Submission to the Press Freedom Commission (PFC) on media self-regulation, co-regulation or statutory regulation in South Africa

Prof. Jane Duncan

13 December 2011

Contact person: Prof. Jane Duncan
Highway Africa Chair of Media and Information Society
School of Journalism and Media Studies
Rhodes University
Grahamstown
6140
South Africa
Tel: +27 (0) 46 603 7185
Fax: +27 (0) 46 603 7189
Cell : 082 786 3600
E-mail: jane.duncan@ru.ac.za
Web: www.highwayafrica.com

‘Before we abolish self-regulation, we should first try it’. Alan Rusbridger, editor, *The Guardian* newspaper.

Summary of recommendations

- The Press Freedom Commission (PFC) should commission a public opinion survey on levels of public trust in the print media and the existing system of self-regulation. This survey should test levels of public trust in newspapers relative to the broadcast media and other major public and private institutions. It should also test if the public feels if the industry is over or under regulated, levels of public knowledge of the Press Council of South Africa (PCSA), which media (if any) are meeting the public's information needs, including newspapers, and how the public feels about the ethical practices used to gather information.
- The PFC should conduct a survey of past complainants to the press ombudsman, to establish levels of satisfaction with the process followed.
- The PFC should conduct a survey of newsrooms, testing levels of knowledge of the press code, and the extent to which newsroom practices are conducive to realising ethical obligations.
- The PFC should seek meetings with the Communication Workers' Union, the Media Workers' Association of South Africa and the Professional Journalists' Association to discuss ways of strengthening the voice of working journalists in the PCSA.
- The PFC should research international systems of self-regulation where journalists have made major contributions to designing self-regulatory systems, and where they have significant ownership and control of these systems.
- The PFC should seek input from the International Federation of Journalists on best practice models
- The PFC should develop strategies to ensure that within a set period of time, at least fifty percent of the press seats on the Press Council and the Appeals Panel are held by working journalists.
- One additional press seat, for a working journalist, should be created on the Council and one on the Press Appeals panel, to ensure that the balance of power in the Council is held by the press, thereby making the system largely self-regulatory in character.
- The PFC should explore the feasibility of the PCSA and the Appeals Panel co-opting journalists that are not members of any of the major newspaper groups, and that either work for independent publications, freelance or are retired.
- The name of the Press Council of South Africa should be changed to 'Press Standards Council of South Africa'. The name change will make it clear that the Council is not a press body, but a body that is independent of the press, devoted to the maintenance of journalism standards. The current name gives the impression that the Council is an extension of the press, and does not capture its core mandate adequately.
- The PCSA should accept third party complaints as a matter of course, and not just as an exception to the rule. In order to protect the rights of a person who does not wish to complain, a third-party complaint should, wherever possible, be accompanied by written consents from the parties directly affected.
- The PCSA should have an obligation to investigate cases where there is a probable breach of the code, even where no complaint has been laid, and should develop policies and procedures to enable this function. The PCSA must ensure that its advocacy, investigative and adjudicative roles should be separated, to prevents conflicts of interest. The advocacy role should remain with the Council, while the Press Advocacy Officer should undertake the investigatory and prosecutorial role by initiating investigations and complaints and assisting members of the public

to formulate complaints. This positions should be renamed the Press Investigations Officer to prevent confusion.

- All newspapers above a certain circulation threshold should establish internal mechanisms for handling complaints, and readers should be obliged to take their complaints to these mechanisms first, unless there compelling reasons to approach the Ombudsman's office directly.
- The waiver should be in force only for the duration of the PCSA's consideration of a complaint, after which time the waiver should lapse
- The PCSA should publish publication guidelines for publication of decisions of the Ombudsman and Appeals Panel.
- The PCSA should publish a ladder of intervention outlining the sanctions prescribed for a particular level of offence, and prescribing a graduated scale of penalties.
- The PCSA should have the power to issue fines in the case of extreme and repeated transgressions of the code. Fines will be graded according to the level of seriousness of the offence in terms of the ladder of intervention, and agreed to by all PCSA members on an upfront basis.
- Funds received from fines should be reinvested in the PCSA, and more specifically in its proactive work around maintaining journalism standards, including its media freedom and research activities.
- The PFC should develop proposals on mechanisms for expulsion of repeat offenders, given that publications are not direct members.
- Websites should carry judgments for 24 hours and links to judgments should remain for archived material.
- The code should commit all members to following the guidelines on publication of decisions
- The PFC should investigate the pros and cons of the PCSA converting from a voluntary association to a trust or a section 21 company.
- The PCSA should establish an audit panel, consisting of the chairperson, one press member and one public member. The panel should review the effectiveness of the Council in upholding the code. Its finding should be included in the annual report.
- The PCSA's objectives should be amended to require it to keep the code under constant review, and to draw a direct link between the maintenance of high journalism standards and the public's right to know.
- Members should be required to adhere to press code, and the requirement to do so should be written into the contracts of employment of journalists and editors. Journalists should have access to a conscience clause that will prevent journalists who expose unethical practices from losing their jobs.
- The Press Investigations Office should operate a service where journalists can report unethical practices for further investigation.
- The PCSA should also offer pre-publication advice to publications, and this activity should be reflected in the Constitution as well.
- The PFC's annual report should contain an analysis of the general trends in relation to press standards, how they relate to previous years, year-on-year statistics on the number of complaints lodged, the number mediated and adjudicated on, the nature of the violations and the performance of publications in terms of the publication guidelines for decisions. The report

should break complaints down by publication and by code clause, setting out where it has complied with or transgressed the code. Information about stories that attracted multiple complaints should also be included, as should information about the average length of time taken to conclude complaints. This information should also be presented in table form on a year on year basis, so that comparisons can be made and trends mapped. The PCSA should also publish budget information in its annual report, including its sources of income.

- The PCSA should also encourage all papers that fall within its purview to adopt charters of editorial independence.
- The PCSA should maintain a public register of all publications that adhere to the code.
- The PFC should investigate the feasibility of the PCSA operating from premises that are independent from its funders.
- The PFC should also review the adequacy of the PCSA's funding, and whether funding by one entity, namely the PMSA affects its independence and accountability. This review should also investigate the desirability of alternative funding models, including levying publications on a sliding scale according to their circulation.

Introduction

The following is a submission to the Press Freedom Commission (PFC) on the current state of regulation of the print media, including the desirability of retaining the existing self-regulatory system incorporating the Press Council of South Africa (PCSA), or shifting towards co-regulation or statutory regulation. I also request time at the PFC's public hearings to elaborate on these points in an oral submission.

Statutory regulation, self-regulation and co-regulation: advantages and disadvantages

The establishment of the PFC is a welcome development. It has taken place at a difficult time for press self-regulation, as different political actors, including in South Africa, argue that self-regulation is incapable of preventing journalistic abuses and contemplate the desirability of introducing co-regulation or even pure statutory regulation. This is in spite of the fact that self-regulation is widely considered to be the gold standard for effective but independent regulation of the press. According to a review conducted by the Press Council of New Zealand, most countries that have established press regulators, have opted for self-regulation (Barker and Evans 2007). Yet some countries have recently opted to introduce statutory regulation, and a minority of countries - such as Denmark and India – have had independent statutory regulation for some time (Lloyd 2010).

It is important to note at the outset that it is at times difficult to distinguish between self-regulation, co-regulation and statutory regulation. In reality, regulatory strategies may vary from a least interventionist self-regulatory system to 'enforced self-regulation', command regulation with discretionary sanctions to command regulation with non-discretionary sanctions (Ayres and Braithwaite cited in Bartle and Vass 2005: 25).

