole system of regulation.

These therefore are the justifications for monetary fines in extreme cases.

The number of repeated offences and warnings warranting monetary fines ought to be determined by the regulator/PCSA. In such cases, again, the amount of a fine ought to be such as to deter the proprietor of the offending publication from persisting in his or her recalcitrant behaviour.

5.2. Suspension

If a publication refuses to pay the fine imposed as a result of disobeying the regulator's rulings and warnings, the publication may then be suspended from membership of the Council for a specified period of time.

The suspended publication is denied all benefits and privileges accorded members during the period of suspension.

The suspension is withdrawn when the defaulting publication pays the fine/s and rectifies the offences the failure of which acts elicited the fines in the first place.

The suspension, and withdrawal of the suspension, must be published in all member publications of the association and in all the publicity outlets of the Ombudsman and the association (eg internet sites).

5.3. Expulsion

A publication may be expelled from membership of the PCSA as a last resort if the publication, after all efforts and after the determined period of suspension, refuses to pay the monetary fine for the publication's recalcitrant defiance of the regulator's decisions. The expulsion must then be published in all PMSA publications, print and online, for all the public to know and to take note.

6. Conclusion

Sanctions regarding offences pertaining to the content of publications are all within the framework of “space fines”, that is, using the publication’s own space to rectify errors of various kinds and severity.

A fine, suspension and expulsion are punishments imposed in the extreme cases of wrongs committed by a publication in relation to its non-compliance with rules and procedure of the regulatory process, and not for the content of its publications which attracted the complaint to the Ombudsman. These rather harsh sanctions are therefore administrative measures and not penalties for what a publication publishes.

7. Recommendations

The sanctions regime proposed is as follows. The corresponding sanctions for the errors and offences listed below are:

- Common pardonable errors (as defined above) – publication of correction, retraction and/or apology;
- Ethical infractions that demand rectification and strong acts of accountability – space fines of determined length of space for rejoinder, published reprimands by the Ombudsman;
- Serious misconduct borne of malicious intent to cause harm – publication in the guilty publication of a considerably lengthy apology, correction and reprimand as determined by the Ombudsman. The panel may impose a sanction that the apology should occupy space of such prominence as the infraction itself and prescribe how many publications/editions must carry the apology/retraction.
- Monetary fine – for failure to appear before the Ombudsman for hearing of a complaint lodged by any aggrieved person;
- Suspension – for failure to pay fines and to rectify complaint; and
- Expulsion – as recommended above.

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- 1 PCSA Review p53
 - 2 Public Protector
 - 3 Highway Africa
 - 4 PCSA Review p53
 - 5 Including that of the Public Protector
 - 6 Tawane Kupe



Report on Press Regulation in South Africa





Digital publishing

1. Introduction

The convergence of technologies has made digital publishing an integral part of print media. Newspapers and magazines have become major players in this space with, for example, websites, videos, social networks, blogs, podcasts and user-generated content.

To this extent, in its Review the PCSA decided that jurisdiction of the Press Code should be extended to the online publications which are members of PMSA.

This is the relevant section from the Constitution:

“Extended jurisdiction

“The Team deliberated on the advisability of extending its jurisdiction to the internet and accepted a submission that jurisdiction should be extended to the online publications associated with the publications listed in 1.4 of the Constitution.

“Proposal: The jurisdiction of the Press Council should be extended to online publications of the members of Print Media South Africa and other publications that subscribe to the Press Code.”

However, digital publishing changes frequently and operates on a variety of platforms that have different procedures and constraints. There is a view that digital publishing is not an extension of the traditional print media industry because the vast majority of what is published on these platforms is not related to newspaper content, and newspapers and magazines do not only publish on websites. It is this nature which differentiates digital publishing from traditional print media in such a manner that they cannot be viewed or treated the same.

2. Types of digital publishing related to the print media industry

There are, at present, three main publishing platforms: internet websites, mobile phones and applications (apps) which may be downloaded onto tablets and smartphones. Publication on each of these three areas may be similar, or may be customised for each platform.



There are different types of content beyond the traditional news and opinion published by newspapers and magazines, such as social media (Twitter and Facebook), user-generated content, blogs, videos, user comments, links and content aggregation.

3. Challenges to regulation

Owing to the number of platforms on which one may publish as well as the variety of ways in which news or such content may be published, the digital publishing landscape may well prove difficult for a body such as the Press Council to regulate. Some of the challenges to regulation are:

- 3.1. Deadlines are a necessary feature of print media, because of the manner in which newspapers operate before publication. However, in digital publishing there is no such constraint and news may be made available “as soon as possible” or immediately, with continual updates which are published as and when news breaks. So, for example, a breaking news story like the Japanese tsunami of 2011 is the kind of story that develops throughout the day and developments would in all likelihood be published digitally as and when the news becomes available.
- 3.2. Content published on digital platforms is prone to abusive or anonymous comments. Comment sections may remain open for a long time (until the publication decides to close comments), and depending on the story comments come in at different speeds. These comments may require moderation. However, not all platforms and not all publishers moderate comments. News sites typically deal with comments in one of three ways: moderate all content, moderate post-publication or no moderation. There are usually different legal requirements sites have to adhere to depending on how they approach moderation.
- 3.3. Social networks such as Twitter and Facebook have grown rapidly in South Africa, and they continue to grow. The people using them continue to spread information. People using these networks may republish links or story summaries, comment on stories and even divulge new information. For example, in the UK a famous married footballer won an injunction against certain newspapers publishing a story about an extra-marital affair he was involved in. Although the newspapers could not name the footballer as part of the court order, he was named by ordinary users of Twitter as Ryan Giggs, and the story was out.
- 3.4. Audience or user distribution of content is similar to social networks in

that when people see stories of interest, they send out links to the story and they may send an accompanying comment with the story to others who might find it interesting – or they may post on other platforms or social networks.

- 3.5. Websites and publishing platforms are hosted in different countries around the world and not just in South Africa; this poses challenges to jurisdiction with regard to potential complaints.
- 3.6. The rules that govern Internet Service Providers (ISPs), who host platforms, are different from those affecting content publishers, who use the services of ISPs to place their content in the public domain. In South Africa the Films and Publications Act No. 65 of 1996 places certain obligations on ISPs, particularly where the safety of children are concerned and do so primarily to prevent the publication of child pornography. The Act provides that every ISP must register with the Film and Publications Board.¹ The Act further places a duty on ISPs to provide information on child pornography to the board as well as a duty to prevent the use of their services for the hosting of child pornography.² Furthermore, the Act provides that internet access and service providers who provide child-oriented services must moderate content, provide reporting mechanisms and take other necessary steps to prevent child pornography and related content from being published or distributed.³
- 3.7. As the technology advances, so new publishing platforms emerge. As mentioned above, this occurs at quite a rapid rate.
- 3.8. Digital publishers who belong to the Digital Media and Marketing Association (DMMA) do not currently have a relationship with the Press Council and Ombudsman.
- 3.9. Digital publishers are merely a small fraction of the people who are able to publish digitally.

4. Digital vs print regulation

In the light of the above considerations it is evident that digital publishing presents issues that are different to those faced by the print media. While the PFC acknowledges that regulation of digital publishing is crucial, it does not believe that it is best regulated by the Press Council. The Press Council has more than enough work to do regulating the print media alone, and that task itself presents many challenges.

Even accepting that more human and financial resources might become available to the Ombudsman's office, the PFC believes that the two different paradigms within which the print media and digital publishing operate would present new and unwelcome challenges to an office which has been the subject of much criticism for not being able to undertake its current mandate.

Within the digital publishing arena itself, there are so many variables that it is critical to consider what is practical to regulate, and what is not.

It is the PFC's view that if digital publishing is to be effectively regulated in South Africa, then it may be best for the regulatory body to focus on core issues such as the rights to freedom of expression, dignity, privacy and children's rights.

The DMMA is a South African industry body that was created from the Online Publishers Association (started 2003). It describes itself as "an independent, voluntary, non-profit association focused on growing and sustaining a vibrant and profitable digital industry within South Africa".⁴ It "represents over 70 local online publishers and over 63 creative, media and digital agencies, between them accounting for more than 14 million local unique browsers and 480 million in SA page impressions."⁵

The DMMA represents the South African digital industry and also acts as the body through which international enterprises enter the South African digital market.⁶ The main work of the DMMA appears to be about growing and sustaining the digital publishing industry as well as creating common interests and strategies amongst its members. Its core business does not include robust regulation of content. However, section 2 of the DMMA's Code of Conduct, which deals with ways in which the DMMA could successfully carry out its mission, does state that amongst other things, the DMMA should strive to "endorse the highest standards in digital publishing, development, creative, and media planning with respect to quality and integrity, credibility and accountability"⁷ and "where relevant, develop and promote standards across all aspects of the South African digital media and marketing industry".⁸ The Code of Conduct also contains procedures and sanctions to deal with any violation of the DMMA Code.⁹

Viewed widely, these sections of the DMMA Code of Conduct (and the Code as a whole) do not preclude the possibility of the DMMA bringing within its ambit the regulation of the content of what is published digitally.

