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UNIVERSITY OF THE WITWATERSRAND

MA Journalism and Media Studies Research Report

The South African Press Code and Investigative Journalism: An In-depth Study of the *Sunday Times*

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A research report submitted to the Faculty of Humanities, University of the Witwatersrand, Johannesburg, in partial fulfilment of the requirements for the degree of Master of Arts in Journalism and Media Studies

Johannesburg, February 2012

This research report is dedicated to God, the repository of knowledge.

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Declaration

I declare that this research report is my own unaided work. It is submitted for the degree of Masters of Arts by Coursework and Research Report in the Department of Journalism, at the University of the Witwatersrand, Johannesburg.

It has not been submitted before for any other degree or examination at any other university.

Ojetimi S. Akinwale

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Abstract

Application of the Press Code in relation to investigative journalism has become a topical issue in recent years following public criticism of breaches of the code by South African newspapers. Using the *Sunday Times* as a case study, this research examines the application of the Press Code to two *Sunday Times* stories that were publicly challenged – the Land Bank reports and the Transnet story – with a view to determine what went wrong and why. As the Press Code is a major instrument of self-regulation, the research uses the social responsibility theory of the press to provide a theoretical background that effective application of the code largely determines the credibility of this regulatory mechanism. In depth interviews and document analysis are the qualitative methods used in conducting the research. The study then draws on themes emerging from these two sources to address the research questions. Is the Press Code a set of rules which South African investigative journalists are actually familiar with? Does it inform the decisions they take? Is the Press Code seen as a help or hindrance? Can it be a force for good as a guideline for best practice? At what stage may investigative journalists have breached the Press Code and why? The findings demonstrate that investigative journalists at South African newspapers are aware of the Press Code and have "a fair idea" of what it is all about but lack the basic knowledge of its content to guide them in making informed decisions in their day-to-day practice. The findings also demonstrate that breaches of the Press Code in the Land Bank and Transnet stories were largely due to failure to properly apply the Code. Among causes of the breaches are the failure of the gatekeeping function, failure to get the views of subjects of reportage and the pressure of deadlines. The study also shows that effective application of the code could help keep journalists within reasonable limits and standards. Sufficient knowledge and conscientious application of the Press Code could also prevent breaches. If well managed by journalists and the industry, correct application of the Press Code could be of great help and a force for good as a guide for best practice of the profession. It could also protect the self-regulation system from its critics and the print media generally from criticisms of shabby journalism.

1. Introduction

South Africa has a rich history of investigative journalism which had maximum impact and contributed to lasting political and social change in the society (Harber, 2009:14). From the days of the *Drum* magazine which pioneered some ground breaking exposés in the 1950s, through the *Rand Daily Mail*, the *New Age*, the *Sunday Express* and the *Sunday Times*, to the so-called alternative press as well as the *Weekly Mail* (now *Mail & Guardian*), the English-language newspapers confronted the worst ravages of the apartheid system. These daring investigations during a long period of repression coincided with an attitude of defiance and rebellion and a willingness to challenge political authority.

Among the recurring themes in South Africa's investigative journalism history were prison conditions, issues of corruption/official malfeasance and illegal security force actions as well as social investigations such as farm labour conditions. Of all these vintage investigations, it is pertinent to briefly examine two of those exposés that stand out – Mr *Drum* and Broedergate - to illustrate their importance in the history of investigative journalism in South Africa. The publication of "Mr *Drum* Goes to Jail" by *Drum* magazine in 1954, exposing the abuse of prisoners, forced the then National Party government to embark on massive prison reforms resulting in tremendous improvement in prison conditions across the country while the Broederbond exposé by the *Sunday Times* in 1963 revealed a consistent picture of a secret organisation that had an iron grip on the cabinet, parliament, the powerful Dutch Reformed Church, the military and the Afrikaans business (Sparks, 2003:78).

Drum 1954: Mr *Drum* Goes to Jail

The March 1954 edition of *Drum* magazine represented one of the most daring exposés of the brutality of being in an apartheid jail. The six-page first-hand vivid account, accompanied by exclusive pictures of abuse of prisoners' rights and gross violation of prison regulations was *Drum*'s cover story titled "Mr *Drum* Goes to Jail." (Sampson, 2004:23) With the coming into power of the National Party came the imposition of full apartheid policies which criminalised a

large section of the African population. By 1951, nearly a quarter of a million people in South Africa were sent to jail annually out of a total population of about 12 million. There were persistent claims that prisoners were "treated like beasts", kicked, slapped and subjected to various forms of inhuman conditions behind bars. These abuses were widely publicised in the press and were supported by statements from ex-prisoners, and also by a warder (Sampson, 2004:32-40). And because these allegations were denied by the authorities, the *Drum* decided to conduct its own investigation by sending its most fearless journalist, Henry Nxumalo, to jail. "We believe that only by sending a member of our own staff to jail could we be certain of an accurate report," said *Drum* editors in an introductory remark on the cover story (Sampson, 2004:20).

So, *Drum* carefully contrived to have Nxumalo arrested at midnight for not having a night pass and was charged and imprisoned for violating curfew regulations. Mr *Drum* served his five-day jail term at the Johannesburg Central Prison, Old Fort near the present Constitutional Court.

Mr *Drum'*s investigation of the inhuman prison conditions by first-hand experience gave a vivid account of what it was like being in an apartheid jail. His description of his experience in prison confirmed and brought into open what was already public knowledge. The main investigation lasted for the five days Mr *Drum* spent in jail. However, a lot of pre and post investigation activities took place in the course of the publication. The investigation took place in January and the report was only published in March.

The five days Mr *Drum* spent in Johannesburg Central Prison revealed a catalogue of abuses suffered by prisoners and established the followings:

1. That prisoners were in fact "treated like beasts", degraded, humiliated and left jail in a worse moral state contrary to the prison's objective of reforming offenders. Right from arrival, prisoners were subjected to all kinds of verbal attacks and use of swear words by both officials and long-term prisoners. Mr *Drum* described the prison reception office as having "a terrifyingly brutal atmosphere" and "full of foul language."

2. That prisoners were regularly slapped and beaten by officials and long-term prisoners in contravention of the law. Mr *Drum* said he was kicked or thrashed everyday and saw many other prisoners being thrashed daily. "They kicked and thrashed prisoners for the

slightest mistake, and sometimes for no mistake at all and promised them additional sentences if they complained," said Mr *Drum* in his account. "The African warder kicked me in the stomach with the toe of his boot. I tried to hold the boot to protect myself, and I fell on my face", said Mr *Drum* in another incident.

3. That searching of prisoners was conducted without due regard to decency and self-respect as described by Mr *Drum* and the accompanying photographs. "We were ordered to undress and 'tausa' - a common routine of undressing prisoners when they return from work searching their clothes, mouths, armpits and rectum for hidden articles," said Mr *Drum*.

4. That prison regulations were not conspicuously displayed in every convict prison in contravention of Act 13 of the 1911 prison regulations. "There are no directions or rules read or posted in prison. At least I didn't see any," said Mr *Drum*.

5. That murderers and other hardened long-term prisoners mix freely with short-term prisoners contrary to regulation 410.

6. That long-term prisoners were given temporary authority over prison entrants. These hardened prisoners abused the temporary authority and dealt very harshly with entrants, threatening, hitting and slapping them for slightest misdemeanour. "Long-term prisoners thrashed more prisoners more severely and much often than the prison officials themselves," said Mr *Drum*.

7. That prisoners lived in most unhygienic conditions as evidence in the poor sanitary situation described by Mr *Drum*. They shared uniforms; sometimes slept on bare floor and with blankets full of bugs.

8. That in spite of the dehumanising 'tausa' search, prisoners still managed to smuggle dagga into cells.

A very important element that gave credence to the *Drum* story was the accompanying 'tausa' dance photograph of the inside of the Johannesburg Central Prison which showed prisoners dancing naked in front of the warder and row of prisoners during daily searching of prisoners returning from work. When Mr *Drum* came out of jail and gave editors a vivid account of his

experience, the *Drum* editors commissioned photographers Bob Gosani and Arthur Maimane to obtain photographs of the inside of the Johannesburg jail to complement Nxumalo's first-hand account of detestable prison conditions (Sampson, 2004:56). After a thorough briefing of the timing and venue of the daily 'tausa' dance by Mr *Drum*, the photographers climbed to the roof top of a tall building adjourning the prison and posed as if they were taking a fashion shoot to obtain the 'tausa' dance.

The aftermath of the publication was that *Drum* not only exposed the detestable prison conditions at the time, but also offered suggestions on how to redress the situation. It then called for the setting up of a commission of inquiry to investigate the many complaints made by the prisoner. Following the publication, the government embarked on massive prison reforms resulting in tremendous improvement in prison conditions across the country. Mr *Drum* also followed up stories by interviewing some prisoners coming out who confirmed massive improvements in prison conditions. And quoting the *Drum* editor Anthony Sampson again: "The results of our jail article confirmed what we suspected – that the government was still sensitive to informed criticism" (Sampson, 2004:65).

The *Drum* investigation generated wide public interest and other newspapers such as the *Rand Daily Mail* published the story with the 'tausa' dance photograph.

In order to expose institutional abuse by authorities, officials and fellow prisoners, the *Drum* employed journalism of immersion, using undercover and impersonation in exposing wrongdoing from the inside. While ethical questions were raised about the method employed by the *Drum*, it has been argued that the method used by the *Drum* in getting the story can be used successfully where ordinary entry was impossible and where there was overwhelming public interest justification. And in the *Drum* investigation, there was no other way to get the story and the story was in the public interest. From the 1950s, the techniques, ethics and outcomes of investigative journalism have become part of the debate on South African journalism.

Bob Greene, former investigative editor of *New York Newsday* and one of the country's most influential journalism educators, insists that investigative reporting has to involve "uncovering something somebody wants to keep secret" – i.e the Watergate Scandal (Green, 1977:17). Others (Ettema & Theodore, 2007:72-73) say secrecy is irrelevant, that investigative journalism can

expose social conditions or patterns of institutional conduct that are there for anyone to see but have been ignored.

If the press is to have an effective impact as a check on the activities of the government and other private institutions, there is an inevitable need for effective and intensive investigative journalism. Accordingly, a free press using strong and vigorous investigative journalism techniques is an indispensable asset to democracy, as it has a duty to inquire, coupled with a duty to do it responsibly and in that way preserving the standards of public life. Blumler and Gurevitch (1995: 28) argue that journalists should warily scrutinise the conduct and rhetoric of the politicians and a strong, intensive, effective, and independent press effectively does this. The government and politicians in particular need to be watched 'lest they abuse their powers, exceed their mandates, commit blunders they would prefer to conceal, and elevate themselves to positions of non-accountable authority' (Blumler & Gurevitch, 1995:28).