Statutory regulators could be considered to be closer to command regulation. Regulators may be directly controlled by the state or even government, or they may be set up by statute, performing public functions and exercising public power independently of the government. For regulators, statutory regulation has distinct advantages over self-regulation: these include legal

enforceability of rules, the power to compel media organizations to respond to a ruling, and the ability to enforce a ruling. Statutory regulation can also be used to ensure universal coverage of the regulatory system by compelling all media organizations opt in to the system (Barker and Evans 2007: 12).

However, statutory regulation is widely distrusted in the print media as it can lead to state control of media content, either through direct intervention in rule making or the enforcement of punitive sanctions for reporting that is critical of the government, or through indirect means through, for instance, control of appointments processes. Compulsory opt-in arrangements for all media organizations can quickly lead to licencing of non-broadcast media organizations, and even all journalists, which in turn can threaten media freedom as journalists and media organizations who criticize the government can having their licences to publish withdrawn. The development of legislation and regulations takes time, which can slow down the work of statutory regulators, making them less responsive to rapid changes in the sector. Government regulation can be costly. Also, individuals who are not necessarily conversant with the sector may be appointed to the regulator, leading to inappropriate decisions being made.

Self-regulation has the advantages of agility, which allows the system to respond rapidly to changes such as technological changes. These regulators also tend to have credibility with the sector they regulate, as the sector has developed the rules itself. As the sector self-funds the regulator, the taxpayer is relieved of the burden of having to fund the regulator. Self-regulatory systems also lends themselves to a less formal, inquisitorial approach, rather than a formal, adversarial approach (Barker and Evans 2007: 12-13), which can also hasten the speed of decision-making, while making the system more accessible to ordinary people who cannot afford legal fees. As the system is run by the sector itself, the regulatory body is more likely to be staffed by individuals who know the sector, and who are therefore able to make informed decisions. The system can design rules that are fit for purpose and do not stray outside the immediate objectives of self-regulation, while the mandates of statutory regulators may grow larger and more unwieldy.

However, self regulation can also be self-serving, claiming to represent the public interest, but in reality serving the very industry is claims to regulates. The system may even act defensively as a self-protective mechanism that works against the public interest, and may be used in an opportunistic way to deflect criticism and stave of legal and governmental threats with minimal financial damage (Marthoz 2010: 13). In self-regulatory systems, members can opt out, leaving their ethical conduct effectively unregulated (Barker and Evans 2007: 12). Renegade publications could take advantage of this lack of regulation. Furthermore, as self-regulators do not use statutory power, their power to sanction relies mainly on moral suasion, which may be a weak form of sanction that media organizations may simply choose to ignore. Also, pure self-regulatory systems can exclude constituencies that may help to give them legitimacy, such as public representatives.

The PFC incorrectly defines co-regulation as a combination of media and government regulation, failing to recognize that co-regulation arrangements between society or the public and the industry are possible too. Industry – public co-regulation has obvious advantages in that it can ensure public buy in to the regulatory process, and greater public involvements makes it more likely that there will be public ownership of the system. However, public members of the system may not be fully conversant with the ways in which the sector works, leading to ineffective decision-making. Also, controversies may arise around who gets to represent the public, which may also damage the system's credibility if selection processes are not sufficiently representative.

Industry – government co-regulation seems to enjoy the best of both worlds, as the regulatory rules are developed jointly by the state and the industry. It could involve co-operation between a public authority and the regulator, the delegation of public authority or public policy tasks to the regulator with the regulator enjoying a statutory backing, or a public body reviewing the activities of the regulator (Bartle and Vass 2005: 33). Co-regulation can combine elements of self-regulation with state power, which may lead to a voluntary system being able to use statutory power to achieve public interest objectives, thereby mitigating one of the main weaknesses of voluntary regulation. The regulator can also be free to develop its own rules, and has a great deal of latitude in making decisions. Co-regulation could also be a practical way of

regulating converging sectors that traditionally have operated according to different regulatory traditions (Palzer and Scheuer 2004: 9-10). Co-regulation may also help the regulator to overcome the perception that self-regulation is self-serving, or that 'self regulation is a tool of the private sector…[much] of self-regulation has nothing to do with public policy' (Bartle and Vass 2005:13)

Two other options - closely related to co-regulation - are available, namely statutory self-regulation and state approved self-regulation. In the former, the state monitors and approves codes of practice, but these do not necessarily have a statutory backdrop, leaving the self-regulatory system to enforce them without statutory backing. In the latter, the rules, institutions and procedures of the regulatory body are spelt out in a statute, but the system is run by the industry itself (Bartle and Vass 2005: 29).

However, in situations where media/ government relations are adversarial, co-regulation may not be possible or even desirable. Non-compliance with the system may also lead to statutorily enforced sanctions, which if inappropriate may undermine freedom of expression. Compulsory opt-in clauses may also undermine freedom of association, which includes the right not to associate with a regulatory agency. Furthermore, the voluntary agency may need to apply to the relevant government structure for recognition or even accreditation, which creates the risk of accreditation being withdrawn if it earns the displeasure of government. These disadvantages have led critics to argue that co-regulation is really a disguised form of statutory regulation. The more autonomous the agency is from state power, and the more control it can exercise over its own decision making, the closer to self-regulation it becomes (Palzer and Scheuer 2004: 6). Furthermore, co-regulation may increase inefficiencies in the system, as the state assumes responsibility for checking on how effective the voluntary regulator is, which can lead to a duplication of oversight functions (Palzer and Scheuer 2004: 7-8).

Deciding from these options is difficult, as there are advantages and disadvantages to all three systems. Furthermore, a system that may work well on one country may not work in another as governance arrangements, institutional cultures, levels of freedom or repression and journalistic practices differ. In this regard, Guy Berger has developed a useful schema for deciding when to

borrow from international best practice. He has argued that a regulatory system needs to pass a three part test for it to be considered relevant to local conditions: (a) how fit is it for purpose in its own context, and does the destination exhibit common purpose; (b) are there general principles that can be extrapolated into a wider logical model which could claim some universal status; (c) how would it square with needs and capacity in the destination site?' (Berger 2011: 13).

Self-regulation in crisis?

More voices are arguing that self-regulation is in crisis, and that alternative models need to be considered. The phone hacking controversy in the United Kingdom (UK), which has led to the establishment of a public enquiry into the culture and practices of the British press, chaired by Lord Justice Leveson, is a grim reminder of how self-regulation can fail utterly to stem intrusive, abusive, newsroom practices. No doubt, supporters of statutory regulation are watching these developments with great interest, including in South Africa.

When the phone hacking scandal broke, Prime Minister David Cameron called for the voluntary press self-regulator, the Press Complaints Commission (PCC), to be scrapped, as it was ineffective and lacked rigour, and argued for 'a new system entirely' (BBC 2011). Once the public enquiry has considered evidence of phone hacking and other intrusive investigative practices by journalists, it will consider options for regulating the press in future (Cameron 2011). In anticipation of this leg of the enquiry, a growing number of voices in the UK are arguing that self-regulation has failed and needs to be replaced either by co-regulation or statutory regulation. The advantage of the PFC holding these hearings now is that it can draw on these debates and use them to strengthen its own work.