It is estimated that approximately 10 to 20% of DMMA members are also members of PMSA and fall under the regulation of the Press Council. As we have stated, the PCSA Review has recommended that all the sites of all members of the PMSA fall under the Press Council. However, we have noted the various difficulties, as well as the fact that there are increasing numbers of digital-only newspapers and magazines who do not belong to PMSA.

5. Recommendation

Currently, there appears to be no coherence in the respective positions of the Press Council and the DMMA with regards to the regulation of digital publishing in South Africa.

The Commissioners recommend that the Press Council seeks to develop a relationship with the DMMA to ensure that insofar as is possible, digital publishing in South Africa is regulated in an effective and efficient manner, and that such regulation is commensurate with regulation of print media.

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- 1 Films and Publications Act, Fn section 27A
 - 2 Films and Publications Act, Fn section 27A
 - 3 Films and Publications Act, Fn section 24C
 - 4 www.dmma.co.za/about-us/)
 - 5 www.dmma.co.za/about-us/
 - 6 www.dmma.co.za/about-us/
 - 7 DMMA Code of Conduct Section 2, para 4
 - 8 DMMA Code of Conduct Section 2, para 5
 - 9 Section 9 of the DMMA Code of Conduct



Report on Press Regulation in South Africa





Media transformation

1. Introduction

Media transformation is a wide field that covers ownership, distribution, content and the languages of publications. Even though media transformation does not fall directly within the scope of print media regulation, it is important to address it as the PFC received many public submissions regarding the specific issue of media transformation.

The ANC has also called for a parliamentary investigation into the transformation of the print media in respect of a BEE media charter, ownership and control, advertising and marketing and the desirability of a media accountability mechanism such as the Media Appeals Tribunal.¹

2. Issues pertaining to media transformation

2.1. Issues of content transformation

Diversity of content in the media is essential to ensure that the voices and opinions of all South Africans are heard. There are currently no measurement tools to analyse the extent to which media transformation has enabled diversity of content.

2.1.1. Limiting factors

The view that “commercial interest dictates content” has been widely expressed. The overly concentrated nature of ownership and the commercialising influence of advertising are often blamed for the lack of diversity of content.

2.1.2. Investment into investigative writing

There has been an upswing in investment in investigative journalism – a strategic decision by newspapers to improve their in-depth reporting in order to hold on to readers and improve the quality of their papers. This has been done in different ways: the creation of investigative teams on individual newspapers, the creation of investigative units to provide content for whole media groups and the creation of donor-funded units.

2.1.3. New markets

Tabloid newspapers, which entered the South African market in the



early 2000s, have created a new market of readers. The tabloids are sometimes dismissed as “dumbing” down South African journalism but are also praised for revitalising a stagnant newspaper market, introducing a new layer of working class readers to newspapers and offering slices of everyday life.

2.1.4. Uniformity of content

The centralisation of newsrooms has led to more sharing and syndication of stories, photographs and graphics, and is blamed for the lack of regional or local nuances which would promote content diversity. In some cases, newspaper groups share all the content produced locally or together decide which paper’s staff will cover a particular event. In other cases, national “pools” of journalists are created to provide the content for all the papers of that media house.

2.1.5. Fewer staff

The pressure on newsrooms to reduce costs has led to the retrenchment of journalists, including senior ones, which puts even greater pressure on the remaining staff. This leads to a lack of differentiation in content through an increased use of news agency copy, South African and international, by newspapers generally – resulting in the use of uniform content across the country.

2.1.6. Unheard voices

It has been noted that the voices of some sections of the population are seldom heard in newspapers. The increased urbanisation of the print media has resulted from the concentration of both advertising and editorial imperatives on the large urban areas where larger newspapers are situated. Even national newspapers focus more on urban news. This results in fewer voices of rural people being published.

Other areas of omission, such as the lack of women’s or children’s voices in newspapers, also need to be corrected in order to improve diversity. In addition, the concentration of newspaper languages leads to a lack of diversity of voices.

2.2. Issues of ownership

According to the Media Development and Diversity Agency (MDDA) 2009 report, “the print media landscape has not transformed much in terms of ownership and control and is still majority owned and controlled by white shareholders. In spite of various interventions by the state through promotion and transformation processes and BEE, the majority of print media in South Africa is still owned or dominated by a few companies and individuals”.

The four largest print media companies in South Africa are Media24, Caxton, Avusa and Independent Newspapers.

Regarding ownership, Media24 and Avusa have some degree of histor-

ically disadvantaged individual (HDI) ownership with Avusa the highest at a 51.38% HDI shareholding and Media24 at 15%. Caxton and Independent Newspapers have a 0% HDI shareholding.²

2.2.1. Concentration and market power

Of the four largest print companies, Media24's newspapers have the largest footprint, followed by Independent Newspapers, Caxton and Avusa. Their combined market share of circulation statistics is approximately 88% with the rest of the independents making up the balance. The four media houses also own 47% of the titles in circulation.³

2.2.2. Lack of bespoke measurement tools

The new B-BBEE scorecard has shifted measurement of empowerment away from ownership only, and identified seven elements of empowerment: ownership, management control, employment equity, skills development, preferential procurement, enterprise development and socio-economic development. These are weighted differently according to their importance.⁴

The B-BBEE scorecard results of the industry are inconsistent, with Avusa a level 3 contributor, Media 24 at level 4 and both Caxton and Independent newspapers at level 5.⁵

The three areas of the B-BBEE scorecard that require attention by the big four media owners are clearly ownership, employment equity and skills procurement.

2.2.3. The recession, new media and consumption

The global recession has led to a decline in the consumption of newspapers in general and circulation figures have therefore been negatively affected. Advertising spend in newspapers has also been in decline over the past few years and has had an adverse effect on the profitability of print media. The growth of online media has also had an adverse effect on print media. Print and distribution costs have been on the increase.

Taking all the above factors into account, the print media industry is struggling financially and is under severe pressure to operate profitably in a "declining market" with consumers also under severe financial pressure. The logical focus area to sustain profitability is to keep costs under control.

The pressure on newsrooms to reduce costs has led to the retrenchment of senior journalists which puts even greater pressure on the remaining staff.

2.3. Community media challenge

The "profitability challenge" in recessionary times affects community newspapers in a more intense way than the big four media groups. Community newspapers do not necessarily have the scale to drastically reduce costs and to find new revenue streams, especially in light of declining ad-

vertising revenues as well. There is also the view that greater urbanisation of the print media has been to the detriment of regional and community media.

Even though circulation of independent community newspapers has grown in general due to the increase of titles, there has been a tide of closures due to cost and profitability pressures.⁶

2.4. Media Charter

There are many strong arguments for the print media industry to develop a transformation charter that will take the specificities of the media industry into account as the system of B-BBEE transformation is too generic and measurements not targeted enough. The purpose of such a charter would be to have a clear vision for transformation with expected targets and outcomes.

3. Recommendations

As stated above, media transformation does not fall within the scope of print media regulation or the mandate of the PFC.

However, due to the many public submissions regarding transformation received by the PFC, the issue was addressed in research and discussions.

3.1 Content diversification

Measurement tools need to be developed for the analysis of content diversity and transformation targets set where appropriate in order to promote freedom of expression and access to information.

3.2. The transformation debate

It is clear the print media transformation debate will intensify if the status quo is maintained. The call for an investigation into anti-competitive behaviour by the big four media houses will only get stronger. It is therefore essential for the print media industry, especially the big four media houses, either independently or through PMSA, to proactively address the core issues as raised above.

3.3. A media charter

Consideration should be given for the development of a media charter to address the specificities of the industry. A charter would be useful in setting concrete deadlines and targets for meeting transformation targets.



Media transformation

3.4. Investment in skills development and training

Irrespective of the global recession and the scaling down of staff numbers, investment should be made in the up-skilling of journalists to ensure world-class standards are maintained.

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- 1 ANC, 2010b
 - 2 MDDA Report, Sept 2011
 - 3 Duncan J. The Print Media transformation dilemma, in Pillay D. and Southall, R. (2011) *New South African Review 2: New paths, old compromises?* Johannesburg: Wits University Press. 245
 - 4 DTI, 2007:4
 - 5 *New SA Review*, Jane Duncan, 2011
 - 6 OMD 2010, 23-24





Report on Press Regulation in South Africa





Recommendations

1. Introduction

The Commissioners recommend a system of independent co-regulation for the print media industry of South Africa. Independent co-regulation is a system of press regulation that involves public and press participation with a predominant public membership but without State or government participation. It is accountable to the public.

The Commissioners' recommendations are as follows:

2. Governance and composition

- 2.1. That there be stronger public representation in the system. The PCSA should have a majority of public members. The Appeal Body should also have a majority of public members on it. Press employees should not be part of the adjudication process.
- 2.2. That representation on the PCSA is amended so as to provide for a majority of public members: seven from the public and five from the press.
- 2.3. That the first chairperson be elected by the council from the press members and the deputy chairperson from the public members; the positions alternating at mid term.
- 2.4. That the Public Advocate includes two members of the Ombudsman adjudication panel in deciding whether to entertain a complaint.
- 2.5. That the adjudication panels for the Ombudsman and the Appeals Panel be separated into two teams of six and eight, from whom the Ombudsman and the Chair of Appeals appoints members to sit with him or her.
- 2.6. That at Appeals level three public members and one press member sit with the Chair of Appeals to increase public participation at the appeal stage.
- 2.7. That no legal representation before the panels be permitted.