Sunday Times 1963: Broedergate

The series of stories published by the *Sunday Times* from March 3, 1963 and for about six months after, revealed the inner workings and scope of influence of the Broederbond, the secret Afrikaans organisation at the heart of the then ruling apartheid government (Sparks, 2003:118). The first report with the headline – "Broeders sack three Nats in Middleburg" - which was buried on page 4 of the March 3, 1963 edition seemed ordinary and harmless but its impact was to later convulse the corridors of power for many months. Week after week in the following months, the *Sunday Times* published further bits of stories, including copies of internal, secret documents and lists of names of Broeder members and applicants for membership. The publications revealed a consistent picture of a secret organisation that had an iron grip on the cabinet, parliament, the powerful Dutch Reformed Church, the military and the Afrikaans business.

Following the embarrassing exposé, the apartheid government raided the *Sunday Times* offices while journalists believed to be involved in the stories were harassed and threatened, thus confirming, ironically, that the stories were true. The fact that the *Sunday Times* had an inside source in the Broederbond was never in doubt, going by the quantum of disclosures. The Broederbond eventually traced the leaks to Bayers Naude, a theologian member who was having

a crisis of conscience. Naude showed the documents to Prof. Atnold Geyer, a dissident who had been tried for heresy for his questioning of apartheid principles, who had felt conscience-bound to copy them and give them to a young reporter named Charles Bloomberg.

This fine tradition of journalism excellence continued well into the new South Africa with the *Sunday Times* and the *Mail & Guardian* leading the pack (Harber, 2010:18). Notwithstanding this great tradition of investigative journalism, things do go wrong as evidenced in quite a number of stories that have been publicly challenged including the two *Sunday Times* investigation which are the focus of this study. In all the stories that were publicly challenged, what went wrong may vary from story to story but what is constant is the application of the South African Press Code which could prevent these disasters if journalists used it effectively. In view of this development, there is therefore the need to examine the effective application of the Press Code in investigative journalism in South African newspapers.

Since the country was liberated from apartheid in 1994, the South African media has been roundly criticised from all angles. Critics from the left and the right, and journalists themselves, have lamented a lack of accuracy, balance, diversity, independence and ethics in the news media, and more generally a failure to deliver on the promise of media freedom enshrined in the Constitution. A constant charge against the media was that journalists were using their rights to trample on the rights of others, notably the right to privacy (Harber, 2010:42).

The perceived post-freedom decline in the quality of investigative journalism is not peculiar to South African press alone. Writing of Slovenia, Sonja Merljak Zdovc and Melita Poler Kovacic (2007:14-16) observe that after independence in 1991, it seemed ‘democracy had brought fresh air into the Slovenian media”. Before long, however, investigative reporting of high quality gave way to a sensationalistic reporting that was sometimes little more than an unverified leak. Merljak Zdovc and Poler Kovacic (Glasser & Ettema, 2007:14-16) attribute this declining quality to a number of factors including the search by the newly privatised Slovenian media for news that will sell and a sense that freedom of expression is an ‘absolute right promising unlimited freedom without responsibility’ (Glasser & Ettema, 2007:16)

China, as Jingron Tong (2009:87) reports, also witnessed the growth of investigative reporting in the 1990s but then a decline. The cause was, in a sense, the opposite of that of Slovenia – not

liberalised but tightened government control. The 'signs of free media seem to have disappeared,' writes Tong, as bans on coverage of such events as 'riots', calamities', and 'serious epidemics' require journalists to develop guerrilla tactics for moving around or through ideological minefields. If any lessons can be drawn from these two examples, it is that journalism, especially investigative reporting, as with other institutions essential to democracy – for example the rule of law – must never be considered secure. Therefore, the development and maintenance of these institutions is by no means a historical inevitability. That is why theories and critiques of journalism around the world are so important –although not as important as practice (Glasser & Ettema, 2007:32).

In his judgment in the case of *Government of the Republic of South Africa v Sunday Times newspaper and another,* Judge Meyer Joffe succinctly enumerated the watchdog role of the press. "The role of the press in a democratic society cannot be understated. The press is in the frontline of the battle to maintain democracy. It is the function of the press to ferret out corruption, dishonesty and graft wherever it may occur and to expose the perpetrators. The press must reveal dishonest, mal and inept administration. It must also contribute to the exchange of ideas already alluded to. It must advance communication between the governed and those who govern. The press must act as the watchdog of the governed," Judge Joffe said.

According to Ronning and Kasoma (2003:63), the journalist who remembers the principles behind freedom of expression and that the freedom exists in the context of other rights, such as human dignity, privacy, freedom of religion and belief and equality, will enjoy and succeed in the relationship with the law.

Ethical codes can be viewed as a mechanism for self-regulation that protects the media from intervention from outside forces, and protects the public from irresponsible journalism. Ethical codes form one of the many foundations for free and accountable media, with self-regulation, an increasingly important form of control (Ronning & Kasoma, 2002: 63).

Therefore, a major challenge of journalism ethics is striking a balance between the universally accepted elements of the quest for truth, an aspiration for responsibility and a dedication to the principle of free expression (Ronning & Kasoma, 2002:7).

South Africa's Press Code of Professional Practice – which is followed closely by the new provisions of the Independent Communications Authority of South Africa (ICASA) – came into force in 1997, when the first Press Ombudsman, Edwin Linington, was appointed. The new code replaced the Press Code of Conduct that dated back to 1962 but had seen several revisions over the years. The new code saw substantial changes to the preamble and the section on discrimination and dropped some things seen as leftovers from the apartheid era, according to former Press ombudsman, Edwin Linington (Berger, 2009a:22).

During the apartheid era, there were at least 120 pieces of legislation that one way or another restricted what could be published on pain of prosecution (Sparks, 2003:97). But as award-winning investigative journalist Mzilikazi wa Afrika noted, investigative journalism is like working for the bomb squad – we all know that it is a dangerous job but someone has to do it because it is for a good cause (Sparks, 2003:72).

1.1 Aim

The research report examines the role of the South African Press Code as an institutional instrument of self-regulation. The research looks at the application of the Press Code as a set of rules which can be used to guide the practice of investigative journalism by South African newspapers. Is the Press Code a set of rules which South African investigative journalists are actually familiar with? Does it inform the decisions they take? Is the Press Code seen as a help or hindrance in the practice of investigative journalism? Can it be a force for good as a guideline for best practice? How does the Press Code guide South African journalists in taking decisions about the public interest versus the right of individuals to fairness and accuracy?

The corollary to this is to determine at what stage investigative journalists may have breached the Press Code in carrying out their duty of independent scrutiny of the forces that shape society, and why. The study looks at the provisions of the Press Code, adopted by the Press Council of South Africa as a self-regulatory code, and the way its application reflects the watchdog role of the press in a democracy.

The report specifically examines two *Sunday Times* investigations between 2007 and 2008 – the Land Bank and the Transnet stories – both of which were publicly challenged. The aim is to look at what went wrong and examine how and why this happened. A study of the application of the South African Press Code in relation to investigative journalism becomes necessary in view of public criticism of breaches of the code in the course of investigations by newspapers in recent years.

1.2 Background / Rationale for the Study

South Africa has a reputation for ground-breaking investigative journalism dating back to its apartheid years (Harber, 2009:14). But going by some investigative reports which were publicly-challenged and for which the newspapers concerned were sanctioned for breaching the Press Code by the Press Ombudsman in recent years, there exists evidence that investigative journalism at some South African newspapers may have taken short cuts to expose the behaviour of individuals in power, and in some cases a system's failure to serve the public good. In the process, the human rights and privacy of particular individuals may have been compromised.

In fact, there have been in some of these cases condemnation of the way some newspapers and their staff may have conducted themselves in obtaining evidence to substantiate their editorial positions at different stages in the investigation of particular stories.

The criticisms came, not only from the aggrieved individuals and public officials who protested that their rights may have been compromised, but also from individuals and public bodies interested in the public good. Some of these criticisms seem justified while others may be lacking in merit.

In some of these cases, the Press Ombudsman and the South African National Editors' Forum (SANEF) were involved in adjudicating public concerns about forms of reportage.

The Press Ombudsman is appointed by the Press Council of South Africa to independently deal with and attempt to settle or otherwise adjudicate complaints against publications using the South African Press Code as a guide. Accordingly, the South African Press Code, which was

adopted by the Press Council of South Africa, guides the South African Press Ombudsman and the South African Press Appeals Panel to reach decisions on complaints from the public. The Press Council of South Africa was constituted as a self-regulatory mechanism to provide impartial, expeditious and cost-effective arbitration to settle complaints based on and arising from the South African Press Code. The Press Code was adopted to guide journalists in their daily practice of gathering and distributing news and opinion. Launched in 2007 and reviewed in 2011, more than 640 publications, mainly members of Print Media South Africa, subscribe to the code. The South African National Editors' Forum (SANEF) is a voluntary forum of senior journalists, editors and journalism educators from all areas of the media industry in South Africa.

Over the past five years, South Africa's oldest and leading weekly, the *Sunday Times,* has suffered a number of high profile story retractions as some of the paper's exposés became controversial and were publicly challenged. The reasons for the public outcry over the exposés were as varied as the stories themselves.

Among the controversial stories which drew the public ire and were publicly criticised for the way they were handled were The Land Bank reports in which the paper, quoting a forensic report it had not seen, reported that top Land Bank officials siphoned off more than R2 billion meant for farmers to fund their close friends and business associates' luxury golf estates, sugar mill, equestrian and residential developments. The Press Ombudsman found the *Sunday Times* in breach of the Press Code and was sanctioned. In another story published on August 24, 2008, under the headline: "Transnet sold our seas to foreigners", the paper also reported that Transnet secretly sold prime Cape Town coastal land and a vast sea area when it offloaded the V&A Waterfront for R7-billion to investors from London and Dubai and that the parastatal was frantically lobbying MPs in a bid to block legislation that would make coastal land public property (*Sunday Times* Review Panel, 2008:25). The story was retracted two weeks later. It was the same for former President Thabo Mbeki's R30-million bribe scandal which the paper failed to substantiate. The publication of the medical records of the late Health Minister Manto Tshabalala Msimang was another controversial story that set the *Sunday Times* on a collision course with both the public and the law.

In its August 3, 2008 edition, the *Sunday Times* alleged that a German firm, MAN Ferrostaal, paid former President Thabo Mbeki R30 million in bribes to guarantee it won the submarine

contract in South Africa's multibillion-rand arms deal. Quoting a secret report compiled in 2007 by an unnamed UK specialist risk consultancy, the newspaper alleged that Mbeki gave former Deputy and now President Jacob Zuma R2 million and the rest to the ruling African National Congress (ANC). Beyond the blanket allegation of corruption in the controversial arms deal which was already in the public domain, the *Sunday Times* did not provide any further proof of bribery against Mbeki as it turned out that the source of the information was dead and there was nothing else to back it up. The newspaper was roundly criticized for this sensational story of dubious provenance, mostly by government officials.