Apart from hearing evidence into phone hacking, the Leveson Enquiry will also consider a more effective policy and regulatory regime for newspapers, in view of widespread unhappiness with the PCC and its failure to stem the erosion of journalism standards. The phone hacking scandal, and subsequent closure of the News of the World, has fuelled a debate about the perceived

weaknesses of newspaper self regulation. Some of the options that are being considered are worth mentioning:

- Abolish the PCC and leave newspapers to regulate themselves
- Reform the existing PCC to give it greater investigatory powers and increase its independence from media proprietors and managers;
- Create an independent regulator, similar to the Advertising Standards Association (ASA), where legislation backstops the activities of the voluntary regulator. For non-broadcast advertising, the Office of Fair Trading provides this backstop and Ofcom for broadcast advertising;
- Extend the remit of the statutory communications regulator, Ofcom, to cover all media.
- Create an entirely new statutory regulator for all media;
- Create a professional body for journalists, similar to the one that exists for lawyers, to police journalism standards;
- Dismantle all existing media regulation, whether voluntary or statutory, and reform media law to cater for journalistic excesses (Moore 2011; Tomlinson 2011).

Two points need to be made about the perceived crisis of self-regulation in the light of the phone hacking scandal. Firstly, the PCC cannot strictly be described as a self-regulatory body as it is dominated by proprietors, not journalists. So it can be argued that what has failed is not self-regulation per se, but a particular model of self regulation. This point will be explored in more depth below. The second point is that the crisis has less to do with the perceived failures of self-regulation and more to do with the problem of political patronage. In return for favourable coverage in Murdock's various media outlets, successive labour and conservative governments liberalised ownership rules and skewed the media landscape to favour Murdock. In bending the rules in this manner, the British government created a regulatory environment where Murdock believed he was unassailable (Freedman 2008: 105-121). Far from being a lesson in the failure of self-regulation, the UK phone hacking scandal is a lesson in why the state should be kept out of media regulation. A self-regulatory system is needed that resists political pressure, and statutory and even co-regulation will make such a system more rather than less difficult to achieve.

Journalism standards in South Africa

As Berger has argued, there are limits to the lessons that can be learnt from other jurisdictions. A model of press regulation must be informed by local dynamics, including local journalistic cultures. In this regard, it is widely suspected that the ANC's call for a statutory Media Appeals Tribunal (MAT) is driven by a desire to curb the investigative powers of newspaper journalism, rather than being motivated by concerns about journalistic excesses in the tabloid market. South Africa lacks the intrusive tabloid culture of the UK; as a result, very few complaints to the PCSA have been about violations of the right to privacy.

It is difficult to establish what is an 'acceptable' rate of complaint to press councils, but according to the Press Council of Ireland, its ratio for 2008 was 9.3 complaints per 100 000 citizens, whereas in the UK it was 7.8 per 100 000 (Press Council of Ireland 2009: 9). In South Africa in 2011, where 250 complaints were lodged out of a total population of 50.50 million people, a ratio of 0.5 complaints per 100 000 citizens is negligible by comparison. The number of complaints could be attributed to a lack of knowledge of the Press Council, the still relatively low penetration of newspapers, or the relatively high ethical standards of newspapers.

However, any existing problems with journalism standards must be confronted, and certainly there are indications of systemic pressures on journalism standards. Most of the complaints received by the PCSA's Press Ombudsman have been about accuracy, followed by not seeking the views of the subjects of critical reporting, and lack of context and balance. These findings imply that fact-checking systems in newsrooms need improvement. Journalists also need sufficient time to investigate stories properly.

Most of the major newspaper groups, namely Media 24, Independent Newspapers, Avusa and *Mail and Guardian* have to different extents reinvested in investigative journalism capacity, which has raised the bar on journalism standards considerably. However, the print media industry is clearly struggling financially. The decline in circulation and advertising revenues has placed pressures on newsrooms to reduce costs, and retrenchments have taken place in many newspapers, leading to even greater pressures on remaining staff. Media 24 followed the lead of

Independent Newspapers and centralised control of its newsrooms, retrenching several senior journalists (Duncan 2011; Harber and Renn 2010: xxi; Niewoudt 2009), and leading to more vigorous syndication of copy across titles. Skills development budgets have become soft targets for budget cuts, which could also impact negatively on journalism standards. Many sub-editors have been retrenched (Harber 2009; Taylor 2011). In November, Avusa reported a 90 per cent drop in first-half headline earnings, which attributed to adverse trading conditions especially for its print media division (Business Day 2011).

Editorial lapses in the *Sunday Times* newsroom in 2007/8 illustrated graphically how these cutbacks can impact on journalism standards. A report commissioned into editorial lapses at the newspaper demonstrated how key checks and balances had been allowed to lapse. The paper's organisational structure had become top-heavy, while being thin in relation to news generation (Fray, Harber, Kruger, Milo, 2010: 79). At times, stories were re-written and 'sexed up' into front page 'splashes', leading to sensationalism and the introduction of inaccuracies. Its approach of failing to attribute sources of information sufficiently led to the publication of incorrect information (Fray, Harber, Kruger, Milo, 2010).

Adrian Hadland has argued that the media as a whole is experiencing gradual professional diminishment. Press-self regulation has been weak in the past and at times its judgments were treated with contempt, but there is evidence of it being taken more seriously since its re-launch. However, there is still too little journalistic involvement in ownership or strategic decision making (Hadland 2011: 105). So while there is little evidence of the sorts of ethical lapses that are being uncovered in Britain, it is entirely possible that financial pressures in South African newsrooms may lead to more ethical lapses in future.

The PFC's review of the existing self-regulatory system should take this possibility into account, and ensure that media accountability mechanisms are in place to prevent cost-cutting from leading to more ethical lapses. The role of the PCSA is to ensure that the regulatory system for newspapers is sufficiently robust to ensure the maintenance of journalism standards, while protecting the freedom of expression of its members by not interfering unduly in their internal operations. If the ANC's proposed MAT is legislated into being, and the press decides to refer the

legislation to the Constitutional Court on free expression grounds, then in assessing the constitutionality of the MAT law, the court would probably need to consider the adequacy of existing regulatory frameworks. It is therefore in the interests of the industry and society as a whole that the system is made as effective as possible.

The PFC's terms of reference

The PFC's terms of reference include an action plan involving public hearings, desktop research, visits to various countries and interviews with various stakeholders and the public. One of the problems with the PCSA's public hearings on self-regulation earlier in 2011 was the lack of public participation. The PFC could mitigate the risk of this problem occurring again by proactively seeking public input.

Recommendations

It is proposed that the PFC's action plan also includes the following:

- A public opinion survey on levels of public trust in the print media and the existing system of self-regulation. This survey should test levels of public trust in newspapers relative to the broadcast media and other major public and private institutions. It should also test if the public feels if the industry is over or under regulated, levels of public knowledge of the Press Council of South Africa (PCSA), which media (if any) are meeting the public's information needs, including newspapers, and how the public feels about the ethical practices used to gather information;
- A survey of past complainants to the press ombudsman, to establish levels of satisfaction with the process followed;
- A survey of newsrooms, testing levels of knowledge of the press code, and the extent to which newsroom practices are conducive to realising ethical obligations.

These surveys will provide the PFC with valuable data about public attitudes, user's experiences of the existing system of self-regulation and newsroom practices.

