

# Sweeping reforms to press regulations announced

On Wednesday 3 October 2012, the Press Council of South Africa announced sweeping reforms to press regulations at an event at Constitutional Hill, Johannesburg. Much stronger public participation in the Press Council of South Africa and its adjudication procedures is the most notable change.



The reforms move the press from self-regulation to voluntary independent co-regulation. This follows years of public debate and deliberations by a task team appointed by the Press Council. It handed its report to the independent Press Freedom Commission, an initiative of the Print and Digital Media Association (representing media owners) and the South African National Editors Forum (representing the editors).

Both bodies received extensive submissions and held public hearings throughout South Africa. The reforms announced yesterday follow the recommendations of the Press Freedom Commission, which was headed by retired Chief Justice, Pius Langa and the ensuing industry-wide discussions.

According to SANEF chairperson, Mondli Makhanya, the revamped press code is one of the best - if not the best - systems in the world. "The media has always been accountable to the Constitution and the public and the new system concretises this."

## New Council format

The present Press Council consists of twelve members, half from the public and the other half from the press. Now an independent chairperson, in the form of a retired judge, adds another public voice.

Six members will be appointed by an Appointments Panel from nominations received from members of the public. A retired judge, who will not be the same as the chairperson of the Press Council, will chair the Panel. Both of these appointments will be based on recommendations made by the Chief Justice.

The other six will be representatives of the press and will be nominated by the constituent bodies of the Press Council: one member each by the Newspaper Association of South Africa, the Magazine Publishers Association of South Africa, the Association of Independent Publishers, by the Forum of Community Journalists and two from the South African National Editors' Forum.

The Press Council will elect a deputy chairperson from its members, alternating the position between public and press representatives. It will aim to promote and develop ethical practice in journalism and to promote the adoption of those standards by the press. This will be based on the South African Press Code, which has been adopted. It also creates a complaints mechanism.

An ombudsman and his deputy plus office staff run the present council.

## **Public Advocate appointed**

The new Press Council will have important additions to take the load off the ombudsman's shoulders but also to make complaining by the public easier. One is a director, the other a public advocate.

The director will lead the Press Council on a full-time, permanent basis and will concentrate on public engagement on issues of ethical journalism and media freedom. It will mean that the promotion of the Press Code and an understanding of what press freedom is about, will receive more attention.

The office of the Ombudsman remains and will continue to adjudicate matters that cannot be resolved at the earlier level of the Public Advocate.

The Public Advocate will have a particularly key role in the new Council's operations.

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

The Public Advocate before the Ombudsman or the Appeals Panel may also represent a complainant. He/she may also file a complaint directly with the Ombudsman if of the view that a prima facie contravention of the Press Code has been committed and it is in the public interest.

## **Complaints mechanism improved**

Two more changes are noteworthy: other than before, legal representation at hearings will be allowed only in exceptional cases and an appeal to the ordinary courts will now be possible should unhappiness over adjudication persist.

Previously complainants had to sign a waiver that they would give up this right. There was some unhappiness over this prescription. The new rule will apply for a year and will then be reviewed.

New, too, are the introduction of space and monetary fines.

Space fines will be applied through imposing an amount of space which is commensurate with the seriousness of the infraction. At present a frequent complaint is that apologies in newspapers are hidden while the original copy was used more prominently.

There will not be monetary fines as a penalty for the content of a report, but there may be in case of failure to appear at an adjudication and repeated non-compliance with a ruling. In addition, suspension or expulsion from the jurisdiction of the Ombudsman could follow.

Complaints must be made to the Public Advocate who will attempt to achieve a speedy settlement. He will attempt to do so within 15 working days of the publication receiving the complaint notice. He may then refer the case to the Ombudsman.

The Ombudsman will hear a complaint with the assistance of adjudicators drawn from the Panel of Adjudicators, which will consist of representatives of the press and the public. This Panel will consist of eight public representatives and six from the press. The Appointments Panel will appoint the first eight and the constituent bodies of the Press Council will appoint the

latter, again, the public representation is stronger than that of the press.

The Chair of Appeals, who will be a senior legal practitioner, preferably a retired judge, will handle appeals from a decision by the Press Ombudsman. He will be appointed on the recommendation of the Chief Justice and may be the same judge who chairs the Appointments Panel.