Writing on the *Sunday Times* report alleging that Mbeki took the bribe, Themba Mathaba (Sunday Times, 2008:23), lamented the falling standard of journalism in South Africa, especially at senior editorial levels. "For your investigative team to come up with such a poor story after six months of exhaustive research, and your editorial team to not only endorse the story but be proud of it, is an indication of the shameful levels we have descended to in most areas of our society, including yours — the media in general and newspaper journalism in particular. There was nothing new in your 'startling revelation'", the Cape Town-based public commentator said in a Letter to the Editor published in the *Sunday Times* of August 10, 2008.

However, these stories were followed by a number of reports that caused the *Sunday Times* to make embarrassing retractions. In the wake of these stories, a number of adverse public comments were made about the *Sunday Times*, denigrating its credibility. These stories came in the wake of others which had also been controversial, and raised questions about the newspaper's professionalism and accuracy.

For the purpose of this study two of the stories retracted by the *Sunday Times* will be examined. The Land Bank reports were referred to the South African Press Ombudsman for adjudication, while the Transnet story was completely retracted two weeks after it was published. This indignity compelled the *Sunday Times* to embark on a critical re-examination of its editorial policies and processes by commissioning a team of communications and legal experts to review its activities. The *Sunday Times* Review Panel was asked to review the systems and processes at the weekly newspaper in order to gain an understanding of how recent stories which fell short of the expected standards of journalistic excellence were printed, and make recommendations for future action to enable the *Sunday Times* to produce bold, incisive journalism that maintains the

utmost credibility with its audience (*Sunday Times* Review Panel, 2008). The panel, among others, reviewed all codes and quality control systems currently in place, reviewed current processes and implementation of codes and policies, examined international best practice and its processes and policies relating to legal checks.

The four-member *Sunday Times* Review Panel which looked into the editorial operations of the publication and made recommendations. Members of the review panel were Paula Fray, Regional Director of Inter Press Service (IPS) and former editor of the *Saturday Star*; Anton Harber, Caxton Professor of Journalism, Wits University, and former editor of the *Mail & Guardian*; Franz Kruger, Senior Lecturer in Journalism, Wits University, former national editor of SABC radio news, author of *Black, White and Grey: Ethics in South African Journalism; and* Dario Milo, media lawyer at leading firm Webber Wentzel and author of *Defamation and Freedom of Speech.*

Case Study 1: The Land Bank reports

These reports arose out of a Cabinet announcement in November 2007 that, following a Forensic Audit Report into the Land Bank, a series of measures would be taken against bank officials, including referring the matter to the police and prosecuting authority for further investigation (*Sunday Times* Review Panel, 2008:40). This statement was released on Friday 9 November 2007, and the story was assigned to investigative reporter Wisani wa ka Ngobeni. Ngobeni did not have, and could not get, a copy of the audit report, and had just over 24 hours to secure his story.

The first story was published on November 11, 2007 on its front page under the headline "How fat cats looted Land Bank billions" with the subhead "Cabinet calls for criminal charges after R2-bn is siphoned off to fund associates' business schemes" (*Sunday Times*, November 11, 2007:1). The story said top Land Bank officials siphoned off more than R2-billion meant for farmers to fund their close friends and business associates' luxury golf estates, a sugar mill, equestrian estates and residential developments. In a follow-up story the following week, "Heads roll for loans to fat-cat buddies" (*Sunday Times*, November 18, 2007:1), most of the allegations were repeated. It quoted the Department of Agriculture and Land Affairs, putting the

extent of the fraud at R900 million (as opposed to the R2 billion figure used the previous week of), but added that "Land Bank officials" had told the *Sunday Times* that this was only the amount disclosed in the financial statements, and did not reflect the total (*Sunday Times* Review Panel, 2008).

Two months later, the paper returned to the story with a Page 15 lead, "Land Bank boss 'must be charged" (*Sunday Times*, January 20, 2008). This time, reporter Ngobeni quoted directly from the report. He repeated many of the allegations in the original story and added substantial detail, but corrected some of the figures: the amount involved was now given as R1,1-billion. Mukoki declined to comment and the story recorded that Mukoki and Mkhabela had laid complaints with the Press Ombudsman about the earlier stories.

Former CEO of Land Bank, Alan Mukoki, took the *Sunday Times* to the Press Ombudsman, complaining that "there was no factual evidence of any R2 billion that has been siphoned off". According to Mukoki, the bank's statutory auditors, the Auditor-General, had not made such discovery or finding of billions given to friends and business associates; and that the report on which *Sunday Times* relied for its story was not audited and "subject to limitations".

Mukoki identified several inaccuracies and distortions in the *Sunday Times* story which infringed on his reputation and capable of misleading the public. According to Mukoki, the *Sunday Times* had failed to report that the Forensic Audit was issued with qualifications. He also claimed his views were incompletely reported or he was misquoted. The *Sunday Times* conceded that there were errors in the report, which were the result of the fact that Ngobeni did not have a copy of the Forensic Audit and was relying on sources telling him what was in it. The newspaper also accepted that it had misquoted Mukoki in parts. However, the newspaper dismissed the factual errors as immaterial and stood by the overall import of the reports. The newspaper claimed that the qualifications in the audit report were standard auditors' disclaimers and could not be reported in full.

The Press Ombudsman on March 13, 2008, ruled that the publication of the story was in breach of the Press Code. The main findings of the press ombudsman's panel were that the *Sunday Times* was in breach of sections 1.3 and 1.5 of the South African Press Code. Section 1.3 provides that "only what may reasonably be true, having regard to the sources of the news, may

be presented as fact, and such facts shall be published fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinions, allegations, rumour or supposition, it shall be presented in such a manner to indicate this clearly." Press Ombudsman Joe Thloloe said: "We ruled that the *Sunday Times* went too far in reporting disputed allegations contained in a forensic report into the Land Bank as fact."

Section 1.5, in turn, said: "A publication should usually seek the views of the subject of serious critical reportage in advance of publication ..." In this regard, Thloloe said: "The newspaper knew that the authors of the forensic report had not interviewed former Land Bank board member, Mr Sam Mkhabela, and that made it important for it to interview him before publishing the allegations. The *Sunday Times'* excuse, that it tried unsuccessfully to obtain contact details for him, is not convincing. It could have continued searching after it had gone to print on November 11 and published his side soon thereafter." The panel ruled further that "from these two major breaches others flowed relating to fact and clarity". It ordered the newspaper to publish this summation of its ruling "with due prominence" on its front page.

"The *Sunday Times* has told us that when they wrote the November story, they had not seen a copy of the report but they had pieced the story together after interviews with a number of sources, including two employees of the Land Bank, employees in the Department of Agriculture, and members of Directorate of Public Prosecutions and the Complainant. In other words, it was enterprising journalism for the newspaper to dig and try and answer the question: What are the contents of the report that pushed the government to these lengths?" the Ombudsman said in his ruling.

The Cabinet had approved the forensic report and referred it to the Scorpions, the South African Police Service and the National Prosecuting Authority for action on November 7, 2007 before it withdrew the report from the investigative agencies, and referred it back to Agriculture and Land Affairs Minister Lulu Xingwana for 'internal investigation'.

In his ruling, the Press Ombudsman said: "In a story where a journalist has to rely on what s/he is told by other people, s/he has to check and crosscheck to ensure that s/he has as accurate a story as possible. There is always the danger of inaccuracies creeping in. "Was the *Sunday Times* right

to publish a story on a forensic audit report they had not seen? Good practice in journalism is to treat allegations as just that until they are proved to be true in a court of law."

Berger (2004:32) posits that fairness demands that real efforts are made to get the other side's comment, and the more serious the claims are, the more trouble must be taken. "It is not good enough to make half-hearted phone calls and then take refuge behind the formulae "X" was unavailable for comment. It is also important to allow a reasonable amount of time for the person to formulate a response. It is unfair for reporters to phone somebody half an hour before deadline and expect a response to six months of investigation" (Berger, 2004:62).

He, however, went further to caution that a story cannot be held hostage by somebody's inability or unwillingness to respond in reasonable time. According to him, the response should also be given due weight and prominence in the story. Berger (2004:63) said: "It is unfair to tack a single line of response into the end of an intricate story. The subject of an accusation deserves to be allowed to respond to the various aspects of the story, and for his or her voice to be heard reasonably prominently." He, of course, reasoned that there are occasions when in spite of best efforts, the comments remain elusive. Then in this case, Berger said, the person should be given an opportunity to respond as soon as possible after the initial story appears. This did not happen in the Land Bank story. Rather, the *Sunday Times* went ahead with follow up stories without correcting most of the inaccuracies contained in its earlier reports.

According to Berger, journalists need to rise to the challenge of fairness as difficult as it is. "We may have difficulties with the notion of objectivity, but no journalist can do without a commitment to fairness," he submitted.

Case Study 2: The Transnet Story

The Transnet story was published in the *Sunday Times* of August 24, 2008, also on the front page, under the headline "Transnet sold our sea to foreigners" with a subhead - "New law could result in R20-bn claim from buyers" (*Sunday Times* Review Panel, 2008:42). The paper reported that Transnet secretly sold prime Cape Town coastal land and a vast sea area when it offloaded the V&A Waterfront for R7-billion to investors from London and Dubai and that the parastatal was frantically lobbying MPs in a bid to block legislation that would make coastal land public property. The much-vaunted sale of Cape Town's major tourist attraction in 2006 included the transfer to the new owners of 22km of coastline and 90km squared of sea, stretching from Table Bay to Robben Island. The story was accompanied by a diagram containing an insert of the Waterfront, with the caption "What they said they sold", within a larger diagram, with the caption "What they sold". The larger diagram indicated that the area sold by Transnet was the entire Table Bay area, extending from Blouberg Strand and Green Point to Robben Island, and including the coast line between Bloubergstrand to the Waterfront. The article also alleged that if the Integrated Coastal Management Bill was passed, Transnet would face a potential claim of R20-billion from the purchaser for breach of contract.

The Transnet story was investigated and written by Mpumelelo Mkhabela, *Sunday Times* correspondent at Parliament in Cape Town and edited by political editor Wally Mbhele. The story contained a number of inaccuracies which discredited a good piece of investigative journalism undertaken in the public interest. First, the extent of the area to be reclaimed by Transnet (22km of coastline and 90km squared of sea) and the accompanying diagram was clearly incorrect while the headline and the sub head claiming that the new Bill before Parliament could result in a R20-billion claim from the buyers are not accurate. Former *Sunday Times* editor-in-chief Mondli Makhanya confirmed that the story was not sufficiently interrogated to authenticate the diagram setting out the size of the sea that was claimed to be sold. Also, in the process of re-writing and editing the story, a number of elements not intended by the writer were introduced to make it conform to *Sunday Times* style which gave the story a sensational angle.