3. Adjudication system and procedure

- 3.1. That greater accessibility to the system is ensured by withdrawal of the waiver clause and the withdrawal of the classification of the adjudication as arbitration.
- 3.2. That there be a widening of the acceptance of third-party complaints.
- 3.3. That Section 38 of the Constitution governs who has standing to lodge a complaint. The Public Advocate may initiate complaints in the public interest.

4. Press Code

- 4.1. That the exceptions to the right of reply to serious criticism in news be limited to non-availability to respond or unwillingness to respond, thereby excluding the present defences which provide for possible destroying of evidence or the stopping of publication by way of a court order.
- 4.2. That the right to reply also be explicitly included in cases where privacy, dignity and reputation are concerned.
- 4.3. That the right to reply also be included in the case of comment concerning a matter of public importance where a person is seriously criticised.
- 4.4. That some rules, based on legislation in regard to court reporting, be included as a readily available summary of such rules.
- 4.5. That the prohibition of hate speech also be included in the text and not be limited to the Preamble.
- 4.6. That privacy, dignity and reputation be placed in one clause and that the defences be included explicitly also in the case of reputation and dignity.
- 4.7. That the rights of children be protected and promoted more extensively in the Press Code and also be included as a priority in the Preamble. This includes reporting on children holistically, and not only negatively or as victims.

Recommendations

- 4.8. That photographs of child pornography and sexual conduct be prohibited as in the past, that children be protected from images of extreme violence and the drug and substance abuse by children not be under-reported .
- 4.9. That the protection of the identity of child victims of rape be stricter than the Children's Act provides for.
- 4.10. That the protection of the identity of children who have HIV-Aids be made stricter by requiring not only that the parents or other care-givers consent to publication, but also that publication be in the public interest.
- 4.11. In respect of improving the standard of journalism:
 - 4.11.1. Newly recruited journalists be required to familiarise themselves with the Press Code;
 - 4.11.2. There be regular consultation between tertiary institutions teaching journalism and the newspapers;
 - 4.11.3. Journalists be tested regularly on their knowledge of the Press Code;
 - 4.11.4. Journalists have a check-list which would guide them in adhering to the Press Code;
 - 4.11.5. Senior journalists be available in newsrooms to assist junior ones;
 - 4.11.7. The PCSA and editors have regular meetings at a regional level and at a variety of forums besides Sanef;
 - 4.11.8. Members of the public be encouraged to visit newsrooms to acquaint themselves with press publishing processes;
 - 4.11.9. Journalists be made aware of the consequences of a breach of the Press Code;
 - 4.11.10. The Press Code be revised regularly to be in line with the changing environment;
 - 4.11.11. Legal practitioners be invited to newsrooms to explain legal aspects of the Press Code.

5. Sanctions

- 5.1. That a hierarchy of sanctions be developed by the PCSA according to a scale of seriousness of infractions.
- 5.2. That "space fines" be applied with the amount of space imposed correspondent with the seriousness of the infraction.
- 5.3. That monetary fines not be introduced as penalty for the content of the press.

- 5.4. That monetary fines, suspension and expulsion from PCSA membership be introduced as penalties for failure to appear for complaints hearings and repeated non-compliance with the rulings of the adjudicatory system.
- 5.5. That in cases referred to in 5.4. above, member newspapers publish the sanctions imposed.

6. Children

- 6.1. That clauses be inserted in the Press Code to fill the need to provide children with respect and protection, and anonymity when they are exposed to harm due to brutality in society.
- 6.2. That children's issues be introduced in the Press Code in a positive way. Firstly: include in the Preamble's vision or ideal a commitment to the respect and protection of children's constitutional rights on an almost equal basis to freedom of expression. Secondly: predicate the section on children with positive clauses.
- 6.3. To introduce to the Press Code guidelines to ensure the press commits itself to giving a positive portrayal of children and holistic coverage of children and children's issues, and bring the voices of children into stories.
- 6.4. To extend the guidelines in the Press Code so the press takes exceptional care in reporting children.

7. Digital publications

- 7.1. That the PCSA seeks to develop a relationship with the DMMA to ensure that insofar as is possible, digital publishing in South Africa is regulated in an effective and efficient manner.
- 7.2. That such regulation is commensurate with regulation of print media.

8. Transformation

- 8.1. In respect of content diversification, clear measurement tools be developed for the analysis of content diversity and transformation targets set where appropriate.



Recommendations

- 8.2. That the print media industry, especially the big four media houses, independently or through PMSA, pro-actively address the core issues as raised in the transformation debate, prioritising issues, giving views on poor performance on some B-BBEE scorecard targets and developing core action plans and targets.
- 8.3. Consideration be given to the development of a media charter to address the specificities of the industry, including setting deadlines and targets to meet transformation objectives.
- 8.4. Further investment be made in the up-skilling of journalists.





Report on Press Regulation in South Africa





Appendix 1

Constitution of the PCSA

Preamble

Reaffirming that the Bill of Rights, which includes the 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 can only be enhanced by public participation in the regulatory process; and

Noting that the laws of the country allow for alternative dispute resolution through a speedy and cost-effective process.

We, the print media in South Africa, accept that co-regulation involving exclusively the press and the public is a system that will uphold freedom of expression and the editorial independence of the press, and contribute to high journalistic standards.

We therefore establish a voluntary independent co-regulatory system involving exclusively the press and 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 bodies 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 (Mpasasa);
 - 1.2.1.3. The Association of Independent Publishers (AIP);
- 1.2.2. The Forum of Community Journalists (FCJ).
- 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 founding bodies 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.

1.4. 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, and appointing staff, and 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.

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 on journalistic ethics from the public against member publications of PMSA and others who subscribe to the SA Press Code;



Appendix 1: Constitution of the PCSA

- 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 the press and the public, as well as public awareness of the existence of the PCSA's mediation and adjudication service to deal with complaints on 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. To consider and decide upon 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 or Complaints Procedure or any function considered necessary by the Council.
- 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 total of twelve individuals representing members of the public and members of the media.
- 4.2. Seven of the representatives shall be appointed by the Appointments Panel from amongst nominations received from members of the public.
- 4.3. Five of the representatives shall be from the press and shall be appointed



by the founding bodies, provided that one representative must be a journalist.

- 4.5. At least 50 percent of the Council shall be composed of women to ensure that there is an adequate gender balance;
- 4.6. After its appointment, the Council shall elect from amongst the members of Council a Chair- and Deputy Chairperson, provided that the first Chairperson under this Constitution shall be chosen from among the press appointees and the first Deputy Chairperson shall come from the seven members of the public. Subsequent Chairpersons and Deputy Chairpersons shall be elected on an alternate formula and on a rotational basis. In the absence of the Chairperson the Deputy Chairperson shall assume all responsibility that is ordinarily carried by the chairperson for the duration of the meeting or where circumstances dictate otherwise for the duration of the absence of the chairperson.
- 4.7. Except for the first term, for which a special rule applies as set out in paragraph 5, the term of office of a member of Council shall be 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 shall serve ex officio on the PCSA, without voting rights.

5. Appointment of Councillors for the first term

The following shall apply with respect to the term of office of the first elected councillors:

- 5.1. Three of the seven public representatives shall only remain on the Council for half of the term of five years;
- 5.2. The identity of the three public representatives shall be determined thus:
 - 5.2.1. If three public representatives are available to serve half of the term they shall serve half a term;

Appendix 1: Constitution of the PCSA

- 5.2.2. If less than three public representatives are not available to serve a half term then volunteers shall be called upon to stand down and serve a half term; and
- 5.2.3. If sufficient volunteers are not obtained lots shall be drawn under the supervision of the Chairperson of the Appointments Panel to determine which three shall serve half of the term.
- 5.3. In the case of the press representatives, three members will serve half of the term. The same rules will apply in their case.
- 5.4. The composition of the Council must comply with section 4.5. at all times in order to ensure the maintenance of the gender balance.

6. Structures and officers of the Council

The PCSA shall establish and maintain the following structures. The staff of the PCSA, no matter how appointed, shall be in the employ of the PCSA.

7. Appointments Panel

- 7.1. The PCSA shall request the Chief Justice of South Africa to appoint a Judge who is no longer in active service to chair the Appointments Panel, and who shall also fill the position of Chair of Appeals of the Appeals Committee for a non-renewable term of five years.
- 7.2. The Appointments Panel shall be responsible for appointment of public members of the PCSA, the Ombudsman and the Deputy Ombudsman, the Director and the Public Advocate, and the Ombudsman Panel and Appeal Panel.
- 7.3. The sitting Council shall appoint two Council members to assist the Chairperson of the Appointments Panel.
- 7.4. The Appointments Panel shall have the right to co-opt no more than two additional members.
- 7.5. All appointments shall be made after public invitations for nomination have been advertised, a shortlist compiled and interviews conducted with shortlisted candidates.

