

Press freedom, the commission and you



By [Herman Manson](#): @marklives

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How wonderful that, in South Africa's high-volume politics, the chance to step back from the abyss still presents itself.



The [Press Freedom Commission](#) report on [media regulation](#) seems to have created an opportunity for politicians to jump the puddle that would have sucked them and the rest of us down an acrimonious path to the Constitutional Court and a bareknuckle fight on our hard-fought [right to know](#) (the truth - and not just [Jimmy Manyi](#)'s).

The commission, put together by the [South African National Editors' Forum](#) and [Print Media South Africa](#) in a bid to creative alternatives to the ANC's much-reviled proposals for government intervention in the media business (apart from, and on top of, government ownership of three of the four national free-to-air channels, loads of radio stations, a newspaper, various internet platforms and a centralised [R1 billion](#) advertising budget).

"Independent co-regulation"

The commission proposes "independent co-regulation for the print media industry of South Africa" that involves public and press participation in media regulation (skewed towards the public) without state or government participation.

The new system proposes stronger public participation in the [Press Council of South Africa](#) (PCSA) and will draw the majority (seven of the 12, in fact) of its members from outside of media circles. The first chairperson will be elected by the council from the press members and the deputy chair from the public members, the positions alternating at mid-term.

The waiver clause in the complaints procedure will be withdrawn and the process will not be classified as "arbitration", meaning those who follow this process maintain all their legal rights. The public advocate may also initiate complaints in the public interest.

Right of reply

The right of reply will be expanded. The commission recommends that "[t]he exceptions to the right of reply to serious criticism in news be limited to non-availability to respond or unwillingness to respond." Right to reply will also be explicitly included in cases where privacy, dignity and reputation are concerned.

The commissioners would also expand the protection of children going so far as to recommend a clause that "drug and substance abuse by children not be under-reported." This part of the report seems designed, it might be cynically said, to get the broader public behind its findings.

It would also remove the public interest exemption on the publication of explicit sexual material, in the name of the children, of course (as it stands, there is already no public interest defence when it comes to child pornography).

Importance of the Press Code

Numerous ways of bringing the importance of the [Press Code](#) to bear on journalists and news rooms are also explored. So it is proposed that "[j]ournalists be tested regularly on their knowledge of the Press Code."

How this will translate practically is not discussed.

The commission would also encourage the public to "visit newsrooms to acquaint themselves with press publishing processes". (Can you imagine the internal memos going around on this one? "We'll have to beef up on HR and the PR dept. Find budget. The sports desk is overstaffed, in any case.")

Hierarchy of sanctions

A hierarchy of sanctions will be developed by the PCSA, according to a scale of seriousness of infractions. These will take the form of 'space fines' - no, editors will not be made stand in the corner of the newsroom - referring to the amount and placing of space to be dedicated to correcting/retracting/apologising for journalistic wrong-doing.

Monetary fines will not be imposed except in cases of non-compliance to PCSA findings.

Digital publishing, the commission rightly found (although it does not state this explicitly) is ungovernable, and so it moves responsibility for regulation to the Digital Media and Marketing Association ([DMMA](#)), a body for the broader digital media and advertising industry.

Measurement tools

The commission also reiterated the need to develop measurement tools "for the analysis of content diversity and transformation targets." It called on the Big Four print media owners (Media24, Avusa, Caxton and Independent Newspapers) to "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." Another commission, anyone?

In terms of the actual appeals process, the commission proposes the following process:

1. Negotiation stage: The public advocate negotiates on behalf of the complaint in the hope of obtaining a speedy settlement with the publication concerned.
2. Should phase one fail the complaint escalates to the arbitration stage: the ombudsman undertakes "private arbitration" and may decide to make a ruling, or to convene a full hearing.
3. Appeals stage: The appeals committee is the final arbiter of the complaint. If leave to appeal is granted, two members of the panel of adjudicators will sit with the chair as an appeals committee.

The entire process is subject to review in the High Court but the grounds of review 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.

Freedom of the press

In its introduction on its proposal for regulatory governance of the press, the commission states that "[f]reedom 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." It calls for adequate financial, technical and human resourcing of the PCSA.

It warns that "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."

The founding bodies of the PCSA are PMSA (which includes the [Newspaper Association of South Africa](#) (NASA); the [Magazine Publishers Association of South Africa](#) [MPASA] and the [Association of Independent Publishers](#) [AIP]), the [Forum of Community Journalists](#) (FCJ) and SANEF. Only member publications of the associations listed here are subject to the Press Code and to the jurisdiction of the PCSA's complaints mechanism.

Members of the Press Freedom Commission included the former chief justice of SA Pius Langa as chair, Anglican Archbishop of Cape Town Thabo Makgoba, Dr Phil Mtshkulu (academia), Adv Anshul Bodasing (law), Adv Kobus van Rooyen SC (law), Futhi Mtshali (business), Derick Elbrecht (labour), Santie Botha (business and marketing) and Prof Kwame Karikari (international-Ghana).

The report was released yesterday, Wednesday, 25 April 2012, in Johannesburg.

For more:

- Bizcommunity Search: [Press Freedom Commission](#)
- Press Freedom Commission: [Report of Recommendations](#) (scanned submissions, written submissions and report on press regulation in South Africa)
- Journalism.co.za: [PFC suggestions give too much away](#) by Gill Moodie
- Journalism.co.za: [Commission recommends 'independent co-regulation'](#) by Gill Moodie
- Google News Search: [Press Freedom Commission](#)

For More list updated at 6.03pm on 26 April 2012.

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