"The story was significantly re-structured – including the claims that the deal was "secret", that the lobbying was "unprecedented" and "frantic", and that it amounted to Transnet seeking to "torpedo" the Bill. We have been provided with what appears to be eight versions of the story,

apparently by different editors and sub-editors. There are no claims in the original draft that the sale was "secret", or that the lobbying by Transnet of the National Council of Provinces was "unprecedented" or "frantic", or that it amounted to Transnet seeking to "torpedo" the Bill" (*Sunday Times* Review Panel report: 2008).

Following the publication, Transnet's lawyers sent a letter of demand to the *Sunday Times* that the evidence did not justify the allegation that Transnet sold the area depicted in the diagram and demanded a retraction of all allegations and an unconditional apology. A day after the story was published, Transnet also issued a "statement on misleading *Sunday Times* article," declaring that the story was "false, misleading and irresponsible". In the statement, the state-owned transport utility explained that the sea area outside the Port of Cape Town as shown on the diagram is not owned by Transnet and could therefore never have been sold by Transnet and was in fact not sold. "To state that it was sold, is a malicious misrepresentation. What was indeed sold were those properties already owned by the V&A Waterfront company and registered in that company's name. No other property, land or area was sold," said the statement signed by Transnet spokesman John Dludlu. Transnet also said that the *Sunday Times* did not seek its comment before publishing the story. "We were not afforded an opportunity by the *Sunday Times* to comment on the article before its release. Had we been granted this opportunity it would have allowed us to present the facts and limit the embarrassment and damage that the article has caused to Transnet. This is particularly disconcerting in light of the fact that several weeks ago – when the matter was first reported in the media – Transnet issued a media statement clarifying the very same issues that are the subject of the *Sunday Times* article", Transnet said in the statement. The statement went further to highlight some of the "factual inaccuracies" in the story already mentioned earlier.

Just two weeks after the story was published, *Sunday Times* (September 7, 2008) issued a retraction headed "Transnet and the "*Sunday Times*" which read: "On August 24, 2008, in a story published under the headline "Transnet sold our sea to foreigners", we reported that the parastatal had sold 22km of coastline and 90km² of sea to a consortium. Our headline, the accompanying diagram and our statement about the extent of the area of sea that was sold went too far. We retract them. In reporting and editing the Transnet story, some of our established practices were not followed. We would like to reassure our readers that we are committed to

improving our systems to validate the information we publish." The story was vastly exaggerated and included a front-page map which was shocking, particularly for Capetonians fond of their coastline (Harber, 2010:24).

The *Sunday Times* Editor-in-Chief Mondli Makhanya wrote in a column on September 7, 2008 that the paper had been "under fire from various quarters in recent weeks" because of these stories and needed to "maintain the intimate trust relationship we have with our readers". To do this, the paper would embark on "a process of reviewing the way we do our journalism, and strengthening our verification and authentication mechanisms". He promised an "honest, critical look at ourselves" and said a panel of experts would be commissioned to help with this process. (*Sunday Times* Review Panel Report: 2008).

The *Sunday Times* prides itself as the flagship of quality journalism in South Africa. Its readership cut across the various segments of the society, comprising of both the affluent and ordinary folks, hence its slogan – the paper for the people. The *Sunday Times'* pre-eminence within the country's conglomerate Avusa, influence the shaping of discourse among decision makers in business and politics in South Africa and Southern Africa. The *Sunday Times'* occupies an important place in South African journalism and politics. As the largest Sunday newspaper, it has an unmatched reach and influence. When The *Sunday Times* hurts, South African journalism hurts, and so may the country's democracy. The paper has built credibility and standing and a reputation for high-quality and incisive journalism over many years. The *Sunday Times* staff is justifiably proud of the many excellent stories they have produced, which far outnumber those which have raised problems. According to Avusa Media website, The *Sunday Times'* print run is about 560,000 and reaches several thousands of people abroad via its Internet website.

The Press Code has been a topical issue within the South African media. However, very few studies exist on how it works in practice. This study takes a critical look at the application of the Press Code as a self-regulatory instrument in investigative journalism in South Africa. It will also identify possible problems in the application of the Press Code at South African newspapers. This will become an even more important issue as the ruling African National Congress (ANC) is opposing media self-regulation, insisting that it would press ahead with its proposal to ask Parliament to investigate, through a public inquiry, the effectiveness of existing self-regulation

mechanisms. The key question the ANC is asking is: Is self-regulation enough? The ANC had, at its 2007 conference in Polokwane, proposed a new government-sponsored tribunal to regulate the media – the Media Appeals Tribunal (MAT). The ANC was of the view that the creation of a MAT would strengthen, complement and support the current self-regulatory institutions (Press Ombudsman/Press Council) in the public interest (ANC, 2007:8).

The organisational approach to media production emphasises the role of internal and external structures in determining journalistic output. It examines the organisational constraints imposed on journalists. The degree of urgency which journalists have to meet deadlines is also shaped by internal constraints such as professionalism, news values and socialisation (Jones, 2008:62). By applying this approach to investigative journalism in South Africa, it will be useful to explore how organisational constraints play a part in determining the quality of investigative reporting. It may also offer insights into reasons for the perceived lapses in investigative exposés in South Africa.

The social responsibility theory of the press makes the media answerable to the society through democratic procedure thus reconciling independence with obligation. In short, it views media ownership and control as a kind of public stewardship, not a private franchise. Although press self-regulation in South Africa as a concept predates the 1994 freedom and new-found democracy, research in this area of study has been limited to the structure, composition and operation of the Press Council itself. Since South Africa's first voluntary Press Code was drawn in 1962 after newspaper owners agreed to set up a press council for fear of statutory regulation, the institutional instrument which can be used to guide the practice of journalism by newspapers has witnessed many changes to accommodate changing democratic landscape as well as public pressure. The latest of these changes came into effect on October 15, 2011 following a review of the code.

Beyond these changes, little research has been done to examine the application of this vital set of rules to the day-to-day journalistic practice and what it means to investigative journalism in South African newspapers. This study seeks to examine at what stage professionals may breach the Press Code which guide the national practice of journalism as adopted by The Press Council of South Africa and the South African National Editors' Forum (SANEF) and why.

It is also important to examine the handling of rules and regulations in the undertaking of news investigations as well as compare this with international best practice. It is hoped that the outcome of this study will help gauge the relevance of Press Code and its practical application to journalism practice and in particular investigative journalism in South Africa.

As a consequence of these concerns, this study examines the role of the Press Code as an institutional instrument which can be used to guide the practice of investigative journalism at South African newspapers.

1.3 Research Question/Problem Statement

There have been complaints by affected members of the public and concerned individuals and public bodies on how the South African press had handled its investigations especially as it relates to accuracy, balance, fairness and individual privacy. The press has been accused of being unethical in the manner it conducted its investigations allegedly in breach of the Press Code and without due regard and sensitivity to the rights of the individuals concerned in the stories.

Journalism is a profession which is commonly believed to be serving the public interest and sometimes questions of privacy and public interest may collide, giving good reason for editors to make decisions which are seemingly controversial. This leads to the questions: What are the factors responsible for the cases of breach of the Press Code at South African newspapers? Do journalists know about the Press Code? Can it be a force for good as a guideline for best practice?

Using the *Sunday Times* as a case study, this research examines at what points and why did some South African newspapers deviate from provisions of the Press Code in their investigations and what are the consequences for the media.

1.4 Research Limitations

Although this research looks at the broad area of press self-regulation, it specifically examines the application of the South African Press Code from 2007 when a new Press Code was launched up to 2011 when the code was reviewed. Another limitation to this research is that it deals mainly with the application of the South African Press Code to investigative journalism with specific reference to the *Sunday Times* and not the entire print media. This research was limited to the views of three selected editorial staff of the *Sunday Times* - the then editor, political editor and one of the journalists who investigated and wrote one of the two stories under examination, as well as a journalism ethics scholar and the Press Ombudsman who adjudicates over complaints using the Press Code as a guide.

2. Theoretical Framework and Literature Review

This review is anchored on the social responsibility theory of the press which has for decades spurred debates on media accountability. The debate on media accountability revolves around forms of regulation of the media, pitching some authorities against media practitioners on the ideal mechanism for regulating the media in a democracy. While the industry generally favours self-regulation, others have continued to advocate statutory or independent regulation. In any case, the major instrument of self-regulation is the Press Code of Practice and its effective application largely determines the credibility and acceptability of the mechanism. Therefore this review first takes an overview of the watchdog role of the press in a democracy and discusses the basic questions of ethics in the media. It goes further to the social responsibility theory which tempers freedom of the press with responsibility and made a strong case for self-regulation. In 2012 South Africa, debates on the media regulation mechanism cannot be complete without an examination of persistent calls for "independent regulation" by the ruling African National Congress (ANC) which is proposing a Parliamentary hearing on the adequacy or otherwise of the existing self-regulatory system in the country. It is worth noting that the ANC remained adamant on its proposal in spite of the recent review of the entire self-regulatory system of the media, including the Press Code.

2.1 The Press as Watchdog in a Democratic Society

In most democratic societies, the press operates as the fourth arm of the government. In this unique position, its main function is to keep watch over the activities of other areas of government, namely executive, legislature and the judiciary (Henry, 1980:97). This function has earned the press the appellation "watchdog" of the people's rights. However, the role of the press as watchdog of people's rights largely depends on the political arrangement operating in any country.

In all political systems, the ruling elites are agreed on the basic function of the press to educate, inform and enlighten the citizens (Henry, 1980:23). But occasions have often arisen, even in the so-called liberal democracies, when the rulers have started to ask "by what law has it been elected and to whom is it responsible" (Eliksadr, 1980:1). In some open societies, the freedom of the press is expressly written into the countries' constitution. For example in the United States of America, the theory of libertarianism is written into the US Bill of Rights (Coronel, 2002:49). This guarantees the press partnership with the government in the search for the truth. In this kind of atmosphere, the freedom of the press is regarded as the freedom of the people themselves to have a say in how they are being governed. In fact, the press is known to hold the freedom in trust for the people.

The main mechanism of the state control of the media on a day-to-day basis is the law. Although the press is not singled out in law for attention, certain specific laws have specific effects on media coverage of events. John Hartley (1985:55) writes that "neither the state, nor the law, nor the news, can work if they appear openly to serve a particular class or group. Their credibility in each case is dependent on their being identified, not with class but with the 'general' or public interest" (Hartley, 1985:55). If this statement is anything to go by, both the media and the government's claims to be working for the interest of the nation needs to be critically examined. Opinions differ as to which among the two, that is, the media and the government, has more at stake in safeguarding the public interest.

As it is always said, good faith with the public is the foundation of all worthy journalism. William A. Henry (1984:32) writes that "ultimately, all journalism is patriotism; if reporters can be said to share a religion, it is devotion to make democracy work." And, according to American jurist, William Douglas (1976:155), "acceptance by government of a dissident press is a measure of the maturity of a nation."

In its unending search for truth, the press should not lean towards any section of the society. Every section must be given equal opportunity of expressing its views. Again, Siebert, Peterson and Schramin (1982:206) summed this up when they write that, "although the path to truth might lie through a morass of argument and dispute, that which lay at the end of the path was delight, provable and acceptable to rational men."