The Chair of Appeals may also convene an Appeals Panel consisting of one press and, at his or her discretion, up to three public members of the Adjudication Panel - again, providing strong public representation.

This shift toward stronger public representation is a theme running through the newly announced constitution of the Press Council - yet the fundamental commitment to freedom of the press as enshrined in the Constitution remains as its bedrock.

It is, in fact, a new beginning for old values.

"We live in a free country and a free country will always need free media," concludes Makhanya.

## Self-regulatory system

The Council, the Ombudsman and the Appeals Panel are a self-regulatory mechanism set up by the print media to provide impartial, expeditious and cost-effective adjudication to settle disputes between newspapers and magazines, on the one hand, and members of the public, on the other, over the editorial content of publications. The mechanism is based on two pillars: a commitment to freedom of expression, including freedom of the press, and to excellence in journalistic practice and ethics.

The Council has adopted the South African Press Code to guide journalists in their daily practice of gathering and distributing news and opinion and to guide the Ombudsman and the Appeals Panel to reach decisions on complaints from the public. More than 640 publications, mainly members of Print and Digital Media South Africa, subscribe to the Code. The Council is the custodian of this Code and may amend it from time to time, depending on needs.

## Support from Freedom House:

Karin Deutsch Karlekar, project director, Freedom of the Press, Freedom House in New York sent these words of support.

Freedom House supports the extensive process of review, consultation and revisions to the current system of print media regulation in South Africa that has been undertaken by the Press Council. In line with international best practice recommendations in this field, Freedom House supports the principle of self-regulation as the soundest way to promote media independence with responsibility, and is opposed to the imposition of statutory regulation. It is encouraged that consensus has been reached within the industry on reforms to current procedures and urge that these changes be implemented and be given a chance to work after they come into force, with the goal that the current system in place be strengthened by these positive reforms.

## Summation of changes

Below is a summation of the changes to the new press regulations with comments made by the Press Council during the press conference.

Current System	2013 System	Press Council comments
Constitution	Constitution	Constitution

<p><i>System</i></p> <p>"press self-regulation"</p>	<p><i>System</i></p> <p>"a voluntary independent co-regulatory system involving exclusively representatives of the press and representatives of the public..."</p>	<p>The reforms move the press from self-regulation to voluntary independent co-regulation. [The Press Council has not accepted state intervention; the reform is done to improve the quality of journalism, not to appease the ANC.]</p>
<p><i>Composition of Council</i></p> <p>The Council shall consist of six members representative of the press and six members, one of them nominated alternate, representative of the public.</p>	<p><i>Composition of Council</i></p> <p>The Council shall consist of a retired judge and 12 individuals representing members of the public and members of the media.</p> <p>The outgoing PCSA shall request the Chief Justice of South Africa to recommend a judge who is no longer in active service to chair the Press Council.</p> <p>The judge shall hold no other position in the Press Council or its appeals mechanism.</p> <p>Six of the representatives shall be appointed by the Appointments Panel...from nominations received from members of the public.</p> <p>Six of the representatives shall be from the press...</p> <p>The Council shall elect from among the members of Council a Deputy Chairperson, provided that in the event the deputy in one term is a public representative, the deputy in the following term will be a press representative, and vice versa.</p>	<p>Now an independent chairperson, in the form of a retired judge, adds another public voice.</p> <p>Six members will be appointed by an Appointments Panel from nominations received from members of the public. The Panel will be chaired by a retired judge, who will not be the same as the chairperson of the Press Council. Both of these appointments will be based on recommendations made by the Chief Justice.</p> <p>The other six will be representatives of the press and will be nominated by the constituent bodies of the Press Council: one member each by the Newspaper Association of South Africa, the Magazine Publishers Association of South Africa (MPASA), the Association of Independent Publishers, by the Forum of Community Journalists and two from the South African National Editors' Forum (SANEF).</p> <p>The Press Council will elect a deputy chairperson from its members, alternating the position between public and press representatives.</p>
<p><i>Office personnel</i></p> <p>The Ombudsman and the Deputy Ombudsman.</p>	<p><i>Office personnel</i></p> <p>The Director shall lead the PCSA on a full-time, professional basis and will concentrate on public engagement regarding issues of ethical journalism and media freedom.</p> <p>The Ombudsman shall adjudicate matters that cannot be resolved at the earlier level of mediation.</p> <p>The Public Advocate shall assist members of the public to formulate their complaints, attempt to resolve complaints amicably by liaising directly with the publication on behalf of the complainant.</p> <p>The Public Advocate may represent the complainant before the Ombudsman and/or the Appeals Panel.</p>	<p>The present council is run by an ombudsman and his deputy plus office staff.</p> <p>The new Press Council will have important additions to take the load off the ombudsman's shoulders but also to make complaining by the public easier. One is a Director, the other a Public Advocate. [If necessary, each will have a Deputy].</p> <p>The Director will lead the Press Council on a full-time, permanent basis and will concentrate on public engagement on issues of ethical journalism and media freedom. It will mean that the promotion of the Press Code and an understanding of what press freedom is about, receive more attention.</p> <p>The office of the Ombudsman remains and will continue to adjudicate matters that cannot be resolved at the earlier level of the Public Advocate.</p> <p>The Public Advocate will have a particularly key role in the new Council's operations.</p>
<p><b>Complaints Procedures</b></p>	<p><b>Complaints Procedures</b></p>	<p><b>Complaints Procedures</b></p>