- 7.6. The Appointments Panel shall be an ad-hoc structure and will dissolve after completion of each assignment. The Appointments Panel shall be requested to reconvene whenever a vacancy occurs and consider an appointment from the previous list of candidates.

8. The Director

- 8.1. The PCSA shall appoint a Director, who will lead it on a full-time, professional basis and who will concentrate on public engagement around issues of standards and media freedom.
- 8.2. On request from a newsroom, the Director will also look at standards in newsrooms.
- 8.3. The Director's post must be filled by an individual of the highest reputation and integrity.
- 8.4. The Director shall serve a renewable term of five years.

9. Complaints mechanism

The PCSA shall establish a mechanism to deal with complaints against the press. The mechanism 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 founding media organisations.

10. Jurisdiction

- 10.1. 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.
- 10.2. The jurisdiction of the PCSA extends to the electronic media of member publications.
- 10.3. 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 and

Appendix 1: Constitution of the PCSA

inquire whether it accepts the jurisdiction of the PCSA for the adjudication of the complaint.

- 10.4. 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.

11. Public Advocate

- 11.1. The Public Advocate shall assist members of the public to formulate their complaints.
- 11.2. The Public Advocate shall be responsible for resolving complaints through mediation between the complainant and the publication in question.
- 11.3. Where the Public Advocate does not succeed in having a complaint settled within 14 calendar days after the complaint was lodged, he or she shall refer the unresolved dispute to the Ombudsman for adjudication.
- 11.4. The Public Advocate may assist the complainant at the hearings before the Ombudsman or the Appeals Committee, but he or she shall not act as the complainant's legal representative.
- 11.5. The Public Advocate:
- 11.5.1. Should ideally have both media and legal skills, with a finely tuned sense of public service and commitment;
 - 11.5.2. Shall be a citizen of and permanently resident in the Republic of South Africa;
 - 11.5.3. Shall be committed to the values underpinning the South African Constitution, as well as to the Press Code of the PCSA; and
 - 11.5.4. May serve a renewable term of five years.

12. The Ombudsman

- 12.1. Shall adjudicate with a public and a press member on the Ombudsman Panel matters that cannot be resolved at the earlier level of mediation.
- 12.2. May convene an Ombudsman Committee of one press and one public member of the Ombudsman Panel as appointed by him or her for that adjudication and reach a decision on the papers without hearing the parties when it is reasonable to do so.

- 12.3. May convene an Ombudsman Committee of one press and one public member of the Ombudsman Panel as appointed by him or her for that adjudication and hear the parties.
- 12.4. The Ombudsman may also co-opt an assessor without voting rights to assist the Committee with technically complex issues.
- 12.5. The Ombudsman shall:
 - 12.5.1. Be a citizen of and permanently resident in South Africa;
 - 12.5.2. Have extensive press editorial experience at a senior level;
 - 12.5.3. Have the capability to adjudicate matters independently and fairly; and
 - 12.5.4. Shall be committed to the values underpinning the South African Constitution, as well as to the Press Code of the PCSA.
 - 12.5.5. The Ombudsman's term of office is five years and is renewable.

13. The Panels of Adjudicators

- 13.1. The Appointments Panel shall appoint an Ombudsman Panel of three press and three public members and an Appeals Panel of three press and five public members.
- 13.2. The two members of the Ombudsman Committee who adjudicate a case with the Ombudsman shall be appointed by the Ombudsman from the Ombudsman Panel, provided that one must be a press member and one a public member.
- 13.3. The four members of the Appeals Committee to hear an appeal with the Chair of Appeals shall be appointed by the Chair of Appeals from the Appeal Panel, provided three must be public members and one a press member.
- 13.4. The term of office of the two Panels of Adjudicators shall be five years and not be renewable. So as to ensure the necessary continuity, one public and one press member of each Adjudication Panel shall be appointed for a term of two and a half years for the first term of appointment after this amended Constitution becomes operational.

14. The Chair of Appeals

- 14.1. Shall receive applications for leave to appeal against an adjudication by the Ombudsman Committee.

Appendix 1: Constitution of the PCSA

- 14.2. May accept or reject applications for leave to appeal with one public and one press member appointed from the Appeals Panel against decisions of the Ombudsman Committee.
- 14.3. Where an application for leave to appeal has been acceded to he or she must convene an Appeals Committee, which consists of one press member and three public members appointed by him or her from the Appeals Panel.
- 14.4. Shall permit the Appeals Committee to consider and decide a matter with or without hearing oral argument or evidence where it is reasonable to do so.
- 14.5. Shall be deputised by a public member of the Appeals Panel to act as Chairperson when he or she is not available.

15. Eligibility for membership of Council, Ombudsman Panel and Appeals Panel

- 15.1. Members appointed to the Council must be persons who:
 - 15.1.2. Shall act in furtherance of the aims and objectives of the Council, and set aside all interests, regardless of the organisation that appointed or nominated them;
 - 15.1.3. Shall be committed to the values underpinning the SA Constitution, as well as to the Press Code of the PCSA;
 - 15.1.4. Possess suitable knowledge, expertise and/or experience in the fields of media, in particular press, journalism, electronic communications (including the internet and social media platforms), public policy, law, marketing, entertainment, education, economics, finance or any other relevant expertise or qualifications; and
 - 15.1.5. Are of high standing and integrity with a strong interest in the press, and subscribe fully to the principles of a free press and the Press Code.
- 15.2. Press members of the PCSA are required to be active in editorial work or reporting for a PMSA publication, or to have wide experience in this field, provided that one member must be a journalist.
- 15.3. The public members of the PCSA and the Ombudsman Panel and the Appeals Panel are required to have a keen interest in communications and the media and social and political issues and to be advocates of freedom of expression and the freedom of the press, but may not be in the employ of the press.

- 15.4.** The press members of the Ombudsman Panel or the Appeals Panel must have expert knowledge of the press and its workings and may be appointed from ex-press employees but not from employees of the press.
- 15.5.** The following persons may not be appointed to any position on the PCSA or the Adjudication Panels:
- 15.5.1.** Persons under the age of 21;
 - 15.5.2.** Any person who is not legally able to manage his or her own affairs;
 - 15.5.3.** 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;
 - 15.5.4.** Any person who has any financial interest in the media;
 - 15.5.5.** Any person who occupies a seat in a local, provincial or national legislative body;
 - 15.5.6.** Any person who is an office-bearer of a political party or movement or is in the employ of the public service;
 - 15.5.7.** Any person who is an unrehabilitated insolvent; and
 - 15.5.8.** 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.

16. Cessation of membership

- 16.1.** A person shall cease to occupy an office of the PCSA or the Adjudication Panels if:
- 16.1.1.** He or she resigns;
 - 16.1.2.** 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
 - 16.1.3.** 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.
- 16.2.** 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.
- 16.3.** The Council may, by a two-thirds majority at a general meeting, suspend or terminate the membership of any member of Council if such a member has brought the good name of the PCSA into disrepute or if such member

Appendix 1: Constitution of the PCSA

has omitted to attend two consecutive meetings in a year without good cause acceptable to the Council.

- 16.4. At least 21 days' prior written notice of such a meeting of the Council must be given to all members of the Council.
- 16.5. 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.

17. Finance

- 17.1. The PCSA 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 members of adjudication committees. The Director of the PCSA shall be a member of this committee.
- 17.2. The Finance and Remuneration Committee shall prepare an Annual Budget for submission to the PMSA.
- 17.3. The PMSA shall cover the reasonable costs of the PCSA.
- 17.4. 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 paragraph 20.
- 17.5. The Chair of Appeals will be remunerated by way of a retainer, a daily hearing fee plus costs.
- 17.6. Public members of the PCSA will be remunerated per meeting and their costs for attending meetings will be paid by the PCSA.
- 17.7. 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.
- 17.8. When press or public members of the Adjudication Panels serve on an Ombudsman Committee or an Appeals Committee, their costs and a reasonable daily rate for attendance shall be paid by the PCSA.
- 17.9. The Ombudsman shall present a budget on an annual basis for the

reasonable costs of the adjudication system and where a dispute arises it shall be referred to arbitration by a person agreed upon or, in the absence of agreement, a person appointed by the Chair of the Johannesburg Bar.

18. Meetings

- 18.1. 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.
- 18.2. 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.
- 18.3. 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.
- 18.4. Minutes shall be kept of the proceedings of meetings.
- 18.5. Unless all the members agree, a Council meeting shall be held within seven days' written notice by the Chairperson.

19. Amendments

- 19.1. Any amendment to this Constitution, the Press Code or the Complaints Procedure shall require the approval of two-thirds of the members of the PCSA voting either personally or in absentia, with the concurrence of the founding bodies.
- 19.2. No amendment shall be effective unless at least 21 calendar days' written notice of a proposed amendment shall have been given to all members.
- 19.3. 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.



Appendix 1: Constitution of the PCSA

20. Arbitration

- 20.1. In the event of any dispute within the PCSA or between the PCSA and its founding bodies which is not capable of resolution between the parties within a period of two months, 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.
- 20.2. 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.
- 20.3. The cost of the arbitrator shall be shared equally by the disputing parties except in the case where the arbitrator decides otherwise.
- 20.4. The decision of the arbitrator shall be final and binding.