2.2 A Question of Ethics in the Media

The media have a strong and multifaceted influence upon how we understand and shape the society in which we live. The media provides us with news and views, transmitted by means of reporting and investigative journalism, information and entertainment. The media contributes to our understanding of the world, but they often distort rather than provide the truth. The media engage with and affect our beliefs, values and commitment (Ronning & Kasoma, 2002:18). Given the media's increasing presence and influence throughout the world, many ethical and social questions are raised that need to be addressed, both by the media practitioners and by the public. This has resulted in an increasingly important public debate about media and ethics. In most cases the background to these debates has public outrage against media content and actions. Accusations of bias, cynicism, manipulations into privacies and worries about the damaging or distorting effect of television have been among the issues raised. Invariably, they have led to discussions about possible forms of media regulation or censorship as well as the appropriateness of libel laws (Ronning & Kasoma, 2002: 23-24).

A dilemma raised by institutionalising ethic rules for the media is that of regulation. The adoption of professional ethics and the setting up of regulatory bodies by media practitioners are typically seen as substitutes for official government regulations. Nevertheless, self-regulation is

also a form of regulation and pertains to the question of freedom versus control. All attempts to institutionalize media ethics involve mediating accountability between the gatekeepers and other actors in the communication process (Kruger, 2009:7).

Because the media holds such a central place in the democratic process, and has become an increasingly important economic factor, it is necessary to emphasise the responsibility of the media. Its obligations and specific rights arise out of their specific function in the democratic process. Unethical journalistic activity would undermine the public and, with that, the democratic and representative function of the news media. (Ronning & Kasoma, 2002:8)

Suffice to say that evidence of shoddy journalism abounds in the industry, arising from pressure, personal lapses as well as lack or failure of the gatekeeping function to crosscheck facts (Hatchen, 2010:14). As a result, good investigative reports can easily be undermined by slack journalism. Many scholars have attributed this trend to lack of sufficient time and resources to carry out error-free exposés. Quoting Professor Guy Berger, Head of the School of Journalism at Rhodes University in *The Media* magazine (January 2005), Vermulen (2008:20) said that healthy competition in the media ought to spur investment in investigative journalism. "It will mean giving sufficient time to build the contacts, source the materials, and sift the data. At present, journalists' turnaround time is too tight for them to do justice to stories that have so much potential. Skills are needed and the competence to work with a database of statistics, track international linkages etc. But without time to use these, there will be no investigative journalism" (Berger, 2005). However, a major challenge of journalism ethics is striking a balance between the universally accepted elements of the quest for truth, an aspiration for responsibility and a dedication to the principle of free expression (Ronning & Kasoma, 2002:8).

2.3 The Social Responsibility Theory of the Press

Situating this discourse within the realm of social responsibility theory brings us to the issue of media accountability which deals with the practice of self-regulation. In his paper titled "The Press Council, Ombudsman and Appeals Panel: a study of adjudication of reader complaints", Robert Brand (2010:17) posits that the regulation of the print media falls into the wider field of

theory and practice called media accountability. According to a key theorist on media accountability systems, Claude-Jean Bertrand (2009:56), media accountability refers to any non-state means of making media responsible towards the public, with the intention of raising media standards (Bertrand, 2004:21; Bertrand, 2008:44)). Put another way, media accountability is 'the process by which media organisations may be expected or obliged to render an account of their activities to their constituents' (von Krogh, 2008:12)

A free and responsible press is anchored in the social responsibility theory of the press articulated by Siebert et al (1956:40). It is one of the six normative media theories articulated by McQuail (1987). According to McQuail, normative theory deals with ideas of how the media ought to or are expected to operate in society. The other five theories are authoritarian theory, libertarian (free press) theory, soviet media theory, development media theory and democratic-participant theory. The social responsibility theory came about as "the power and near monopoly position of the media impose on them an obligation to be socially responsible, to see that all sides are fairly represented and that the public has enough information to decide, and that if the media do not take on themselves such responsibility, it may be necessary for some other agency of the public to enforce it" (Siebert et al, 1956: 5). Prior to when *A Free and Responsible Press* was published in the US by the Hutchins Commission, journalists had started recognising the art of writing as a profession requiring an ethical code of conduct. Allan (1999:75) contends that in line with certain occupational groups, such as those of medicine or law, many British and US journalists sought to legitimate their claim to professional status with reference to a larger sense of public responsibility.

According to McQuail (1987: 117), the main principles of social responsibility are:

- Media should accept and fulfil their obligations to society.
- These obligations are mainly to be met by setting high or professional standards of informativeness, truth, accuracy, objectivity and balance.
- In accepting and applying these obligations, media should be self-regulating within the framework of law and established institutions.

- The media should avoid whatever might lead to crime, violence or civil disorder or give offence to minority groups.
- The media as a whole should be pluralist and reflect the diversity of their society, giving access to various points of view and rights of reply.
- Society and the public, following the first-named principle, have a right to expect high standard of performance and intervention can be justified to secure the public good.
- Journalists and media professionals should be accountable to society as well as to employers and the market.

Proponents of social responsibility attempt to reconcile the ideas of freedom and independence with responsibility towards society (Roelofse, 1996:53-54). According to McQuail, social responsibility theory is based on the following premises (McQuail, 1987:116-118):

- The media have an important function to fulfil in society, especially with regard to supporting democratic political principles.
- The media are under an obligation to fulfil their social functions, especially with regard to the transmission of information and the creation of a forum for different viewpoints.
- The independence of the media should be emphasised in relation to their responsibility towards society.
- The media should meet certain standards.

From the foregoing, it can be noted that the social responsibility approach is unashamedly normative as it seeks to define the ideal. According to Kruger (2009:10), real media in the real world are of course subject to failings.

According to Hong-won (2008:42), social responsibility theory finds the philosophical basis of freedom of the press in the moral duty to serve the public, but the problem is how does society intervene when the media refuse to accept responsibility? In essence, self-regulation leaves journalists to regulate themselves to ensure that they fulfil their expected role and are

accountable to the public. Oosthuizen (2002:88) says that initiatives by the media to institute codes of conduct (on a voluntary basis) are informed by societal expectations about media conduct. In general, society would expect the media to adhere to general societal norms or values that are desirable (Christian et al, 1991 cited in Oosthuizen, 2002:60).

It was the confusion of responsibility with accountability that led to the press's negative, knee-jerk reaction to the so-called social responsibility theory of the press promoted in the US in 1947 by Hutchins Commission. The Commission addressed press responsibility, but the working press read accountability. Journalists and news organizations did not want to be accountable to a bunch of intellectuals on the Commission who would judge their performance. The confusion may also be one of the underlying reasons the US National News Council folded. The Hutchins Commission declared that "if the press is to be accountable—and it must if it is to remain free—its members must discipline one another by the only means they have available, namely, public criticism" (Leigh, 1947: 94).

Therefore, solving the media accountability puzzle may not be so much a case of finding the perfect accountability mechanism, as one of creating a patchwork of mechanisms. If journalists are continuously held accountable on multiple levels (internally and externally) by multiple parties (employers, peers, clients, and themselves), we may come closer to journalism that adequately serves society.

2.4 The Case for Press Self-Regulation

The Vienna-based Organisation for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media describes self-regulatory bodies of the media as voluntary bodies set up to protect the public against breaches of codes of professional standards committed by members of the council themselves and those who subscribe to these codes (Haraszti, 2008:2). It is a joint endeavour by media professionals to set up voluntary editorial guidelines and abide by them in a learning process open to the public. By doing so, OSCE said, the independent media accept their share of responsibility for the quality of public discourse in the nation, while fully preserving their autonomy in shaping it (Haraszti, 2010:14).

Berger (2007:32) notes that this form of regulation exists in between the 'law' and its agencies, on the one hand, and on the other, journalists' self-proclaimed norms. The practice follows from press freedom guaranteed in most democracies and it is an effort to balance the need for accountability with the desire to safeguard media freedom (Berger, 2007: 2).

According to Miklos Haraszti (2008), author of The Media Self-Regulation Guidebook, self-regulation is about establishing minimum principles on ethics, accuracy, personal rights and so on, while fully preserving editorial freedom on what to report and what opinions to express. The system helps the media respond to legitimate complaints, and correct mistakes in a trial-and-error way. By promoting standards, self-regulation helps maintain the media's credibility with the public. This is particularly welcome in new democracies, most of which are also new to an independent press. Media self-regulation helps convince the public that the free media are not irresponsible (Haraszti, 2010).

Many international conventions also support self-regulation. The African Union's Commission on Human and People's Rights, in its 2002 Declaration of Principles of Freedom of Expression in Africa, puts the issue well: "Effective self-regulation is the best system for promoting high standards in the media. The charter went further saying that any complaints against the press shall be determined in accordance with established rules and codes of conduct agreed between all stakeholders; and that the complaints system shall be widely accessible." Any regulatory body established to hear complaints about media content, including media councils, shall be protected against political, economic or any other undue interference. Its powers shall be administrative in nature and it shall not seek to usurp the role of the courts. (African Commission on Human and Peoples' Rights, 2002)

In essence, self-regulation is regarded as an alternative to statutory regulation and helps keep at a distance government's interference with the media content, a move that would lead to restrictions on the freedom of expression. Also, The Windhoek Declaration on Promoting Independent and Pluralistic Media says: "… the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development" (UNESCO, 1991).

At the same time, self-regulation protects the right of journalists to be independent, and to be judged for professional mistakes not by those in power but by their colleagues. When it comes to correcting factual errors or violations of personal rights by the press, satisfaction over the judgments of self-regulatory bodies lessens pressure on the judiciary system to sanction journalists (Haraszti, 2010:19)

Kruger (2009:10) opined that self-regulation has been seen as an important element in a system based on a social responsibility approach from the Hutchins Commission onwards. According to McQuail (1987:4), the basic principles of that approach include that society can expect high standards of performance, that journalists should be "accountable to society as well as employers and the market" and that "media should be self-regulating within the framework of the law and established institutions" (McQuail, 1987:117-118).

However, critics of self-regulation, including the ruling African National Congress (ANC), have said that it can easily become a means for the media to evade responsibility. The media have been accused of exercising power without accountability, so media accountability, and ways to achieve it, have become burning issues internationally (Duncan, 2010:23).

Accordingly, the ANC (2011) has continued to express discomfort with press self-regulation, saying that it is not enough of a safeguard against irresponsible reporting. The party is insisting that it would press ahead with its proposal to ask Parliament to investigate, through a public inquiry, the effectiveness of existing self-regulation mechanisms.