<p><i>Complaints</i></p> <p>"Complainant" shall mean and include any person who or body of persons which lodges a complaint, provided that such person or body of persons has a direct, personal interest in the matter complained of.</p> <p>The complaint shall be made to the Ombudsman...</p> <p>A complaint shall be made as soon as possible, but not later than fourteen days after the date of the publication giving rise to the complaint.</p>	<p><i>Complaints</i></p> <p>"Complainant" shall mean and include any person who or body of persons which lodges a complaint and has standing to complain in terms of the following rule:</p> <ul style="list-style-type: none"> <li>• anyone acting in their own interest;</li> <li>• anyone acting on behalf of another person who cannot act in his or her own name;</li> <li>• anyone acting as a member of, or in the interest of, a group or class of persons; and</li> <li>• an association acting in the interest of its members.</li> </ul> <p>The complaint shall be made to the Public Advocate...</p> <p>A complaint shall be made as soon as possible, but not later than 20 working days after the date of publication giving rise to the complaint.</p> <p>Where, within 30 working days after the date of publication there has been no complaint, but the Public Advocate is of the view that a prima facie contravention of the Press Code has been committed and it is in the public interest, he may file a complaint with the Ombudsman for adjudication...</p>	<p>The Public Advocate will assist members of the public to formulate their complaints and attempt to resolve complaints amicably by liaising directly with the publication on behalf of the complainant.</p> <p>A complainant may also be represented by the Public Advocate before the Ombudsman or the Appeals Panel. He/she may also file a complaint directly with the Ombudsman if of the view that a <i>prima facie</i> contravention of the Press Code has been committed and it is in the public interest.</p>
<p><i>Conciliation and Adjudication Procedure by the Ombudsman</i></p> <p>The Ombudsman shall forthwith endeavour to achieve a settlement.</p> <p>The Ombudsman shall hold discussions with the parties on an informal basis with the object of achieving a speedy settlement...</p> <p>If the complaint is not settled within 14 days of its notification to the respondent, the Ombudsman may, if it is reasonable not to hear the parties, decide the matter on the papers.</p>	<p><i>Settlement procedure by the Public Advocate</i></p> <p>The Public Advocate shall forthwith endeavour with the complainant to achieve a speedy settlement with the publication.</p> <p>If the complaint is not settled within 15 working days of the publication receiving notice of the complaint, the Public Advocate shall refer the complaint to the Ombudsman for adjudication, unless she or he feels the process needs to be lengthened because of the circumstances.</p>	<p>The Ombudsman will hear a complaint with the assistance of adjudicators drawn from the Panel of Adjudicators, which will consist of representatives of the press and the public.</p> <p>This Panel will consist of eight public representatives and six from the press. The first will be appointed by the Appointments Panel and the latter by the constituent bodies of the Press Council - again, the public representation is stronger than that of the press.</p>
<p><i>Adjudication by the Appeals Committee</i></p> <p>The Chairperson of SAPAP shall appoint one press member and one public member from the persons appointed in terms of clause 10 of the Constitution to hear the appeal with him.</p>	<p><i>Adjudication by the Appeals Committee</i></p> <p>The Chair of Appeals shall appoint one press member and up to three public members from the Panel of Adjudicators appointed in terms of clause 5.6 of the Constitution, to hear the appeal with him or her. The Chair of Appeals will have discretion on the number of public members he or she invites to hear an appeal with him.</p>	<p>Appeals from a decision by the Press Ombudsman will be handled by the Chair of Appeals, who will be a senior legal practitioner, preferably a retired judge. He will be appointed on the recommendation of the Chief Justice and may be the same judge who chairs the Appointments Panel.</p> <p>The Chair of Appeals may also convene an Appeals Panel consisting of one press and, at his or her discretion, up to three public members of the Adjudication Panel - again, providing strong public representation.</p>
	<p><i>Hearings</i></p> <p>Discussions between the Public Advocate and the complainant, on the one hand, and the publication, on the other, are private and confidential and are conducted on a without prejudice basis. No person may refer to anything said at these discussions during any subsequent proceedings, unless the parties agree in writing. No person may be called as a witness during any subsequent proceedings in the Press Council or in any court to give evidence about what transpired during the discussions.</p>	
	<p>The hearings of the Adjudicating Panel and of the Appeals Panel shall be open to the public unless the identity of a rape victim or victim of a sexual offence, a child under eighteen, or a victim of extortion is at issue.</p>	