21. Seat of the PCSA

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

22. Dissolution

- 22.1. 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.
- 22.2. 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.
- 22.3. In the case of dissolution the assets will be handed back to the founding bodies.





Report on Press Regulation in South Africa





Appendix 2

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 Public Advocate, the Ombudsman Committee and Press Appeals Committee 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 and he or she must have 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 their own name;
 - anyone acting as a member of, or in the interest of, a group or class of persons;
 - anyone acting in the public interest; 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 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 Public Advocate, Ombudsman Committee or the Appeals Committee.
- 1.3. A complaint shall be made as soon as possible, but not later than 21 calendar days after the date of publication giving rise to the complaint. The Public Advocate, who throughout the entire process (also at the Ombuds-



man 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. Upon the receipt of a complaint by the Public Advocate, 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, and that of the public and press members, approached by the Public Advocate for this purpose from the Ombudsman Panel, 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 editor of the publication and request that its owner 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 Chairperson of Appeals, depending on at which level the complaint is 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 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 Public Advocate, a public and a press representative from the Ombudsman Panel, approached by the Public Advocate for this purpose, constitutes a reasonable and sufficient offer of settlement of such complaint, the Public Advocate may withdraw the acceptance of the complaint.

Appendix 2: Complaints procedures

- 1.8. Where the Public Advocate and members as stated above decline to accept a complaint on any of the grounds specified in rule 1.5 or withdraw the acceptance of a complaint under rule 1.7 the Complainant may, within seven days, with full reasons, request the Chair of Appeals to review the Public Advocate and members' decision. In the event of the majority of the Chair of Appeals and a public and a press member on the Appeals Committee overruling the latter decision, the matter shall proceed in terms of rule 2. The Deputy Ombudsman or another competent member of the Press Council will act as the Public Advocate in this event.
- 1.9. Where, within 30 calendar days after the date of publication, the Public Advocate is of the view that a prima facie contravention of the Press Code has been committed and it amounts to a matter of public interest, he may file a complaint with the Ombudsman Committee for an adjudication, after the prescribed notice with reasons has been sent to the newspaper involved and a response (if any) within the time stated in the notice has been received from the newspaper and the matter was not settled to her or his satisfaction. The Public Advocate shall also have the right to apply for leave to appeal to the Appeal Committee against a decision of the Ombudsman Committee, where it has dismissed his or her complaint.

2. Negotiation procedure by the Public Advocate

- 2.1. Upon acceptance of a complaint by the Public Advocate 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 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 respondent.

3. Adjudication by the Ombudsman Committee

- 3.1. If the complaint is not settled within 14 calendar days of the notification to the Respondent, the Ombudsman, one public and one press member appointed by the Ombudsman from the Ombudsman Panel may, if it is reasonable not to hear the parties, adjudicate the matter on the papers.

- 3.2. Where the Ombudsman decides to hold a hearing, the Ombudsman shall appoint a public and a press member from the Ombudsman Panel to adjudicate the matter with him or her.
- 3.3. It shall be obligatory for the respondent's representative to appear before the Ombudsman Committee and both parties are entitled to attend and address the Committee which is, in any case, entitled to question them personally or in writing on the matter: provided that a respondent is not under a duty to disclose the identity of an informant.
- 3.4. Decisions shall be by a majority vote.
- 3.5. Legal representation shall not be permitted at hearings.
- 3.6. Within 7 calendar days of receipt of the decision of the Ombudsman Committee, 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.
 - 3.6.1. The application and grounds must be filed at the Ombudsman's office.
 - 3.6.2. 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 calendar days of receipt thereof.
 - 3.6.3. If a majority of the Chair of Appeals, one public member and one press member of the Appeals Panel as appointed by the Chair of Appeals, is of the view on the papers before them that there are reasonable prospects that the Appeals Committee may come to a decision different from that of the Ombudsman Committee, the Chair of Appeals shall grant leave to appeal.

4. Adjudication Procedure of the Press Appeals Committee

- 4.1. Where leave to appeal is granted in terms of rule 3.6.3, the Ombudsman shall place before the Press Appeals Committee 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 Appeals Committee and that it is obligatory for the respondent to appear before the committee.
- 4.2. The Chair of Appeals shall appoint one press member and three public members from the Appeal Panel on the Appeals Committee to adjudicate the matter.

Appendix 2: Complaints procedures

- 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. It shall be obligatory for the respondent's representative to appear before the Press Appeals Committee and both parties are entitled to attend and to address the Committee which is, in any case, entitled to question them personally or in writing on the matter: provided that a respondent is not under a duty to disclose the identity of an informant.
- 4.5. The Chair of Appeals may inform the parties that an adverse inference may, in any case, be drawn from failure to appear before the committee.
- 4.6. Legal representation shall not be permitted at hearings.
- 4.7. If the Press Appeals Committee finds against a respondent, the respondent shall be given an opportunity to address, personally or in writing, the Committee in mitigation of any sanction that may be imposed; the appellant shall likewise be granted an opportunity to address the Appeals Committee on the sanction.
- 4.8. The hearings of the Press Appeals Panel shall be open to the public unless the identity of a rape or sex victim, a child under eighteen or a victim of extortion is at issue.

5. Variation of Procedure

- 5.1. 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:
 - 5.1.1. Extend any time period contemplated in these rules;
 - 5.1.2. At any stage require any allegation of fact to be verified on oath; and
 - 5.1.3. Call upon the parties to a dispute to furnish such further information as he or she may consider necessary.

6. Findings of the Ombudsman or Press Appeals Committee

- 6.1. The Press Ombudsman Panel or the Press Appeals Panel may uphold or dismiss a complaint or appeal, as the case may be.



- 6.2.** If a finding is made against a member of PMSA or a publication that has voluntarily become subject to the jurisdiction of the Ombudsman Committee or the Appeals Committee the latter bodies, as the case may be, may make any one or more of the following orders against the proprietor of the publication:
- 6.2.1.** Caution or reprimand a respondent;
 - 6.2.2.** Direct that a correction, retraction or explanation and, where appropriate, an apology and/or its findings be published by the respondent in such manner as may be determined by the Ombudsman Committee or the Appeals Committee, as the case may be.
 - 6.2.3.** Order that a complainant's reply to a published article, comment or letter be published by the respondent;
 - 6.2.4.** Make any supplementary or ancillary orders that are considered necessary for carrying into effect the order made in terms of this clause and, more particularly, issue an order as to the date, manner, style, size and position in the publication of the findings of the Ombudsman Committee or the Appeals Committee and also as to the number of consecutive issues in which it must appear, if it is deemed necessary.
 - 6.2.5.** In the reasons for the decision and/or sanction the Ombudsman Committee or the Appeals Committee is entitled to criticise the conduct of the complainant in relation to the complaint, where such criticism is warranted in the view of the Ombudsman Committee or the Appeals Committee.
- 6.3.** Fines and a hierarchy of sanctions
- 6.3.1.** 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.
 - 6.3.2.** "Space fines" shall be applied by way of the amount of space imposed to be correspondent with the seriousness of the infraction.
 - 6.3.3.** That as a general rule monetary fines will not be imposed as penalty for the content of the press.
 - 6.3.4.** That monetary fines according to a formula determined by the Press Council and included in this sub-clause, suspension for a period or expulsion from the jurisdiction of the Ombudsman 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.
 - 6.3.5.** That in cases referred to in 6.3.4 above, all member newspapers publish the sanctions imposed.





Appendix 2: Complaints procedures

7. Records

- 7.1. 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 Press Ombudsman Panel or the Press Appeals Panel's orders or directives, if any.
- 7.2. The Ombudsman shall keep on record all findings and reasons for findings by the Press Ombudsman Panel or the Press Appeals Panel.
- 7.3. The records referred to in rule 7.1 shall be public documents except insofar as those documents are privileged in terms of the Promotion of Access to Information Act 2000 or identify a rape victim, a person who has been sexually assaulted or a child under eighteen, or a victim of extortion or identify any other person whose identity is protected in the Press Code.





Report on Press Regulation in South Africa





Appendix 3

The South African Press Code

Preamble

The press exists to serve society. Its freedom provides for independent scrutiny of the forces that shape society, and is essential to realising the promise of democracy. It enables citizens to make informed judgments on the issues of the time, a role whose centrality is recognised in the South African Constitution. Section 16 of the Bill of Rights sets out that:

"Everyone has the right to freedom of expression, which includes:

- 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.

"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."

Furthermore, the Bill of Rights (Section 28.2) states: "A child's best interests are of paramount importance in every matter concerning the child." We commit to having a special concern for children and to ensure their protection in our gathering of data and reporting of our findings.

The press holds these rights in trust for the country's citizens; and it is subject to the same rights and duties as the individual. Everyone has the duty to defend and further these rights, in recognition of the struggles that created them: the media, the public and government, who all make up the democratic state.

Our work is guided at all times by the public interest, understood to describe information of legitimate interest or importance to citizens.