In its presentation to the Press Freedom Commission on January 30, 2012, the ANC clarified its position on the burning issue of press regulation. Represented by its General Secretary, Gwede Mantashe, National Spokesperson, Jackson Mthembu and Jessie Duarte, the party told the Justice Pius Langa-led Commission that it believes in "independent regulation" as opposed to the misrepresentation of its proposal as meaning "state or government regulation" of the media: "We are advocating an independent regulation of the media unencumbered by commercial or party political interests," said the ruling party at the Commission's hearing in Johannesburg (ANC, 2012). According to the ANC, any press regulation mechanism should act without fear, favour and prejudice and be empowered to impose appropriate sanctions and there must not be pre-publication censorship. The party explained that Parliamentary inquiry would, among others,

balance the rights of dignity, freedom of expression and freedom of the media. Among the weaknesses of self-regulation identified by the ANC are: continuous shabby journalism: declining journalism standards: inaccurate, unfair and irresponsible reporting: inadequate powers of the Press Ombudsman to deter and discourage this practice (shabby and irresponsible journalism): continuous and non-compliance with the existing Press Code: inadequate Press Code in respect of being unaligned to the Constitution and internationally agreed protocols and un-independent appeal mechanism, among others.

But democracy is not only about disputes. It is also about a shared culture of disputing in a rational and fair manner. Governments, even if freely elected, are participants in the political contest and therefore are not best-suited to enforce rationality and fairness. Besides, democracy is incompatible with state custody of the press. Media self-regulation is an effort to impose democracy's political culture, independent of political forces. It also advances the transition from a government-owned, state-controlled press to one owned and controlled by civil society.

Ultimately, the public and the politicians must accept that freedom of expression means, in the words of the European Court of Human Rights (ECHR), "the right to shock, disturb, and offend". The media have a strong interest in making that freedom not only tolerable but also enjoyable. Responsible self-regulation is the way to achieve that.

2.5 ANC's Proposal for a Media Appeals Tribunal

At its 52nd Conference in Polokwane in 2007, the ANC resolved to investigate a possibility of establishing a Media Appeals Tribunal (MAT) to strengthen self-regulation of the press. According to the ANC, the existing self-regulation mechanism by design only serves the interest of the media as opposed to serving the interest of the broader South African society (ANC, 2007). It recognised that while there had been much progress in engagement with the media, much still needs to be done as some factions of the media continue to adopt an anti-transformation, anti-development and anti-ANC stance.

The ANC is of the view that the media needs to contribute towards the building of a new society and be accountable for its actions. The party accused the print media of dishonesty, lack of professional integrity and lack of independence. The ANC said in its position paper that editorials distancing the paper from these acts and apologies which are never given due prominence and mostly which have to be forced through the Press Ombudsman are not sufficient in dealing with this ill. According to the ruling party, legal aid is not available for libel cases, which are expensive. There is no statutory regulation of the press. Instead there is an entirely voluntary system which does not have the force of law. There continues to be a need to strengthen self-regulation by the press, the party said.

The ANC noted that in order for a complaint to be accepted by the Press Ombudsman, the aggrieved party has to agree to waive his or her constitutional right to take the issue to the courts if he or she disagrees with the self-regulatory system's verdict: "This situation is untenable. There is a need to strengthen, complement and support the current self-regulatory institutions (Press Ombudsman) in the public interest. As a profession, the media can establish its own mechanism to deal with its ethical issues and to regulate conducts and some internally inherent conflicts," it said. The ANC also noted that the mere fact that the Press Ombudsman is from the media ranks, a former journalist, and is not an independent person who looks at the media from the layman's perspective, poses an inherent bias towards the media with all interpretations favourable to the institution and the other party just has to understand and accept the media way, saying that this is grossly unfair and unjust: "We hold the view that the creation of a MAT would strengthen, complement and support the current self-regulatory institutions (Press Ombudsman/Press Council) in the public interest" (ANC, 2007), the party said in its policy document.

The ANC 52nd National Conference Resolution then tasked the ANC to investigate the desirability of setting up an independent statutory institution, established through an open, public and transparent process, and be made accountable to the Parliament of South Africa. It said the investigation should further consider the mandate of the media appeal tribunal and its powers to adjudicate over matters or complaints expressed by citizens against print media, in terms of decisions and rulings made by the existing self-regulatory institutions, in the same way as it happens in the case of broadcasting through the Complaints and Compliance Committee of

ICASA. The proposal for a Media Appeals Tribunal (MAT) is meant to provide a platform for citizens to be fairly treated through an independent process supported by public funds and accountable to the people through parliament, the ANC concluded.

The Press Council of South Africa in August 2010 inaugurated a panel to investigate the newspaper industry's self-regulatory processes, comprising the Ombudsman, the Appeals Panel, the Press Code and the complaints procedure (Press Council, 2010). The review panel, which submitted a 98-page report a year later, drew on public hearings in the major centres of Johannesburg, Cape Town, Durban, Port Elizabeth and Bloemfontein and worked through 58 written and oral submissions. It made major amendments to the Press Code and concluded that self-regulation is the best way of upholding journalistic standards (Press Council, 2011).

The panel came out against ANC moves to impose statutory regulation. Quoting Miklos Haraszti, the author of The Media Self-Regulation Guidebook, the panel asks: "Can governmental regulations make the press more professional or ethical? No. True ethics standards can be created only by independent media professionals and can be obeyed by them only voluntarily. Whether passed in goodwill or not, any attempt to impose standards on journalists by law will result in arbitrary limitation of their legitimate freedoms and restriction of the free flow of information in society."

The report adds that any state involvement in regulating the press is incompatible "with the constitutional value of media freedom. The Press Council is convinced that any attempt to create a statutory Media Appeals Tribunal would not meet the test of section 36 of the Constitution. It would be a throwback to the 1980s when the press in South Africa was tightly controlled by the National Party government," the report says. It also points out that two-thirds of complaints referred to the council are upheld, meaning that it can hardly be accused of ruling consistently in favour of the press.

2.6 Press Code as an Instrument of Self-Regulation

The Code of Practice is central to self-regulation. It is the code on which editors should rely to guide them in decisions on whether a practice is acceptable or not, and it provides the yardstick by which the Press Council assesses complaints. Only a code drafted by editors would command the necessary authority to deliver universal compliance (Berger, 2008:43).

Code of ethics publicly defines the functions, rights and duties of journalists and thus provides journalists with guiding principles on how to best exercise their profession. The names of these codes vary: ethical standard, ethical charter, code of conduct, code of practice, code of ethics etc. However, they all serve similar purposes: safeguarding the autonomy of the profession and serving the public interest (Haraszti, 2009:72).

In democracies, journalists enjoy protected rights and privileges that ensure the freedom to establish diverse media outlets, to move in public to collect facts and views, to disseminate news, and to demand accountability. In turn, journalists must be responsible. They must operate with a clear conscience and transparent objectives. There will inevitably be times when journalists test the limit of their freedoms in the name of defending the public good. If journalists work according to agreed ethical standards of behaviour — based on accuracy, fairness, independence and accountability – they are less likely to fall foul of the law. Indeed, codes of ethics ensure that press freedom prevails (Da Silva & Paulimo, 2007:12).

According to Ronning and Kasoma (2002:19), good journalism is in the interests of the public. It offers news that is accurate, fair and balanced, gives voice to the voiceless, and contains the diversity of views that a specific story demands. While free to be partisan, it must clearly distinguish between facts, comments and opinions — unlike "propaganda journalism", disguised "missionary journalism" or tabloid journalism, which serve specific causes or interests. All good journalists should pay continual attention to codes of ethics. For media owners and publishers, a code is protection against criticism and legal action; for journalists, it serves as a standard against public criticism (Ronning & Kasoma, 2002:19-21). Among the basic elements covered by most codes of ethics, Haraszti said, are accuracy, impartiality, and diversity of opinion, fairness, privacy and public interest, crime and social behaviour, harm and offence, children, politics and

public policy, war, terror and emergencies. Others are editorial integrity, audience, law and accountability (Haraszti, 2009:10).

Journalists are persuaded to comply with the code by awareness. Editors must ensure that ethical issues are regularly discussed by the staff – not just when a specific issue comes up. Standards can be taught internally by well-respected, experienced editors. The more the issues are kept alive, the stronger the commitment. Many newspapers appoint an independent news ombudsman to scrutinise the content, both in response to readers' complaints and as an independent initiative. The Ombudsman's assessments, based on the code of ethics, are published or broadcast. This keeps awareness of the code alive and creates an institutional culture in which journalists see ethical behaviour as the norm. Also using the stick and carrot method of regularly and publicly rewarding fine ethical behaviour and reprimand transgressions. Praise and critique are efficient tools for honing the quality of professional conduct.

Journalists must abide by the fundamental standards set by the institution they work for. By accepting employment, they are understood to have approved its code of ethics, the compass that prevents deviation from agreed standards of good journalism. Some news outlets include a formal undertaking to abide by the code in their contracts of employment. Others prefer a non-binding approach, coupled with a staunch commitment to ethics.

It is solely the duty of an organisation to raise awareness by notices in publications and/or websites, discussions, conferences, radio and TV debates. In addition, organisations should also publicise the code through internal communications and discussions, making sure that the employees have continuous access to it, and encouraging them to refer to it whenever necessary. Ethical issues should be covered in universities through professional training courses. It is vital to maintaining credibility, accessibility and trust. Codes should be publicised by news and comments in the news outlets themselves. They should be available on the outlets' internet websites. Violations of the codes and adjudications should be reported as soon as possible.

The code of ethics is not an official legal document and the Press Council does not make juridical decisions. Members need personal and professional moral integrity rather than any law-related knowledge. Unlike court decisions that combine justice with punishment, Press Council decisions are corrective, upholding journalistic standards and defending society's right to receive

objective information. These decisions do not prevent a possible court case on behalf of the complaining side.

2.7 The South African Press Code

The Press Council of South Africa 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. Launched in 2007 and reviewed in 2011, more than 640 publications, mainly members of Print Media South Africa, subscribe to the code (Berger, 2009:14).

According to Raymond Louw (Berger, 2009:15), South Africa's first voluntary press code of conduct was drawn in 1962 after newspaper owners reached a consensus on self-regulation for fear of statutory regulation. The code was essentially similar to those in other countries with press councils and it stipulated that in presenting news there should be no wilful departure from the facts through distortion, significant omissions or summarisations. The code also stipulated that headlines and posters should fairly reflect content of report and it frowned at the use of obscene and salacious material and of excess in the reporting and presentation of sexual matters. The code further stipulated that comment should be clearly distinguishable from news and should be made on facts truly stated, free from malice, and not actuated by dishonest motives (Hachten & Giffard, 1984: 61-62).

The code also required the press to take account of the complex racial problems of South Africa and the general good and safety of the country and its peoples (Hachten & Giffard, 1984:62). According to Oosthuizen (2002:65), the stipulation referring to racial issues reflected the government's expectations about press reporting on the controversial racial policies of the time. Journalists were also not required to observe professional secrecy to protect their sources of information (Hachten & Giffard, 1984:63).