<p><i>Legal representation</i></p> <p>Legal representation shall be permitted at hearings.</p>	<p><i>Legal representation</i></p> <p>Legal representation shall not be permitted at hearings unless:</p> <ul style="list-style-type: none"> <li>• The Ombudsman or the Chair of Appeals and all the other parties consent;</li> <li>• The Ombudsman or the Chair of Appeals concludes that it is unreasonable to expect a party to deal with the dispute without legal representation...</li> </ul>	<p>Other than before, legal representation at hearings will be allowed only in exceptional cases [in order to prevent a self-defeating "arms race" of junior vs senior counsels etc which is not cost-effective].</p>
	<p><i>Space fines</i></p> <p>"Space fines" shall be applied by way of the amount of space imposed to be correspondent with the seriousness of the infraction.</p>	<p>Space fines will be applied through imposing an amount of space which is commensurate with the seriousness of the infraction. At present a frequent complaint is that apologies in newspapers are hidden while the original copy was used more prominently.</p>
	<p><i>Monetary fines</i></p> <p>Monetary fines will not be imposed as a penalty for the content of the press. However, monetary fines according to a formula determined by the Press Council and included in this sub-clause and/or suspension for a period or expulsion from the jurisdiction of the Ombudsman may be imposed as sanctions for a respondent's failure to appear for adjudication hearings and repeated non-compliance with the rulings of the adjudicatory system.</p>	<p>There will not be monetary fines as a penalty for the content of a report, but there may be in case of failure to appear at an adjudication and repeated non-compliance with a ruling. In addition, suspension or expulsion from the jurisdiction of the Ombudsman could follow.</p>
<p><i>Time frames</i></p> <p>That complaints be considered and adjudicated upon within the shortest possible time after the publication of the matter giving rise to the complain</p>	<p><i>Time frames</i></p> <p>...finding must be handed down within 21 days of the hearing of the complaint.</p>	<p>Complaints must be made to the Public Advocate who will attempt to achieve a speedy settlement. He will attempt to do so within 15 working days of the publication receiving the complaint notice. He may then refer the case to the Ombudsman.</p>
<p><i>Waiver</i></p> <p>I, (name of complainant), the undersigned, hereby agree to submit my complaint and any dispute arising from my complaint for adjudication to the SA Press Ombudsman ("the Ombudsman") subject to the SA Press Code and Complaints and Procedures of the SA Press Council. I accept the decision of the Ombudsman, or in the event of an appeal, the decision of the Press Appeals Panel as final and binding.</p> <p>Furthermore, by submitting my complaint for adjudication to the Ombudsman I waive my right to approach a court of law or any other tribunal to adjudicate upon my complaint or any dispute arising from my complaint submitted to the Ombudsman.</p>	<p><i>Waiver</i></p> <p>Excluded, but Press Council will recommend to the new council to review this decision after a year of working without one.</p>	<p>Previously complainants had to sign a waiver that they would give up this right. There was some unhappiness over this prescription. The new rule will apply for a year and will then be reviewed [to see if there has been any abuse of the new system].</p>
	<p><b>The SA Press Code</b></p>	
	<p>Some sections rewritten and tightened, but no major changes</p>	