As journalists, we commit ourselves to the highest standards of



excellence, to maintain credibility and keep the trust of our readers. This means striving for the maximum truth, avoiding unnecessary harm and acting independently.

We adopt the following Press Code:

1. Reporting of News

- 1.1. News shall be obtained legally, honestly and fairly in accordance with the laws of the country, unless public interest dictates otherwise.
- 1.2. Press representatives shall identify themselves as such, unless public interest dictates otherwise.
- 1.3. The press shall be obliged to report news truthfully, accurately and fairly.
- 1.4. 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, summarisation or conjecture.
- 1.5. 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.
- 1.6. 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.
- 1.7. A publication shall seek the views of the subject of serious critical reportage in advance of publication. Reasonable time should be afforded the subject for a response.
- 1.8. 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.
- 1.9. Reports, photographs or sketches relating to indecency or obscenity shall

Appendix 3: The South African Press Code

be presented with due sensitivity to the prevailing moral climate. A visual presentation of explicit sex shall not be published.

- 1.10. Journalists shall not plagiarise; that is they shall acknowledge the source of the material being quoted.
- 1.11. Reporters shall be circumspect when writing stories on crime in order to avoid being seen to be glorifying criminals and their activities.
- 1.12. Journalists shall keep their notes for a period of not less than three years in case a story is later disputed.
- 1.13. Letters to the editor shall not be altered except to correct the language. Where the letter is shortened the message may not be altered. The letter shall bear the name of the person who wrote it, unless anonymity is requested and reasons are provided for it. Letters shall not be in conflict with clauses 2, 4, 5 or 6 of this Press Code.

2. Court Reporting

- 2.1. Where a court directs that no information relating to proceedings held behind closed doors shall be published:
 - 2.1.1. The identity of the accused and the charge may only be published after the accused has pleaded;
 - 2.1.2. The information relating to the name and personal particulars of the accused, the charge against him, the plea, the verdict and the sentence may be published, unless the contrary is ordered by the court; and
 - 2.1.3. The identity of the complainant shall not be published, unless the court orders otherwise.
- 2.2. Where an accused or witness is under the age of 18 years his or her identity may not be published, unless the court authorises it.
- 2.3. Proceedings in court shall be reported without comment.
- 2.4. Where court proceedings are published the final outcome shall also be published.
- 2.5. Unless a court orders otherwise, the publication of the identity of, and any information that may reveal the identity of, any party or child in any divorce proceeding before a court is prohibited.

- 2.6. The name or address of any person under the age of 18 years who is or was involved in any proceedings at a maintenance enquiry or the name of his or her school or any other information likely to reveal the identity of that person may not be published unless permitted in writing by the Minister of Justice or the officer presiding at such an enquiry.

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 shall 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 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 shown clearly distinct from advertising.

4. Dignity, Privacy and Reputation

- 4.1. The press shall exercise exceptional care and consideration in matters involving the private lives and concerns of individuals, bearing in mind that:
- 4.1.1. The right to privacy may be overridden only by a legitimate public interest;
- 4.1.2. In the case of defamation truth plus public interest or reasonableness may be a defence;
- 4.1.3. In the case of the invasion of dignity reasonableness may be a defence.
- 4.2. The press shall offer the subject of the impairment set out in the previous sub-clauses a right to reply in the same publication.
- 4.3. Where it was impossible to reach such a person a full explanation shall be given in the publication why it was not reasonably possible to do so.
- 4.4. 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 only if it is in the public interest.



Appendix 3: The South African Press Code

- 4.5. The HIV/Aids status of people shall 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.
- 4.6. The press shall exercise sensitivity in respect of a bereavement or tragedy and shall respect the privacy of a family.

5. Discrimination and Hate Speech

- 5.1. The press shall avoid discriminatory or denigratory references to people's race, colour, ethnicity, religion, place of origin, gender, sexual orientation or preference, physical or mental disability or illness, age, or other status except where it is strictly relevant to the matter reported.
- 5.2. The press shall not refer to a person's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental disability or other status in a prejudicial or pejorative context except where it is strictly relevant to the matter reported.
- 5.3. 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.
- 5.4. The press shall not publish material that amounts to the advocacy of hatred that is based on race, ethnicity, gender or religion and that constitutes incitement to cause harm.
- 5.5. The press shall not publish material that amounts to propaganda for war or which constitutes incitement of imminent violence.

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.
- 7.4. Where the comment includes serious criticism of a person, that person shall be afforded a right to reply in the same publication, unless such person cannot be found or is not prepared to respond, in which case such fact shall be stated.

8. Children

- 8.1. The press shall endeavour to give holistic coverage of children and children's issues.
- 8.2. The press shall endeavour to include the voices of children in stories that affect them and not to solely portray them as victims or in a negative light.
- 8.3. The press shall exercise exceptional care and consideration when reporting on matters of 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.
- 8.4. Child pornography shall not be published
Definition of Child Pornography: 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 circumstance which, in context, amounts to sexual exploitation.





Appendix 3: The South African Press Code

- 8.5. The press shall not identify children who have been victims of abuse or exploitation, or who have been charged with or convicted of a crime.
- 8.6. The press shall not trivialise or under-report drug and substance abuse among children and the impact or results thereof.

9. Violence

The press shall refrain from inappropriate, sensational portrayal of violence, brutality 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 handle 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 cheque-book 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.





Report on Press Regulation in South Africa





Appendix 4

PFC Terms of Reference (2 August 2011)

Contents

- 1 Background
- 2 Objectives
- 3 Scope
- 4 Constraints
- 5 Roles & Responsibilities
- 6 Reporting
- 7 Key Milestones
- 8 Costs

1. Background

Print media SA (PMSA) and the SA National Editors' Forum (Sanef), herein after referred to as the initiators, believe that freedom of expression is best fostered through a system of media regulation, and that the protection and promotion of freedom, human dignity and equality are necessary for the sustenance of South Africa's democracy.

The initiators are desirous of strengthening the work and effectiveness of the Press Council; and to take its work in investigating its systems forward. These efforts have their origins in the fact that over the years many criticisms have been levelled against the shortcomings in print media's self-regulatory system. The criticisms were brought to the fore once more when public debate followed the passing of a resolution by the ANC in 2007 which, amongst other concerns, mooted the idea of a media tribunal.

In the light of this, the initiators invited persons who represent different sectors of South African society to look at the regulation of print media in this country. This group of people is called the Press Freedom Commission (PFC). Former Chief Justice of South Africa, Justice Pius Langa, is the Chairperson of the PFC.

The PFC will study a report prepared by the Press Council about the current print media landscape and the Council's findings on strengthening self-regulation; and it will make recommendations on the place of print



media regulation in a democracy in which the freedom of the press is guaranteed. These recommendations will ultimately be published in the form of a South African Press Freedom Report ("SAPF Report").

2. Objectives

The Primary Objective of the PFC:

- To Ensure press freedom in support of enhancing our democracy which is founded on human dignity, equality and freedom.

The Secondary Objectives of the PFC:

- In support of our primary objective, research the regulation of specifically print media, locally and globally. Self-regulation, co-regulation, independent regulation and state regulation will be examined.
- Recommendations on the way forward will be developed and published to the stakeholders and in the public domain. The recommendations will represent the best regulatory framework suitable for South Africa and which is in conformity with the SA Constitution.
- The process for the finalisation of the recommendations will be completed by the end of March 2012.

The Action Plan of the PFC:

1. Review the Press Council report on strengthening press self-regulation in South Africa when it is published, and where necessary do further research. The review of the Press Council report will include the submissions which were made to the Press Council in its recent investigation.
2. Desktop research: Study regulation nationally and internationally to compare best practices. The international review will include visits to countries with a reputation for best practice and which are relevant to the South African context.
3. Public hearings: Conduct interviews with a representative spectrum of stakeholders and the general public.
4. Publish a final SAPF Report of findings and recommendations for a gold standard of regulation in South Africa, and recommend additional measures deemed necessary. These would include, making a recommendation on the place of press regulation in a democracy in which freedom of the press, and human dignity are guaranteed, as contemplated in the Constitution.
5. The PFC will issue a final SAPF Report.



Appendix 4: PFC Terms of Reference

3. Scope

The PFC has a transparent mandate to review and compare media regulation in South Africa with international best practices. Upon completion of its work, it will publish the SAPF Report.

The PFC may comment on the social impact of a free press in relation to matters such as an empowered citizenry, protection of human dignity, corruption, education, access to services, etc.

The PFC's mandate is specific to the print media, but reference may be made to electronic and broadcast media, if and when relevant.

4. Projection and funding

The PFC will consist of nine members, of which a quorum will be six members.

The PFC must aim to complete its assignment within 6-8 months.

The PFC's expenses and fees will be disbursed through the initiators, but managed through the Project Director.

5. Roles and responsibilities

The Chairperson will set out the budget deliverables and activities and these will be approved by the PFC.

The PFC will assign responsibilities to staff and will be responsible for the issuing of reports.

6. Reporting

The Project Director will submit regular updates about the PFC's progress, as well as about funds and the resources required to the initiators.

Key Milestones

First month

- Appointment of PFC Chairperson and other members.
- Confirm terms of reference and formulate implementation procedure.
- Develop and approve detailed review plan with resource and research requirements and budgets.