When the government again threatened statutory press regulation in 1974, the _Press Council constitution was amended to give it "teeth" by enabling it to impose fines up to R10,000. The

pressure from the government also led to the introduction of a new code of conduct, and two clauses of the new code reflected this pressure. One demand of newspapers "due care and responsibility concerning matters which have the effect of stirring up feelings of hostility between racial, ethnic, religious or cultural groups in South Africa, or which can affect the safety and defence of the country and its people." The other required newspapers "due compliance with arrangement entered into between the newspaper press unions and any department of Government of South Africa with a view to public safety or security or the general good" Hachten & Giffard, 1984:69).

The democratic Press Code of Conduct adopted in 1997 had seven clauses dealing with a range of issues such as fairness in news reporting, advocacy, comment or criticism, dealing with confidential sources, paying for articles and reporting violence. Unlike the Press Code of the apartheid regime which was also used by the government as a weapon for controlling the press, the new code embraced the spirit of freedom of expression on the one hand as well as the spirit of accuracy, balance, fairness and decency, upon which the press will be judged on the other hand. However, the Press Code has since gone through several amendments since 1997, in response to democratic principles as well as public pressure.

2.8 The Old and the New Press Code – a Brief Comparison

The new South African Press Code has raised the ethical bar for print journalism in South Africa, holding the press accountable for a wider variety of issues (Louw, 2011). When the Press Council decided in August 2010 to review its system, including the Press Code, one of the objectives was to improve journalism's ethical standards.

The old Press Code consisted of eight articles while the new one has 13. The only four sections that remain unchanged are on advocacy, comment, violence, and headlines, posters, pictures and captions. The preamble was re-written in less legalistic language. (see appendix A)

The first subsection to become a section of its own involves the gathering of news. It states that news should be obtained honestly and fairly (the old code uses the words "dishonest" and

"unfair") – and now also "legally", adding that press representatives shall identify themselves as such unless the public interest dictates otherwise (Louw, 2011). This is a significant improvement in that it is not only a journalist's duty to act ethically when writing a story, but also when gathering news.

The old code merely prohibits the publication of child pornography but the new one adds that "exceptional care and consideration" must be exercised when reporting on children and that if there is any chance that coverage might cause harm of any kind to a child, they should not be interviewed, photographed or identified (unless a parent/custodian consents or public interest is evident). It adds that the press shall not identify children who have been victims of abuse or exploitation, or have been charged with or convicted of a crime. Children are by definition not adults, which means that they cannot properly anticipate the consequences of their actions and therefore they need special protection (Louw, 2011).

On the use of anonymous sources, the former code merely stipulates that the press has an obligation to protect confidential sources of information. The new code, however, adds that the press shall avoid the use of anonymous sources unless there is no other way to handle a story. Other additions include that the press shall indicate if it was unable to obtain comment from the subject of reportage, and the prohibition of plagiarism.

2.9 The South African Press Ombudsman

Newspaper journalists are subject to the jurisdiction of the Press Ombudsman of South Africa, which replaced the South African Press Council in 1997. The Ombudsman's office falls under a founding bodies committee, among whose members are representatives of journalists' unions, editors' forums, the Newspapers Association of SA and magazines and community press owners (Berger, 2009:16).

Anybody can complain to the Ombudsman, on condition that they waive their right to legal action. But this does not mean that newspapers can be harassed by fraudulent, malicious or vexatious complaints, or those that do not reveal prima facie contravention of the code. An

offending newspaper can be ordered to publish a finding – no fines or other punishment can be meted out. The ombudsman deals with the editor on behalf of his or her newspaper, not an individual journalist (Thloloe, 2010).

It is pertinent to note that the Ombudsman, the Swedish word for "representative", has been widely adopted by other languages as the name for a mediator (of either sex) who investigates citizens' complaints. It was first applied to the press by the daily *Courier-Journal* in Louisville, Kentucky, which, in 1967, commissioned a former head of local information to handle relations between readers and journalists (Ntuli, 2008:42).

2.10 Press Councils

The Swedish Court of Honour, founded in 1916, is generally seen as the first press council (Haraszti, 2008:56). Its three-member panel of distinguished journalists also took up industrial issues, such as employee grievances as well as disputes between companies. An important principle of the Swedish Court of Honour was that it was the newspaper that was held to account and not the writer (Kruger, 2009:15). A press council is essentially good for building trust and credibility in the media, improving quality standards in media outlets, preventing interference from the state and the authorities and diminishing the number of court cases against journalists.

The major functions of press councils are adjudicating complaints against the media by members of the public and preservation of the freedom of expression. In most democratic societies with media self-regulation system, press councils are funded by the industry as a way of guaranteeing their independence and shielding them from external control and influence of governments. According to Pinker (2002:49), those countries where the state wholly funds press regulation tends to have the most discredited press councils. For example, the Nigerian Press Council was established by an Act and fully funded by government.

The main duties of a press council are to: accept complaints; verify that they fall within the limit of the code of ethics; review them thoroughly from each angle; serve as mediator between the complainant and the media; take decisions on complaints based on rules and regulations with

fairness; single out the media for breaching ethics guidelines; secure transparency and publicity of all decisions taken; analyse and comment on media trends and provide guidance about the code's requirements; suggest amendments to the code of ethics (if mandated to do so); set journalistic professional standards and defend press freedom.

2.11 The Press Council of South Africa

In an account of the evolution of press councils in South Africa, Ntuli (2008:32) says that the first move towards self-regulation of the press occurred when two press commissions were set up in 1950 and 1962 to probe the monopolistic tendencies of the press.

When in the mid 1960's the apartheid government threatened to start a statutory council to regulate the media, the press countered by setting up their own body. It was then that the Newspapers Press Union (NPU) proposed a voluntary Press Council under the banner of the Press Board of Reference to avoid government's interference to control the press (Oosthuizen, 2002:30). However, many journalists distrusted the move and feared "that even a voluntary disciplinary body would be the first step toward even more restrictive measures" (Hachten & Giffard, 1984: 50). Many journalists saw the initiative as a government creation. The concern was that the council favoured government. Much criticism has been expressed that the body ended up complicit in one way or another with much of governmental abuse of media freedom under apartheid (Berger, 2009b:26). The council, it has been argued, came close to being a tool of self-censorship (Berger, 2009b:43). In its determination to impose a measure of control on the press, the 1964 Van Zijl Commission advised that a statutory Press Council be set up to "tighten control over the press" (Oosthuizen, 2002: 71).

In 1977, the constitution of the Press Council of South Africa was reviewed following government's threat to introduce a Newspaper Press Bill that would pave the way for a statutory Press Council (Kumwenda, 2010:38). In 1983, a media council replaced the Press Council to regulate both broadcasting and print media following the recommendations of the Steyn Commission of Inquiry, which investigated whether the mass media were meeting the needs and interests of the South African community and demands of the times (Oosthuizen, 2002:40). The

council had 14 public members, 14 press members and two retired judges as chairpersons. But the South African Broadcasting Corporation refused to be part of the council. The media council later separated with broadcasting and reverted to its old name of Press Council. The Broadcasting Complaints Commission of South Africa (BCCSA) was then established (Ntuli, 2008:36). In 1992, the Press Council was reformed and was run by a committee that included owners, editors and journalists.

The Press Council was finally changed to the Press Ombudsman office in 1997, a new Press Code replaced a Press Code of Conduct that dated back to 1962 but had been revised over the years, and the first Press Ombudsman, Edwin Linnington, was appointed (Ntuli, 2008:57). The Press Ombudsman system was initially administered by a body called The Founding Bodies Committee, consisting of representatives of the newspaper industry. However, in 2007, the structure again changed to the Press Council, replacing the Founding Bodies committee, while retaining the position of the Press Ombudsman. This was, among other reasons, in response to criticisms that there should be public representation in the council to make the public feel part of the whole arrangement. Criticism also came over the poor visibility of the Press Ombudsman office, as well as major concerns about the prevalence of poor ethics in the press notwithstanding the existence of the system (Berger, 2009b:21). It has further been argued that press councils contribute little to protecting press freedom or countervailing individual interests such as privacy and reputation (Ronning, 2002:26).

South Africa's self-regulation system is structured into two parts - the Press Council, which has six representatives of the press and six public representatives; and the adjudicating mechanism consisting of the Press Ombudsman and the Press Appeals Panel which also has six press representatives and six public representatives and is chaired by a retired judge (Thloloe, 2008:54). The council has four major aims and objectives: promote and preserve the right to freedom of expression; promote and develop excellence in journalistic practice and ethics; promote the concept of press self-regulation and set up the office of the Press Ombudsman and the Press Appeals Panel and accept a Press Code enforced by an independent non-statutory, mediating and adjudicating structure.

When a person lodges a complaint against a newspaper or magazine, the Press Ombudsman first attempts to mediate and find an amicable solution between the two parties. If this fails, the matter

proceeds to a formal hearing where the Press Ombudsman sits with two members of the Press Appeals Panel – a press representative and a public representative and hears the evidence and arguments from both sides before making a ruling on the matter. Either party can appeal against the Ombudsman's ruling and the appeal is heard by the chairman of the appeals panel and two other members of the panel. Their decision is final. The Press Council's mandate is to promote system of self-regulation and to fight for media freedom. The foundation of the system is the South African Press Code, adopted by more than 640 publications including all major newspapers and magazines in the country. The adjudication mechanism is separate from the Press Council. The council is funded by the press industry itself - Print Media South Africa.

3. Methodology

The study used two selected *Sunday Times* investigations that were publicly challenged – The Land Bank saga and Transnet story. It examined how the stories unfolded, how the investigations were conducted and reported, the subsequent issues arising from the publications, from which quarters and why, and how the issues were handled. It looks at whether the investigations conformed to the South African Press Code in line with international best practice.

3.1 Research Design – Qualitative Research Method

The method used is qualitative research which is described as the non-numerical examinations and interpretation of observations for the purpose of discovering underlying meanings and patterns of relationships (Babbie, 1992:17). Generally, qualitative research methods explain. Strauss & Corbin (1990:97) suggests that qualitative approach produces rich quality information which will be essential in creating a coherent account to address the research questions: Are South African investigative journalists familiar with the Press Code, does it inform the decisions they take and at what stage may investigative journalists have breached the Press Code and why?

3.2 Data Collection

Data collection in qualitative research involves a variety of techniques: in-depth interviews, document analysis and unstructured observations (Jankowski & Wester, 1991:62). In this research, document analysis, which is the systematic exploration of written documents and in-depth interviews, were utilised in order to gather the data necessary to address the research questions.

3.3 In depth interviews

An in depth interview is a kind of probe. According to Berger (1991), an in depth interview is an extended conversation, but has a different purpose from an ordinary conversation in that it is highly focused. This study makes use of interviews to probe how things happened during typical *Sunday Times* investigations and how things happened in relation to the selected stories. The in depth interviews specifically focus on the two stories from when it unfolded through the investigations to the publication and aftermath. The interview subjects were selected purposively, on the basis of their experience and knowledge of the functioning of the system.