The ‘self’ in self-regulation

What is meant by the ‘self’ in self-regulation? This submission proceeds from the premise that the rationale behind journalistic self-regulation is sound. True journalism has an ethical basis. Ethical principles and practices cannot be legislated or compelled; they must be driven by a deeper moral purposes, and arise primarily out of journalistic self-organisation and self-activity. Codes of ethics should involve an assertion of journalistic principles, as well as the primacy of the judgement of their peers. Good journalists will not abuse these spaces, as their activities have a moral base, and they should not hesitate to speak out if any of their peers erode this base through poor ethical conduct. Peer review is an important principle for journalists as they have (or should have) no vested interests other than the protecting the principles of their craft, while the same cannot be said for media owners, big business, governments, Parliaments and others in positions of power. At some stage or another, all these power-holders will probably come into conflict with the democratic role of journalism, which is why it is important to keep journalistic decision-making as far away from them as possible (Duncan 2010 ..).

However, globalisation and commercialisation of media have shrunk autonomous spaces for ethical journalism, placing the craft under pressure in the name of the bottom line. In many newsrooms, media owners, managers and even editors have placed journalists under pressure to produce journalism for multiple platforms with fewer resources at their disposal, with negative impacts on the quality of journalism (Warren 1998; The Guardian 2011). The ineffectiveness of the British PCC could not be ascribed to the fact that it is a self-regulatory body, but to the fact that it is not. The fact that it is dominated by media owners and editors, rather than working journalists, led to it becoming a ‘poodle of the publishers’, and also made it susceptible to political pressure. As the National Union of Journalists’ Michelle Stanistreet, argued at the Levison Enquiry, ‘For years we have had the media bosses' model of self- regulation. It is one that excludes both the producers and the consumers of the media output and represents only the owners. The general public and journalists themselves have had to contend with what has been little more than a self-serving gentleman's club’ (Guardian 2011).

Attempts by journalists to return the craft back to its ethical foundation – namely to speak truth to power, and on behalf of the powerless – should be defended. This includes ensuring, at the very least, that the self-regulatory mechanisms that are set up are controlled, in the main, by journalists. However, pure self-regulation may be unstrategic in an environment where public trust in the media needs to be built, but in order to operate as a system of peer review, the balance of power should remain in the hands of journalists (Duncan 2010, Bertrand 2008).

The PCSA is not, strictly speaking, a self-regulatory body: it is a co-regulatory body between the press and members of the public. Six members of the Council are selected by the Press, and the remaining six are public members. The journalistic voice in the PCSA is weak: of the six press representatives, three are members of the South African National Editors' Forum, two are editors of small independent publishers, and one is a publisher. On the Press Appeals Panel, one is an editor, two are former editors, two are in academia, and one is a former journalist. This is a structural weakness in the Council's composition. Solving this problem will not be easy, though as journalists' associations/ unions in South Africa are relatively weak; so their weakness on the Council is a reflection of a more general weakness in the media sector.

Recommendations:

- The PFC should seek meetings with the Communication Workers' Union, the Media Workers' Association of South Africa and the Professional Journalists' Association to discuss ways of strengthening the voice of working journalists in the PCSA.
- The PFC should research international systems of self-regulation where journalists have made major contributions to designing self-regulatory systems, and where they have significant ownership and control of these systems.
- The PFC should seek input from the International Federation of Journalists on best practice models
- The PFC should develop strategies to ensure that within a set period of time, at least fifty percent of the press seats on the Press Council and the Appeals Panel are held by working journalists.

- One additional press seat, for a working journalist, should be created on the Council and one on the Press Appeals panel, to ensure that the balance of power in the Council is held by the press, thereby making the system largely self-regulatory in character.
- The PFC should explore the feasibility of the PCSA and the Appeals Panel co-opting journalists that are not members of any of the major newspaper groups, and that either work for independent publications, freelance or are retired.

The 'regulation' in self-regulation

What is meant by the 'regulation' in self-regulation? Regulation generally balances rights with responsibilities in particular sectors; in the case of the media, regulation ideally seeks to balance the right to freedom of expression of media producers with the rights of media users, and acts as a check on unconstrained industry action that may threaten users' rights. There are three components to regulation: rule-making where the basic ground rules of the sector are established; enforcement, where action is initiated against parties who have broken the rules; and adjudication, where decisions are taken about whether rules have been upheld or not (Campbell 1999: 714-715). In order for regulators to command public confidence, they need to demonstrate that they are independent (both from government and from the industry they claim to regulate), effective, accountable and transparent. Self-regulators need to work particularly hard to demonstrate their independence (Media Standards Trust 2010), as they are generally set up by the very industry that they regulate which makes them particularly predisposed to industry capture.

Broadcasting regulators generally tend to have more intrusive powers of investigation than press-self-regulators, to enable the former to establish whether licencees are keeping to their licence conditions; these powers may also include powers to issue fines and to initiate own investigations where it suspects that breaches have taken place. Print regulation evolved according to different regulatory traditions, as the rationale for statutory regulation that existed in broadcasting – namely to regulate a public resource for a diversity of views and in the public interest – did not exist in the print media.

The danger of formalising the system by giving it 'teeth' through strengthening its investigative powers, and giving it the power to issue fines, is that print media groups will refuse to be part of the system, which in turn may invite statutory regulation on the grounds that voluntary regulation is not taken seriously by the very industry it is being regulated. Furthermore, Parliaments may argue that voluntary Councils cannot strengthen their powers of investigation and sanction without a statutory backstop.

But the danger of not strengthening the regulatory aspects of the system is that the industry will not take the Council seriously, and its rulings will be given short shrift or even ignored, which will in turn invite statutory regulation. While there was evidence in the past of sections of the industry not taking the previous Ombudsman's office seriously, compliance with the current ruling seems to have improved significantly. However the fact that the Council lacks key features of a regulator weakens the system and makes it susceptible to attack on the grounds that it is structurally biased towards the industry it regulates because it has been designed to ensure minimal intervention. As the IFJ has argued:

> 'If the industry cannot prevent mistakes and abuses, it must at least submit itself to meaningful and serious review of its behaviour and equip its self-regulator with the mandate and resources to carry out "without fear or favour" investigation that would make outside regulation unnecessary. Meaningful self-regulation is not just "soft law". It is the application by the profession of "hard norms" that make calls for the police or the magistrate unnecessary' (Marthoz 2010: 13).

Press Councils should regulate journalism standards, and not just mediate and adjudicate complaints. This means that in addition to their adjudicative role, they should monitor press standards, proactively investigate possible breaches of the press code, report regularly with compliance on the code and have a range of remedies at its disposal to sanction breaches of the code (Media Standards Trust 2010). In this regard, Claude-Jean Bertrand has argued that Press Councils need to commission research on the influence and functioning of the news media. He has supported the idea of them having the powers to issue fines, but the fines levied should be ploughed back into the Press Council to strengthen its activities, and should fund public

education drives to inform people of the existence of the Press Council, to encourage media literacy work and education campaigns on the media. He has also favoured a Press Council which plays an active advocacy role in the defence of press freedom. While Press Councils are the most well-known method of achieving print media accountability, Bertrand has identified at least 110 media accountability systems, many of which may require media organisations to justify their decisions (Bertrand 2008; Duncan 2011).

The more proactive roles of regulation, such as investigation, initiating complaints and mapping industry trends, often do not sit comfortably with press councils, who consider them inappropriate for a sector that has freedom of expression at its core (PCC 2010). The PCSA describes itself as a self-regulatory mechanism to provide adjudication to settle disputes between the print media and the public (PCSA 2011). So on the one hand, it describes itself as a regulator, but on the other it confines its role to adjudication.