Second and Third month



- Review the Press Council report on print media self-regulatory regime in South Africa.
 - Study regulation internationally to compare best practices.
- Fourth and Fifth months
- Public Hearings: interviews with interested stakeholders and public.
- Sixth and Seventh months
- Draft a final SAPF Report.
- Eighth month
- Release of the SAPF Report.

8. Costs

The PFC assisted by the Project Director and the initiators will agree on a budget for the following expenses:

- Professional fees.
- Travel, car hire and accommodation.
- Incidental expenses.
- Administrative support and services.
- Staging of public hearings.
- Incidental costs.



Appendix 5

Definitions of types of regulation

What are self-regulation, independent regulation, co-regulation and statutory regulation?

There are mainly four different types of regulation of print media that can be identified worldwide: self-regulation, independent regulation, co-regulation and statutory regulation. However there is no single model for each type of regulation as they differ from one another in shape and features. Worldwide trends reveal that the Press Council is the leading mechanism for regulation of the print media. A Press Council can be understood as an independent body that deals with complaints from the public about the content of print media.

Self-regulation: Is a peer review system operating within a set of self-imposed rules by the media. It consists of representatives from the media profession passing judgement on complicated matters of journalistic reporting using a Journalistic Code of Ethics which is applied in determining the final ruling, and benchmarking the generally accepted norms and standards. Tanzania has adopted a self-regulatory method for their press. Some self-regulatory systems such as South Africa and UK include members of the public, in such cases the media representatives dominate in influence and decision making.

Independent regulation: Implies independence from both the media and government. The Press Council of Ireland embodies qualities of independent regulation, where the Press Council itself and the Press Ombudsman are independent of government, and in operation independent of the media.

Co-regulation: Is generally to be regulation by both government and the media industry. The Indonesia Dewan Pers (translated as Press Council)





example shows features of co-regulation, it is created by Statute Law of the Press 1999. However its funding comes from a mixture of journalists, media owners, assistance from the state and other sources. Its membership consists of media representatives and public figures.

Statutory regulation: Is realised when a regulatory body is either set up by statute or otherwise controlled by the government. The models of government regulation differ worldwide and are not customised to a set formula hence the level of government involvement differs. For example, the German Press Council is not a statutory body but receives about 30% of its funding from government. On the other hand, the National Commission of Ghana is established under statute and 100% funded by government. The Indian Press Council is set up by statute, and government controls the appointment process.

The Press Freedom Commission used a number of resources in compiling this information, of which a bulk was taken from the 2007 Review of the New Zealand Press Council.





Appendix 6

PFC Commissioners



Pius Langa

Justice Pius Langa was appointed Judge of South Africa's Constitutional Court (1994-2009) and as the Republic's Chief Justice (2005-2009). He served as the court's Deputy President (2001-2003) and as South Africa's Deputy Chief Justice (2003-2005). He commenced practice as an Advocate in 1977 and took Silk in January 1994. A political activist against apartheid, he was a founder member of the National Association of Democratic Lawyers of which he was president for six years. He was awarded the National Order of the Baobab in Gold.



Santie Botha

Santie Botha is currently the Chancellor of the Nelson Mandela Metropolitan University (PE) and sits on the boards of Tiger Brands Limited and Imperial Holdings. She was the Business Woman of the Year 2010 and Marketer of the Year 2002. Previously she was the Exec Director for Marketing at the MTN Group (2003-2010) and Exec Director at Absa Bank (1996-2003). She holds a B Econ Honours degree from Stellenbosch University.



Anshal Bodasing

Anshal Bodasing is a member of the Johannesburg Bar. She has a BA LLB LLM from the University of Kwazulu-Natal. After completing her Masters' degree, she spent about two years as a law clerk to Justice Albie Sachs at the Constitutional Court. Then she was in private practice for two years before joining the Constitutional Litigation Unit of the Legal Resources Centre where she worked as in-house counsel in 2010 and 2011. She returned to private practice in 2012.



**Kwame Karikari**

Professor Kwame Karikari is Executive Director of the Ghana-based Media Foundation for West Africa, a non-governmental body that promotes press freedom in the region. Educated at the City College of New York and Columbia University in New York, he lectured at the University of Ghana, worked as a journalist and headed the Ghana Broadcasting Corporation. An active advocate for media freedom and development, he serves on a number of civil society and editorial boards.

**Kobus van Rooyen**

Professor Kobus van Rooyen SC has been a professor of law for 32 years. He is Chair of the Broadcasting Complaints Commission of SA. Previously he was Chair of the Publications Appeal Board in the 1980s, Chair of the Task Group which drafted the 1996 Publications Act, Chair of the Press Council (1991-7) and a councillor of ICASA for four years. He was an Acting Judge for 12 court terms, has authored four books and is a Fellow of the Alexander von Humboldt Stiftung.

**Thabo Makgoba**

Dr Thabo Makgoba is Archbishop of the Diocese of Cape Town and head of the Anglican Church of Southern Africa. He was previously bishop of Grahamstown. He holds a PhD from UCT and a Masters in Educational Psychology from Wits, and is recipient of an honorary Doctorate of Divinity from the General Theological Seminary in New York. He is an outspoken critic of abuses of power and a strong campaigner for advancing the human dignity of all people. He serves as chairperson for the Anglican Environmental Network.



Appendix 6: PFC Commissioners and staff



Phil Mtimkulu

Dr Phil Mtimkulu is a senior lecturer in political science at Unisa. He sits on the Editorial Committee of Politeia and serves on the executive council of the SA Association of Political Studies. He holds a PhD from the University of Johannesburg. He was a journalist for 20 years and worked at *Golden City*, *The World*, *The Voice*, *Post*, *Sowetan* and *The Star*. He was secretary-general of the UBJ and Mwasu and was banned for five years. He was also SABC board deputy chairperson.



Derick Elbrecht

Derick Elbrecht spent 30 years in the labour movement fighting for workers' rights, culminating in serving as the National Treasurer of the National Union of Mineworkers for 12 years and 25 years on its NEC. He is a qualified Technician (Electrical) and studied management UCT, USB, and GIBS. He serves as a non-executive director in statutory regulatory bodies, companies, banks and NGOs. He is presently finalising the Teba Trust Fund, set up by the Chamber of Mines and the NUM.



Futhi Mtoba

Futhi Mtoba is a Chartered Accountant and Chair of the Africa Board at Deloitte. She is President of Business Unity South Africa and past national president of the Association for the Advancement of Black Accountants in Southern Africa. She is Chair of Council at the University of Pretoria and Chair of the National Anti-Corruption Forum. She is a member of the Nepad Business Foundation and the United Nations Global Compact Board, and a past member of the board of directors of the Public Investment Corporation.



PFC staff



Mathatha
Tsedu,
Project Director
and Co-Editor



Jabu Molotsane,
Project
Administrator



Prinola
Govenden,
Researcher



Elizabeth
Barratt,
Co-Editor





Appendix 7

Public submissions register, February 2012

- | | |
|---------------------------------------|--|
| 1. Alan Vincent | 29. Anonymous |
| 2. J Hewin | 30. Apartheid Museum |
| 3. Jackie Lincoln | 31. Ashwin Witbooi |
| 4. Shona Bagley | 32. Avril Patton |
| 5. A Roberts | 33. Avusa Media |
| 6. AC Erasmus | 34. Azanian People's Organisation |
| 7. Adrian Miljak | 35. B Singh |
| 8. Advocate D de Haviland | 36. Barend J Alberts |
| 9. African Methodist Episcopal Church | 37. Barney Mthombothi |
| 10. African National Congress | 38. Belinda Spalding-Jones |
| 11. AJ Janse van Rensburg | 39. Bhok' muzi A Mathonsi |
| 12. Alan Shearn | 40. Bheki Twala |
| 13. Alf | 41. Brian Douglas |
| 14. Alfreda Franzen | 42. Callaghan LEA |
| 15. Alp Phillip | 43. Carol Watermeyer |
| 16. Alpoa - NGO | 44. Caxton Newspapers |
| 17. AM Zwane | 45. Centre for Constitutional Rights |
| 18. Amabhungane Publications | 46. Children's Right Centre |
| 19. Amos B Mathosi | 47. Christian Revival Church |
| 20. Anglican Church | 48. Clarence Grasset |
| 21. Anonymous | 49. Collin Pittendrigh |
| 22. Anonymous | 50. Congress of South African Trade Unions |
| 23. Anonymous | 51. DA Fiene |
| 24. Anonymous | 52. Dandre Gerber |
| 25. Anonymous | 53. Danny Naicker |
| 26. Anonymous | 54. Darron Araujo |
| 27. Anonymous | 55. Dave Nicholls |
| 28. Anonymous | 56. David Blyth |