In its review report of August 2011, the PCSA attempted to steer a middle path between an interventionist and a hands-off role. It argued that public expectations of the body should be tempered as it is simply one player among many who have ethical standards as their core concern. However, it also acknowledged that it did have a role to play in raising the standards of journalism, and accepted that it should adopt a more proactive approach to regulation. To this end, the PCSA proposed the establishment of a Director who will concentrate on public engagement around journalism standards and media freedom, and a Public Advocate who will assist aggrieved members of the public to formulate their complaints (PCSA 2011: 6). The PCSA also proposed that it will also issue guidance notes to editors when unhealthy trends are picked up from complaints, and furthermore its reports should map trends in the media environment more broadly, to assist the public to understand whether journalism standards are increasing or declining (PCSA 2011: 9). However, the PCSA rejected a proposal for it to accept third party complaints as a matter of course, preferring to encourage the prospective complainant to contact the person affected by the article and encouraging him or her to lay a complaint.

The changes proposed by the PCSA are welcome, and will go some way to assisting the public to assess arguments about the state of journalism standards. But there are additional measures the PCSA needs to consider to increase its proactivity.

Third party complaints

If the PCSA is going to act in the public interest, rather than the interest of the complainant only, then it should accept third party complaints as a matter of course, and not just as an exception to the rule. This activity is entirely consistent with, and in fact necessitated by, its regulatory role. There may be circumstances where a constituency or group of people may feel aggrieved by a story. In such cases, a community of interest and in fact society as a whole, stands to be affected by unethical reporting. Paid-for stories may never come to light except through third party complaints, especially if exposed during the course of court proceedings.

The Media Council of Tanzania defines a complainant as any individual acting in his or her own interest; anyone acting on behalf of another person who cannot act in his or her own name; anyone acting in the interests of, or in the name of, a group or class of persons; a body of persons whether corporate or unincorporated; or anyone acting in the public interest (Media Council of Tanzania 2011 (a)). The British Parliament's Select Committee on Culture, Media and Sport adopted a narrower approach to third party complaints and recommended that investigations should be initiated on recommendation of three lay people on the committee (Lloyd 2010). In order to protect the rights of a person who does not wish to complain, a third-party complaint should, wherever possible, be accompanied by written consents from the Parties directly affected.[i]

Investigatory and prosecutorial role

The PCSA is also reluctant to extend its proactive role to the investigation of alleged breaches of the code, and initiate its own complaints, as it fears becoming a prosecutor and a judge at the same time. The solution to this problem is not to reject the possibility of laying own complaints, but to separate the investigatory and adjudicative functions. The PCSA should have an obligation

to investigate cases where the code may have been breached, not just the discretion, and should develop policies and procedures and budgets to enable this function. If the Council does not develop this capacity, then its inability to investigate serious ethical breaches may invite investigations by state institutions such as the police and Parliament, which may have negative implications for media freedom.

The Press Council of New Zealand's review conceded that there may be particular instances where the Council should initiate its own investigations, such as when it has researched and publicly espoused a view, or when those directly affected may not be able to lay a complaint, or when there is need for a timely consideration of a seemingly clear breach of the code. The report makes the further point that a Council should not need the power to initiate its own complaints, thereby representing the public in the complaint if it accepts third party complaints (Barker and Evans 2007: 30). This suggests that it is inappropriate for the PCSA not to want to accept third party complaints as a matter of course and not initiate its own complaints, as this schema undermines the Council's role as custodian of the code.

However, if the PCSA is to initiate its own investigations and lay its own complaints, then it must ensure that the advocacy role, the investigatory role and the adjudicative roles are separated. To achieve this separation, the advocacy role should remain the Council's overall responsibility and shall therefore continue to be what Hendrik Bussiek has called the 'political face of the institution', arguing for self-regulation and defending press freedom (Bussiek 2008: 3), while the press advocacy officer should undertake the investigatory and prosecutorial role by initiating investigations and complaints and assisting members of the public to formulate complaints (the position should be renamed the press investigations officer, to avoid confusion). The mediation and adjudicative functions will continue to be performed by the Ombudsman and the Press Appeals Panel.

Adopting a more proactive approach will need additional resources. One way of dealing with this problem is to require all newspapers above a certain circulation threshold to establish internal mechanisms for handling complaints, such as internal ombudsmen, clarification and corrections

columns or reader's editors. The Media Council of Tanzania requires complainants to take their complaints through internal mechanisms first, noting that:

> '…All possibilities of reconciliation will not have failed if complaints will not have been allowed to pass through relevant institutional channels. For example, a complaint has first to go to the editor, then chief editor, managing editor, managing director, publisher of chairman whichever is applicable at a given media institution. Some complainants having failed to agree with authors of the stories (reporters) being disputed, they decide to file complaints, directly to the Council, ignoring higher authorities which are in fact better placed to settle such disputes' (Media Council of Tanzania 2011(b)).

The *Guardian* newspaper established a reader's editor in 1997, who is given space to correct or clarify any editorial problems and to address concerns raised by editors. The independence of the reader's editor from the newspaper editor is guaranteed in writing (Rusbridger 2011).

These internal complaints mechanisms should be the first port of call for complaints with the PCSA considering complaints only once they have not been resolved satisfactorily, although readers should not be prevented from accessing the PCSA directly if there are sound reasons for doing so. The existence of the PCSA should not be used as a method of outsourcing the handling of complaints that should be handled internally, and should not replace internal accountability mechanisms. This approach should reduce the workload of the PCSA, freeing it up to undertake more proactive work.

Another feature of the Press Council that requires reconsideration is the requirement for complainants to waive their right to take the matter to court if they use the Ombudsman's services. There is no unanimity even among Press Councils that wavers are even needed: in 2007, 56 per cent of 87 Press Councils surveyed worldwide did not require a waiver (Barker and Evans 2007). The rationale for this measure is that complainants would have – in the words of Press Council of South African chairperson Raymond Louw – 'two bites at the cherry' (Frayintermedia/ *Mail and Guardian* Journalism Dialogues 2008: p. 6), where the Ombudsman's

office is used as the first stage of a court procedure. In making the argument for the constitutionality of the waiver, the Ombudsman's office relies on a constitutional court judgment by Kate o'Reagan, stating that any two parties can agree on the procedures for an arbitration, and the courts will not interfere as long as both parties agree to the procedure. Also, the courts can enforce any arbitration decision. Furthermore the Ombudsman notes that the Press Council can be taken on review, rather than on appeal.[ii] The PCSA has proposed its review report that the waiver should be replaced by a Complainant's Declaration that stating that they are aware that they have the option to take the system's rulings on review to the High Court, but they felt that the Press Council of New Zealand's decision to prohibit complaints only for the duration of Council proceedings was inappropriate as it still required the respondent to answer twice for the same complaint.

However, Loammi Wolf has argued that while there may be grounds to limit access to courts for the duration of a mediation process, voluntary participation in a self-regulatory system cannot invalidate the right of access to court into perpetuity, and would involve an unreasonable limitation of this right (Wolf 2010). So while there are strong arguments for a waiver during a mediation process, the constitutionality of an indefinite waiver is in doubt and merits examination (Duncan 2011).

Recommendations:

- The name of the Press Council of South Africa should be changed to 'Press Standards Council of South Africa'. The name change will make it clear that the Council is not a press body, but a body that is independent of the press, devoted to the maintenance of journalism standards. The current name gives the impression that the Council is an extension of the press, and does not capture its core mandate adequately.
- The PCSA should accept third party complaints as a matter of course, and not just as an exception to the rule. In order to protect the rights of a person who does not wish to complain, a third-party complaint should, wherever possible, be accompanied by written consents from the parties directly affected.
- The PCSA should have an obligation to investigate cases where there is a probable breach of the code, even where no complaint has been laid, and should develop policies and procedures

to enable this function. The PCSA must ensure that its advocacy, investigative and adjudicative roles should be separated, to prevents conflicts of interest. The advocacy role should remain with the Council, while the Press Advocacy Officer should undertake the investigatory and prosecutorial role by initiating investigations and complaints and assisting members of the public to formulate complaints. This positions should be renamed the Press Investigations Officer to prevent confusion.

- All newspapers above a certain circulation threshold should establish internal mechanisms for handling complaints, and readers should be obliged to take their complaints to these mechanisms first, unless there compelling reasons to approach the Ombudsman's office directly.
- The waiver should be in force only for the duration of the PCSA's consideration of a complaint, after which time the waiver should lapse.

Sanctions

One of the main criticisms of the PCSA is that its sanctions are too weak. According to the ANC, the PCSA is toothless, as it does not levy fines, and merely compels corrections that may not enjoy the same prominence as the original article, leading to the reputational damage remaining even if an apology has been made (Duncan 2011). The PCSA has argued in its review report that the Broadcasting Complaints Commission of South Africa (BCCSA) has not found that fines are a deterrant against breaches of the code, and that the moral suasion that flows from a critical adjudication process is the most effective sanction, as it involves a publication having to admit to its peers that it made an error in judgment, which is very embarrassing. Fines may formalize the process to the point where legal representation is required, which will undermine the accessibility of the complaints process (PCSA 2011: 51-54). The Organisation for Security and Co-operation in Europe has also argued further that the introduction of fines may raise the related question of the need for statutory power, which should be avoided (OSCE 2008: 36-37).

There are distinct advantages to introducing fines. Ethical transgressions will be given a monetary value, which may make publications much more careful about lapses in future as they have the potential to impact on profits. Public perception that the system has 'teeth' will also

probably increase. But unfortunately, globally the terms of the debate have become captured by owners and their interests, leading the IFJ to ask whether it is acceptable for the scope of reform to be limited by the need to ensure co-operation of the industry, with 'parameters of self-regulation being defined by the apparently limited capacity of the industry for self-criticism and self-control' (Marthoz 2010: 18).

If the PCSA introduces fines, it does not follow that the Council will require a statutory backdrop, as parties to a private arbitration proceeding can decide the terms of this proceeding themselves, which may well include fines. The Media Council of Tanzania is an example of a voluntary press council that has the powers to issue fines. Needless to say, the industry will resist the imposition of fines, but it should be remembered that the Council is meant to be independent of the industry. Furthermore, a system that that does not have 'teeth' invites statutory regulation, so the industry should have a vested interest in ensuring that the system works in the public interest, and not simply to its narrow advantage.

The PCSA's concerns that fines may invite legal intervention, and that legal haggling may make the process more expensive and adversarial, merit more serious consideration. This problem could be mitigated by the Press Council adopting a ladder of intervention, setting out the sanctions prescribed for a particular level of offence. Severe and repeated transgressions of the code would attract fines, determined according to a formula based on the severity of the transgression. Given that this formula will be established upfront and agreed on as part of the voluntary process of self-regulation, there should be no need for legal arguments at the time of adjudication.

An additional complaint about the self-regulatory system is that publications often do not publish decisions and apologies with the same level of prominence as the original complaint. One approach is to state in the PCSA's constitution should require an decision and apology to be published that is of the equivalent value of a particular graded offence.[iii] Another approach is the one adopted by the Press Council of Ireland, which has published a guideline for the publication of its decisions, which states that:

> 'Those sections of decisions of the Press Ombudsman upholding a complaint should be published: (a) in full; (b) promptly; (c) on the same page as the original article, or further forward, subject to the exception at (6) below; (d) on the same day of the week as the original publication, (e) with similar prominence; (f) unedited; and (g) without editorial commentary by way of a headline or otherwise. In addition, each should carry, above the headline, a strap-line indicating that it is a decision of the Press Ombudsman' (Press Council of Ireland 2009).

Recommendations:

- The PCSA should publish publication guidelines for publication of decisions of the Ombudsman and Appeals Panel.
- The PCSA should publish a ladder of intervention outlining the sanctions prescribed for a particular level of offence, and prescribing a graduated scale of penalties.
- The PCSA should have the power to issue fines in the case of extreme and repeated transgressions of the code. Fines will be graded according to the level of seriousness of the offence in terms of the ladder of intervention, and agreed to by all PCSA members on an upfront basis.
- Funds received from fines should be reinvested in the PCSA, and more specifically in its proactive work around maintaining journalism standards, including its media freedom and research activities.
- The PFC should develop proposals on mechanisms for expulsion of repeat offenders, given that publications are not direct members.
- Websites should carry judgments for 24 hours and links to judgments should remain for archived material.

The PCSA's constitution

One of the main criticisms of the PCSA is that it is not sufficiently independent of the industry. The PCSA is a voluntary association whose activities are governed by a constitution. The PCSA is structured in such a way as to make it not sufficiently independent of its founding members. For instance the PCSA's members select their representatives, and can presumably recall them as

well, although the Appeals Panel is selected through a different process. The PCSA has one source of funding, namely Print Media South Africa (PMSA). It is unclear whether the PMSA will approve an expanded budget for increased activities and staff for the PCSA. The current legal structure is based on the assumption that the PCSA will continue to have one funder, namely the PMSA. If the PCSA is to perform additional functions over and above the mediating and adjudicative functions, then it may need to fundraise for these functions, which implies an incorporated legal structure.

The PFC should consider the pros and cons of the PCSA adopting a different legal structure that would allow it greater autonomy from the PMSA and its founding organisations. This may involve the PCSA being incorporated as a section 21 company or as a public trust, which will commit the body to substantial public disclosure and grant it internal independence. In the interim, the PCSA's constitution also needs to say that the PCSA acts independently of its founding members. Furthermore, the dissolution clause should be amended to specify the circumstances in which the founders can dissolve the structure, as its members have too much discretion in making this decision, which further reinforces the perception of lack of independence.

According to the PCSA's constitution, all the founding organisations shall take such reasonable measures as they may determine to promote the aims and objectives of the PCSA. This clause is weak. Members should be required to adhere to press code, and the requirement to do so should be written into the contracts of employment of journalists and editors. Journalists should have access to a conscience clause that will prevent journalists who expose unethical practices from losing their jobs. The Press Investigations Office should operate a service where journalists can report unethical practices for further investigation. The PCSA should also offer pre-publication advice to publications, and this activity should be reflected in the Constitution as well.

The PCSA's constitution does not reflect its proactive role as a regulator of journalism standards sufficiently. S. 1(2) of the constitution requires the PCSA '...to promote and to develop excellence in journalistic practice and ethics and to promote the adoption of and adherence to those standards of practice and ethics by publications that are associated with it'. This does not

require the PCSA to keep the state of journalism standards under constant review, nor to identify the underlying factors that may impact on standards; furthermore, the relationship between journalism standards and the public's right to know is not made clear.

In contrast, one of the objectives of the constitution of the Press Council of Australia is 'to keep under constant review, and where appropriate, challenging political, commercial, legislative or other developments which may adversely affect the dissemination of information of public interest, and that may consequently threaten the public's right to know. One of the Media Council of Tanzania's objectives is to 'oversee that journalists, editors, broadcasters, producers, directors, proprietors and all those involved in the media industry in Tanzania adhere to the highest professional and journalistic standards' (Media Council of Tanzania 1995: 5). It is also commits the Council to defending the interests of readers, viewers and listeners.