Report on Press Regulation in South Africa

57. David K Mlotshwa
58. Democratic Alliance
59. Deneys Sutton
60. Derek & Angela Moulton
61. Dineo Makobane
62. Don McCulloch
63. DP Johnson
64. E Fraser
65. EC Hassim
66. EL Peckhana
67. Elise Havinga en Familie
68. Eric Alison Hulbert
69. Etienne Cronje
70. Fanie Groenewald
71. Freedom Front Plus (FFP)MP
72. Fifi
73. Fikile Khuzeni
74. Film & Publication Board
75. France Navio
76. Free Society Institute
77. Gail York
78. Gawie Venter
79. Geoff Taylor
80. Gill Moodie
81. Goolam Dawood
82. Grant McNulty
83. Hailey Fudu
84. Halle Handwatch
85. Harvey Tyson
86. Health & Peace Activist
87. Health & Peace Activists
88. Highway Africa
89. Human Rights Commission
90. Ian Petzer
91. Independent Newspapers
92. Independent Democrats
93. Ingrid Willinga Laarman
94. Inkatha Freedom Party
95. Institute for the Advancement of Journalism
96. Institute of Public Relations and Communications Management
97. Ivan van Niekerk
98. James Motshweni
99. Janey Ball
100. Janse van Rensburg
101. Janine Petzer
102. Jennifer D Kemp
103. Jill Bob
104. Joan Perros
105. Joan van Straaten
106. Johan Ostrowick
107. John Christie
108. John L Cooke
109. John Strachan
110. KA Ntimbani
111. Karen Valley
112. Ken Stacey
113. Kerry Caldwell
114. Kevin Lodge
115. Kevin Vally
116. Kkua
117. Kwaai84
118. L Hotz
119. Ladysmith Gazette
120. Lebogang Kubyane
121. Lekgathoane Phala
122. Leslie Berkowitz
123. Linda Behr
124. Linden R Mollie
125. Linette Manga
126. Lorraine Dove
127. Louise Taczalo
128. Lowveld Community Newspapers
129. Lwazy Molotsane
130. Lyn Fish

Appendix 7: Public Submissions Register

- | | |
|--|--|
| 131. M J Netshifhefhe | 168. Penny Edge |
| 132. Mail & Guardian | 169. Penny Hickman |
| 133. Manell | 170. Peter Leo |
| 134. Margaret Heydenrych | 171. Petrus Johannes Smith |
| 135. Margie G | 172. Philip Alp |
| 136. Marion Crowford | 173. Pieter A Visser |
| 137. Martin & Linda | 174. PJP Mulholland |
| 138. Mary de Haas | 175. Polly Kistain |
| 139. Mashilo Boloka | 176. Primedia (Pty) Ltd |
| 140. Mathew Basson | 177. Professional Journalists Association |
| 141. Media 24 | 178. Public Protector |
| 142. Media Monitoring Africa | 179. Rajan Naidoo |
| 143. Megan Lewis | 180. Rhodes University |
| 144. Methodist Church | 181. Richard Harrison |
| 145. Mike Griffiths | 182. Right to Know |
| 146. Mongameli Edwin Dondolo | 183. Robert Sithole |
| 147. Morgan Phaahla | 184. Ronald Underwood |
| 148. Mpendulo Nzama | 185. Rose Tuelo Brock |
| 149. Musacapital | 186. Ruby |
| 150. Mxolisi Dimbaza | 187. SA Jewish Board of Deputies |
| 151. Mzimkulu Malunga | 188. Samantha Pickard |
| 152. Nadine Gordimer & Andre Brink | 189. Santoro Arikum |
| 153. Naomi Dinur | 190. Sapa |
| 154. National Council of Women in SA | 191. Seabelo Katane |
| 155. National Union of Mineworkers of South Africa | 192. Section 16 |
| 156. Neu Magazine | 193. Semakaleng Magoboa |
| 157. Niranjana Kalidass | 194. Sheryl Nel |
| 158. Nis Media | 195. Sibusiso Buthelezi |
| 159. Nola Kouluntis | 196. Socialist Party of Azania |
| 160. Nomcy | 197. Sonnet |
| 161. Norman JJ Webber | 198. Soobramoney Jayanathan |
| 162. OFM | 199. South African Council of Churches |
| 163. PA Bennet | 200. South African Institute of Race Relations |
| 164. Pan African Congress | 201. South African Pagan Rights Alliance |
| 165. Patricia | 202. Soweto TV |
| 166. Patrick Riley | |
| 167. Pen Writers Association | |



Report on Press Regulation in South Africa

203. Soweto TV
204. Special Rapporteur on Freedom of Expression and Access to Information in Africa
205. Springs Advertiser
206. Steve Hegerstrom
207. Sweetlife Magazine
208. Ten Ten
209. Teresa Williams
210. Thandekile Nyembezi
211. ThandoJohn Vilakazi
212. Themba Sepotokele
213. Thembalihle Desmond Nongayiyana
214. Tim Singiswa
215. Tlaki Dlepu
216. Tricia
217. Trudie Blanckenberg
218. TS Kroon
219. Tshwane University of Technology
220. Ujala
221. University of South Africa
222. University of South Africa
223. United Democratic Party
224. University of Stellenbosch
225. University of Witwatersrand
226. Ute Kuhlmann
227. Vusumuzi Gcuma
228. Wilf
229. Zamakhuze
230. Zoutnet CC





Appendix 8

ANC resolutions on media regulation

ANC Polokwane Resolution on MAT – December 2007

On the establishment of a Media Appeals Tribunal (MAT):

Conference adopts the recommendation of the Policy conference that the establishment of a MAT be investigated. It accordingly endorses that such investigation be directed at examining the principle of a MAT and the associated modalities for implementation. Conference notes that the creation of a MAT would strengthen, complement and support the current self-regulatory institutions (Press Ombudsman/Press Council) in the public interest.

This discourse on the need for a MAT should be located within a proper context. It has to be understood as an initiative to strengthen the human rights culture embodied in the principles of our Constitution (Constitution Act of 1996) and an effort to guarantee the equal enjoyment of human rights by all citizens.

It particularly relates to the balancing of human rights in line with section 36 of the Constitution of the Republic. This especially relates to the need to balance the right to freedom of expression, freedom of the media, with the right to equality, to privacy and human dignity for all.

The investigation should consider the desirability that such a MAT be a statutory institution, established through an open, public and transparent process, and be made accountable to Parliament. The investigation should further consider the mandate of the Tribunal and its powers to adjudicate over matters or complaints expressed by citizens against print media, in terms of decisions and rulings made by the existing self-regulatory institutions, in the same way as it happens in the case of broadcasting through the Complaints and Compliance Committee of ICASA.

The investigation should further consider remedial measures which will safeguard and promote the human rights of all South Africans.





The Media and other stakeholders, including civil society, shall be consulted to ensure that the process is open, transparent and public. Parliament will be charged with this mandate to establish this MAT, in order to guarantee the principle(s) (of) independence, transparency, accountability and fairness.

ANC Resolution at NGC in Durban, September 2010 (from ANC.org.za)

On Media Accountability Mechanisms

23. The existing self-regulatory system (Press Ombudsman and Press Council) is ineffective and needs to be strengthened to balance the rights of the media and those of other citizens guided by the values enshrined in our Bill of Rights, i.e. Human Dignity, Equality and Freedom.
24. According to the Constitution, the National Assembly is elected to represent the people. The Assembly is also mandated to provide a national forum for the public consideration of issues. Media accountability as now it is a matter of public importance should therefore be a matter for consideration by the Assembly.
25. The South African Constitution is premised on the values of human dignity, equality and freedom. In addition human dignity is enshrined as a fundamental right in Section 10 of the Bill of Rights. This is an indication of the primacy of human dignity in the South African situation.
26. Freedom of expression is also an important right enshrined in our constitution, but we should fight hard to prevent the campaign to elevate it above the right and value of human dignity.
27. The Commission affirmed the call for Parliament to conduct a public inquiry on:
 - 27.1 Balancing of the rights enshrined in the Constitution like right to dignity, freedom of expression and media, guided by the values enshrined in our Bill of Rights, i.e. Human dignity, Equality and Freedom.
 - 27.2 Transformation of the print media (media charter, ownership and control, advertising and marketing and the establishment of media accountability mechanism, the Media Appeals Tribunal).
 - 27.3 Media accountability mechanism in the public interest, including the investigations into the best international practices without compromising the values enshrined in our Constitution.



Appendix 8: ANC resolutions on media regulation

- 27.4 What regulatory mechanisms can be put in place to ensure the effective balancing of rights, this may include self-regulation, co-regulation and independent regulation.
28. Any media accountability mechanism should be independent of commercial and party political interests, should act without fear, favour and prejudice, should be empowered to impose appropriate sanctions and must not be pre-publication censorship.

ANC presentation to the PFC in January 2012

ANC Emphasis:

- The ANC believes in Independent Regulation: which is a fundamental principle that should guide all regulatory frameworks (industry codes, legal systems, etc).
- This may differ with the interpretation that is commonly assigned to our proposal.
- Which has been misrepresented as meaning state or government regulation of the media.
- We want to be clear, we are advocating an independent regulation of the media unencumbered by commercial or party political interests.
- Accordingly, the ANC resolution states that any mechanism should be independent of commercial and party political interests should act without fear, favour and prejudice, should be empowered to impose appropriate sanctions and there must not be pre-publication censorship.



Report on Press Regulation in South Africa





Appendix 9

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