Recommendations:

- The code should commit all members to following the guidelines on publication of decisions
- The PFC should investigate the pros and cons of the PCSA converting from a voluntary association to a trust or a section 21 company.
- The PCSA should establish an audit panel, consisting of the chairperson, one press member and one public member. The panel should review the effectiveness of the Council in upholding the code. Its finding should be included in the annual report.
- The PCSA's objectives should be amended to require it to keep the code under constant review, and to draw a direct link between the maintenance of high journalism standards and the public's right to know.
- Members should be required to adhere to press code, and the requirement to do so should be written into the contracts of employment of journalists and editors. Journalists should have access to a conscience clause that will prevent journalists who expose unethical practices from losing their jobs.
- The Press Investigations Office should operate a service where journalists can report unethical practices for further investigation.

- The PCSA should also offer pre-publication advice to publications, and this activity should be reflected in the Constitution as well.

Independence and transparency

In its review report, the PCSA has made several positive suggestions to improve transparency of its operations. Some additional measures could also be considered. For instance, in its annual report, information should be made available in the PCSA's report to enable year-on-year comparisons of the number of complaints, the fate of the complaints, and trends in journalism standards. The report should also include information on the time frames taken to reach decisions. The PCSA should also encourage all papers that fall within its purview to adopt charters of editorial independence, which commits the Board of Directors and their management to editorial independence, and signal the agreement of the Board, the management, editors and staff to uphold the PCSA's code. The charter should also vest editorial decision making in the editor within agreed budgets, and shall commit the editor to carry out his or her functions in a way that will ensure the independence and integrity of the publication. Lastly the charter should commit journalists to reporting regardless of any commercial, personal or political interests, including those of shareholders, directors, managers, editors or staff members.[iv]

The PFC should also review the adequacy of the PCSA's funding, and whether funding by one entity, namely the PMSA affects its independence and accountability. This review should also investigate the desirability of alternative funding models, including levying publications on a sliding scale according to their circulation. Furthermore, the PFC should investigate the feasibility and the cost implications of the PCSA operating from premises that are independent from its funders, as the close physical proximity to the PMSA can add to the perception that it is merely an extension of the PMSA. The PCSA should also publish budget information in its annual report, including its sources of income. Furthermore, the PCSA should publish a register of all publications that adhere to its code by virtue of their membership of respective organisations. As it is not possible to know which publications are members of the PCSA's founding members, the public has not easy way of knowing if a publication is covered by the code.

Recommendations:

- The PFC's annual report should contain an analysis of the general trends in relation to press standards, how they relate to previous years, year-on-year statistics on the number of complaints lodged, the number mediated and adjudicated on, the nature of the violations and the performance of publications in terms of the publication guidelines for decisions. The report should break complaints down by publication and by code clause, setting out where it has complied with or transgressed the code. Information about stories that attracted multiple complaints should also be included, as should information about the average length of time taken to conclude complaints. This information should also be presented in table form on a year on year basis, so that comparisons can be made and trends mapped. The PCSA should also publish budget information in its annual report, including its sources of income.
- The PCSA should also encourage all papers that fall within its purview to adopt charters of editorial independence.
- The PCSA should maintain a public register of all publications that adhere to the code.
- The PFC should investigate the feasibility of the PCSA operating from premises that are independent from its funders.
- The PFC should also review the adequacy of the PCSA's funding, and whether funding by one entity, namely the PMSA affects its independence and accountability. This review should also investigate the desirability of alternative funding models, including levying publications on a sliding scale according to their circulation.

Conclusion

Since its re-launch, there is little doubt that the PCSA has established itself an independent, effective mediator and adjudicator of complaints. It has criticised harshly publications that have transgressed the code, and has not demonstrated any discernable bias towards the industry it regulates, especially in relation to complaints from ruling party members and government officials. This can be attributed in large measure to the strong leadership shown by the PCSA and particularly the Ombudsman's office. Furthermore, there are no indications of a crisis in journalism standards of the order that prompted the establishment of the Leveson Commission.

However, the fact that the PCSA's founding members have chosen a ‘soft law’ model of self-regulation that is designed to cause minimal offence to the industry is a structural flaw in the system's design that is now being exploited by the detractors of self-regulation. Aspects of the 'best practice' the PCSA has drawn on have been implicitly designed to benefit proprietors, rather than journalists or the public at large. Unless the system is reformed to develop 'teeth', then the establishment of a statutory Media Appeals Tribunal is almost inevitable as the industry will have great difficulty in defending its version of self-regulation if the matter is taken to the Constitutional Court. But reforms should not be undertaken simply to stave off political pressure; they should be designed to make journalism standards better, so that journalism can better serve the public's right to know.

Returning to Guy Berger's schema for deciding when to borrow from international best practice, South Africa needs a press self-regulatory system that is fit for the purpose of defending the public's right to know in a climate of growing political tensions over service delivery, corruption and mismanagement, high unemployment and growing inequality. For a variety of reasons, newspapers have taken a lead in exposing elite misconduct through investigative journalism, ensuring a level of public accountability but in turn raising the ire of the ruling party and the government, who are intent on exploiting any weaknesses in the self-regulatory system to shut these papers up. An additional feature of this climate is that the newspaper industry is in long term decline, and cost cutting is rife. The role of the editor is mutating from focussing merely on editorial considerations to focussing on aspects of the media business that impact on editorial work as well. Journalistic working conditions are being adversely affected, and there are signs of these pressures impacting negatively on journalism standards. Yet journalists lack organisations to defend their working conditions, and promote optimum conditions for the practice of their craft. A fit-for-purpose system would need to take all these factors into account. Such a system needs to avoid state control of the system and, in fact, any state involvement whatsoever given the poisoned nature of press-state relations at the moment. Hence, models such as the ones found in Denmark and India are not fit-for-purpose; neither are co-regulatory models. But at the same time, a system that remains under the thumb of proprietors and even editors is not fit-for-purpose either. These factors imply that a system is needed that maximises public and journalistic

involvement, involving inventive strategies to ensure that journalistic peer review is placed at the centre of the system, so that the system squares with the needs and capacities of the destination site: hence references in this submission to international best practice that will take the system closer to this ideal. The IFJ has perhaps articulated the concept of self-regulation in its purest form by stating in its Declaration of Principles on the Conduct of Journalists that '...within the general laws of each country the journalist shall recognise in professional matters the jurisdiction of colleagues only, to the exclusion of every kind of interference by governments or others' (IFJ 1954). With the caveat that pure self-regulation is unwise, as the system needs public buy-in and therefore public involvement, the general principle that can be extracted into a wider logical model which could claim universal status is that of the continuing relevance of self-regulation. In fact, not only is the principle still relevant: it is the currently only way out for the independent press in South Africa.

One more concluding point needs to be made. In the medium term, the whole system of media regulation will need to be reviewed in the light of convergence. The convergence of content implies the need for a convergence in the regulation of content, as it may not be sustainable for material published n various platforms to be subjected to different regulatory standards. The PCSA cannot afford to be caught flat-footed on this matter, as government again may use the emerging convergence regime to shift all regulation of content towards statutory content. Unless the bona fides of self-regulation are won now, the whole media system in a converged environment may find itself being subjected to statutory regulation on the grounds that manifestly inconsistent regulatory standards are unjustifiable.

References

Age Independence Committee (undated) *Charter of Editorial Independence.* Accessed from http://www.abc.net.au/mediawatch/transcripts/ep23age.pdf on 12/12/2011.

Barker, I. and L. Evans. (2007). *Review of the New Zealand Press Council*. Newspaper Publisher's Association and the Amalgamated Printing Engineering and Manufacturing Union. http://www.presscouncil.org.nz/articles/press_council_review.pdf (accessed 29 September 2010).

Bartle, I. and Vass, P (2005) *Self regulation and the regulatory state – a survey of policy and practice. University of Bath School of Management.* Accessed from http://www.bath.ac.uk/management/cri/pubpdf/Research_Reports/17_Bartle_Vass.pdf on 11/12/2011.

Bertrand, C.J. 'M*A*S in the present world: an overview of Media Accountability Systems', in von Krogh, T. 2008. *Media accountability today…and tomorrow: updating the concept in theory and practice.* Goteborg: Nordicom. 29-40.

British Broadcasting Corporation (BBC) (2011) 'Cameron and Miliband demand new watchdog'. British Broadcasting Corporation. Accessed from http://www.bbc.co.uk/news/uk-politics-14073718 on 30/11/2011

Bussiek, H. (2008) *Self-regulation of the Media in the SADC.* Experiences of Media Councils in Southern Africa. Windhoek: Friedrich Ebert Stiftung.

Business Day staff reporter. 'Avusa first half earnings plummet'. *Business Day.* 24/11/2011. Accessed from http://www.businessday.co.za/articles/Content.aspx?id=159583 on 8/12/2011.

Cameron, D (2011) 'Prime Minister's statement on phone hacking'. Office of the British Prime Minister. Accessed from http://www.number10.gov.uk/news/pm-statement-on-phone-hacking/ on 30/11/2011.

Campbell, A. 'Self-regulation and the media', *Federal Communications Law Journal.* Vol. 51. Number 3. 712-749.

Duncan, J (2011) 'The ANC's poverty of strategy on media accountability'. Ecquid Novi, Volume 32(2), 90-105.

Fray P, A Harber, F Kruger and D Milo (2008) Sunday Times Review Panel (report). December.

Freedman, D (2008) *The politics of media policy*. Cambridge: Polity Press.

Hadland, A. Africanising three models of media and politics: the South African experience, in Mancini, P. and Hallin, D (2012) *Comparing media systems beyond the Western world.* Cambridge: Cambrige University Press. 96-118.

Harber, A. 2010. ‘Staring into the newspaper abyss’. The Harbinger (blog post). Accessed from http://www.theharbinger.co.za/wordpress/2009/04/29/staring-into-the-newspaper-abyss/

Harber A and Renn M (2010) *Troublemakers: the best of South Africa's investigative journalism.* Johannesburg: Jacana Media.

International Federation of Journalists (1954) IFJ Declaration of Principles on the Conduct of Journalists. Accessed from ....on 12/12/2011.

Lloyd, L (2010) *Watchdogs and newshounds: holding the media to account – mechanisms, principles and practices from around the world*. Freedom of Expression Institute and Friedrich Ebert Stiftung. Accessed from http://library.fes.de/pdf-files/bueros/africa-media/07856.pdf on 1/12/2011.

Marthoz, J-P. (2010) *Calling to account: how the telephone hacking row makes the case for reform of the Press Complaints Commission.* Report produced for the International Federation of Journalists.

Media Council of Tanzania (1995) ‘Constitution’. Accessed from http://mct.or.tz/mediacouncil/images/stories/Publications/Books/MCT%20Constitution.pdf on 10/12/2011.

Media Council of Tanzania (2011, a). ‘Complaint handling procedure’. Accessed from http://mct.or.tz/mediacouncil/images/stories/Secratariat%20Processing%20Rules.pdf on 10/12/2011.

Media Council of Tanzania (2011, b). ‘Complaints procedures’. Accessed from http://mct.or.tz/mediacouncil/index.php?option=com_content&view=article&id=398&Itemid=481 on 10/12/2011.

Media Standards Trust (2010) ‘Can independent self-regulation keep standards high and preserve press freedom?’. Submission to the PCC's review of governance. Accessed from http://mediastandardstrust.org/projects/press-self-regulation/recommendations-for-reform/ on 3/12/2011.

Moore, M (2011) ‘Reform of press-self regulation: a spectrum of possible models’. Media Standards Trust (blog). Accessed from http://mediastandardstrust.org/blog/reform-of-press-self-regulation-a-spectrum-of-possible-models/ on 30/11/2011.

Niewoudt S (2009) ‘Crisis control’, *The Media Magazine*. 1 February.

Organisation for Security and Co-operation in Europe (OSCE). (2008). *The media self-regulation guidebook*. http://www.osce.org/publications/rfm/2008/04/30697_1117_en.pdf, (accessed 28 September 2010).

Palzer, C. and Scheuer, A (2004) *Self-regulation, co-regulation, public regulation.* Unesco Clearinghouse Yearbook. Accessed from http://www.emr-sb.de/news/Palzer_Scheuer_Unseco-Clearinghouse_Yearbook2004.pdf on 11/12/2011.

Press Complaints Commission (2010) *The governance of the Press Complaints Commission: an independent review*. Press Complaints Commission report.

Press Council of Ireland (2009a) *Press Council of Ireland and office of the Ombudsman Annual Report.* Accessed from http://www.presscouncil.ie/_fileupload/PCI-PO%20Annual%20Report%202009%20FINAL.pdf on 12/12/2011

Press Council of Ireland (2009b) Publication guidelines for newspapers and magazines. Accessed from http://www.presscouncil.ie/cases-and-appeals/publication-guidelines-for-newspapers-and-periodicals.1162.html on 10/12/2011.

Press Council of South Africa. Accessed from http://www.presscouncil.org.za/ on 8/12/2012.

Rusbridger, A. (2011) 'Hacking away at the truth: Alan Rusbridger's Orwell lecture', 10 November 2011, accessed from http://www.guardian.co.uk/media/2011/nov/10/phone-hacking-truth-alan-rusbridger-orwell on 1/12/2011.

Taylor A (2011) 'The (dying) craft of the chief sub', *The Media online*. Accessed from http://themediaonline.co.za/2011/08/the-dying-craft-of-the-chief-sub/ on 30/11/2011.

The Guardian (2011) 'NUJ chief Michelle Stanistreet's opening statement to the Leveson Enquiry', 16 November 2011, http://www.guardian.co.uk/media/2011/nov/16/michelle-stanistreet-leveson-inquiry?INTCMP=SRCH

Tomlinson, H (2011) 'Media regulation: a radical new proposal – part one: reform options'. Informm's blog. Accessed from http://inforrm.wordpress.com/2011/09/29/media-regulation-a-radical-new-proposal-part-1-reform-options-hugh-tomlinson-qc/ on 30/1/2011.

Warren, C. (1998). Editorial democracy: a fight for our space, in Duncan, J. and Seleoane, M. *Media and democracy in South Africa*. Pretoria: Human Sciences Research Council and the Freedom of Expression Institute.

Wolf, L. (2010, 29 Sept.). 'Media Tribunal: why access to the court is important' (blog), *Mail and Guardian's Thoughtleader* blog. http://www.thoughtleader.co.za/loammiwolf/2010/09/29/on-press-freedom-and-bypassing-courts/ (accessed 4 October 2010).

Notes

[i] This process is followed by the Press Council of British Columbia.

[ii] Discussion with the Press Ombudsman, Joe Thloloe, 21/09/2010.

[iii] These recommendations were developed by the Media Standards Trust for a submission to a governance review of the Press Complaints Commission (Media Standards Trust 2010)

[iv] These clauses are taken from the Charter of Editorial Independence, concluded between the Fairfax Group and the Age Independence Committee (Age Independence Committee (undated)).