Bertrand & Hughes (2005:141) argue that interviews add a human dimension to the written record as "what appears on the written records as a simple decision may in fact have been fiercely debated". Nonetheless, the disadvantage of interviews is that oral sources depend on the reliability of memory, which varies with age and mental alertness, and memory is in any case always selective and likely to have reshaped events (Bertrand & Hughes, 2005:14).

3.4 The Interview Process

The interview process was used to provide answers to most of the questions asked in this study. This study is interesting in view of the topical nature of the subject at this point in time when all

eyes are on the newly reviewed South African Press Code to address some of the concerns being raised by the public, particularly the ANC, on its adequacy or otherwise in safeguarding the rights of individuals and the public interest. Interviews enable the researcher to "gain an understanding of the human understandings and insights of a particular feature". (Golding et al, 1999: 2)

Interviewing has become a widely-used means for data generation in qualitative research. Wisker (2001: 165) states that "interviews can provide both the detailed information you set out to collect and some fascinating contextual or other information". Interviews that are conducted for qualitative research rely for their quality on the nature of the interactions with the interviewees. This study relied heavily on the semi-structured interview format. Hitchcock and Hughes (2001:79) state that the semi-structured interview allows depth to be achieved by providing the opportunity on the part of the interviewer to probe and expand the interviewee's responses. Some kind of balance between the interviewer and the interviewee can develop which can provide room for negotiation, discussion, and expansion of the interviewee's responses (Hitchcock & Hughes, 2001:82). To Bernard (1988:106), the advantage of the semi-structured interview is that the interviewer is in control of the process of obtaining information from the interviewee, but is free to follow new leads as they arise. Lindloff (2000:90) calls the semi-structured interview "conversation with a purpose" as the interviewer participates with the subject in order to understand a certain phenomenon in an interactive, committed, open-ended and emphatic manner. In contrast to structured interviews which employ close questions, semi-structured interviews offers a great degree of flexibility in probing and in determining certain subjects in greater depth. (Fontana & Frey, 1994:361). Therefore, semi-structured interview required "carefully and fully wording of each question before the interview in order to guarantee that each interviewee is asked same question in same way and same order to ensure similar issues are discussed with each interviewee (Fontana & Frey 1994:364) Each respondent was asked to give a once off, in-depth interview of approximately one hour in duration. The interview guide used was a set of questions, targeted at different categories of respondents based on their status and position and phrased in a similar way across respondents to encourage consistency in data collection and to enable the researcher to make comparisons between the various respondents. For my interviews, I used a digital tape recorder, which serves as a permanent record of the interview. This is advantageous because it allows the interviewer to be able to observe the

respondent in the interview process, and limits the chances of errors that happen often when the interviewer depends only on taking notes. Note-taking can be distracting and serves no real purpose for a research of this nature.

3.5 Interviewees

Six respondents were selected for interviews in the course of this research - four *Sunday Times* journalists and two media experts. The journalists who were successfully interviewed are former Editor-in-Chief Mondli Makhanya, former Political Editor now Editor *Sunday World,* Wally Mbhele and Wisani wa ka Ngobeni. The three were part of the team of journalists who worked on the two stories under examination. The two media experts I interviewed are the Press Ombudsman, Joe Thloloe and Franz Kruger, Senior Lecturer in Journalism, Wits University, former national editor of SABC radio news, author of *Black, White and Grey: Ethics in South African Journalism.* The relevant people interviewed are either experts or professionals who are knowledgeable about the publications under examination.

The aim of these interviews was to evaluate and to gain some insight into the general awareness of the Press Code and its application in investigative journalism.

These questions were designed generally focusing on the respondents' take on accuracy, balance, fairness and individual privacy and if the Press Code informed them in taking decisions about the public interest versus the right of individuals. Specifically, the journalists were asked how the breaches to the Press Code came about and why, while questions for the media experts centred on the code as framework for good working practice as well as filling the gap between the code and what obtains in actual practice.

The interview material was collected via numerous formats and these included telephone and E-mail correspondence to schedule the interview appointments, face-to-face interviews that were digitally recorded and subsequently transcribed, as well as telephone interviews that were also recorded and transcribed. For the purposes of this chapter, however, the material has been

ordered thematically, which more or less aligns with the broad questions that appeared on the in-depth interview guides. (See Appendix A and B for actual interview questions)

Among the issues for the respondents are:

- How did the stories came about?
- How did the stories passed through the editorial process?
- How did the criticisms come about?
- What is the nature of the criticisms and from which quarters?
- What is the position of the editorial team on the criticisms?
- Are the criticisms justified or not? What went wrong?
- What is your take on the provisions of the press code relating to investigative journalism?
- Did the press code influence your handling of the stories?
- What are the challenges/constraints experienced during investigation?
- What are the resources available for investigations?
- Relationship with source and role of deadlines
- Effectiveness of gate keeping functions
- Training and skills acquired
- Thoughts on watchdog role of journalists
- Thoughts on press code as instrument for self-regulation and framework for good working practice

3.6 Document Analysis

This category looked at the South African Press Code in relation to ethical issues of accuracy, fairness, human rights, balance and public interest raised in the complaints filed with the Press Ombudsman and the pattern on how the Press Ombudsman dealt with specific breaches of the code. The documents that were analysed are The South African Press Code, Press Ombudsman's Ruling in the matter between Mr Alan Mukoki, former CEO of the Land Bank and the *Sunday Times* and the *Sunday Times* Review Panel.

4. Findings

The focus of this research is the application of the South African Press Code as a set of principles which can be used to guide the practice of investigative journalism. The research examined the level of awareness of the Press Code and its application to investigative journalism. Specifically, the research examined factors responsible for the cases of breaches of the Press Code using two of the *Sunday Times* stories which were publicly challenged – The Land Bank saga and the Transnet story.

The findings presented below are the result of information gathered from two different types of sources, namely in depth interviews and document analysis. The subjects of the interviews are three *Sunday Times* journalists and two media experts. The journalists are the editor-in-chief of Avusa Media titles, publisher of *Sunday Time*s, Mondli Makhanya, who edited the newspaper when the two stories were published, former *Sunday Times* political editor, Wally Mbhele, one of the senior editors who edited the two stories and Wisani wa ka Ngobeni who investigated and wrote the Land Bank stories. The two media experts interviewed are Press Ombudsman, Joe Thloloe and Franz Kruger, Senior Lecturer in Journalism, University of the Witwatersrand, former national editor of SABC radio news and author of *Black, White and Grey: Ethics in South African Journalism.*

He was also a member of the *Sunday Times* Review Panel and a member of the Press Council's task team that recently reviewed the press self-regulation system, including the Press Code. The documents that were analysed are The South African Press Code and the Press Ombudsman's Ruling in the matter between Mr Alan Mukoki, former CEO of the Land Bank and the *Sunday Times,* and the *Sunday Times* Review Panel Report.

4.1 Emerging Themes

The findings are presented according to themes emanating from these two sources:

- *The handling of the Sunday Times investigations*
- *Journalists' knowledge/awareness of the Press Code*
- *Application of the Press Code to investigative journalism: The Sunday Times example*
- *Accuracy and the Accuracy Check at the Sunday Times*
- *Breaches of the Press Code resulting from publication*

i. Balance and right of reply

ii. Fairness, facts and allegations

ii. Public Interest versus Individual's Right to Privacy

- *Factors responsible for breaches of the Press Code*

i. Gate-keeping Function – editing, rewriting and "sexing up"

ii. Role of Deadlines

4.2 The Handling of Two *Sunday Times* Investigations

A careful examination of what happened in the two *Sunday Times* stories that are the subject of this report, the Land Bank saga and the Transnet story, gives an indication of how things worked at the influential weekly and how things worked in these two particular instances. Makhanya gave a rundown of the *Sunday Times* news production procedure from the time a story is assigned to a reporter to its eventual publication: "The story will be investigated and will then go through the news editing process, the editor will have a close look at the story, it will be edited and go through editorial process, and be subjected to our Accuracy Check" (Makhanya, 2011). However, what happens in actual practice differs greatly as shown below.

4.2.1 The Land Bank Reports

According to Makhanya, the Land Bank had been in the news for all the wrong reasons for some time and the *Sunday Times* had been keeping an eye on the institution to find out what was going wrong there. The reports arose out of a Cabinet announcement in November 2007 that, following a Forensic Audit Report into the bank, a series of measures would be taken against bank officials, including referring the matter to the police and prosecuting authority for further investigation. This statement was released on Friday 9 November 2007, and the story was assigned to investigative reporter Wisani wa ka Ngobeni He did not have, and could not get, a copy of the audit report, and had just over 24 hours to secure his story.

The first story was published on November 11, 2007 on its front page under the headline "How fat cats looted Land Bank billions" with the subhead "Cabinet calls for criminal charges after R2-bn is siphoned off to fund associates' business schemes". The story said top Land Bank officials siphoned off more than R2-billion meant for farmers to fund their close friends and business associates' luxury golf estates, a sugar mill, equestrian estates and residential developments. In a follow-up story the following week, "Heads roll for loans to fat-cat buddies" (November 18, 2007), most of the allegations were repeated. It quoted the Department of Agriculture and Land Affairs putting the extent of the fraud at R900 million (as opposed to the

figure used the previous week of R2-billion), but added that "Land Bank officials" had told the *Sunday Times* that this was only the amount disclosed in the financial statements and did not reflect the total.

Two months later, the paper returned to the story with a page 15 lead, "Land Bank boss 'must be charged' " (*Sunday Times* Review Panel, 2008). This time, reporter Ngobeni quoted directly from the report. He repeated many of the allegations in the original story and added substantial detail, but corrected some of the figures: the amount involved was now given as R1,1-billion. Mukoki declined to comment and the story recorded that Mukoki and Mkhabela had laid complaints with the Press Ombudsman following the earlier stories.

Makhanya said: "We've been digging up. And in the course of our digging up, we came across a draft forensic report which spoke about certain things people had done. And we then proceeded. We wrote the story. We tried to get comments. We didn't get comment from some individuals concerned. But we got some facts wrong in the story. But the story was true. It was accurate. But we had not done our homework properly. We got the figures wrong. And we didn't get the comment from the person and as a result, we had an adverse judgment from the Press Ombudsman".

He went further: "Unfortunately these two stories were not subjected to our Accuracy Check which is the fault on our side, both as the editorial management and the people who were doing the story. An investigative story should be put through a very, very rigorous process. But I think that in these two particular instances, we skipped a step and that step was the Accuracy Check. Then, the stories also happened to have arrived very late in the day. They should have arrived much earlier on deadline, allowing us to edit them more rigidly." (Makhanya: 2011). For Mbhele, the use of the Accuracy Check Form comes too late in the editorial process. "It should not wait for the article to be on-page before applying it to the story."

Makhanya, however, said that he thought that in retrospect the story should probably have been held for a week to allow more time for detailed checking and to get an important comment from one of the named individuals.

According to Wisani wa ka Ngobeni who investigated and wrote the Land Bank stories, two sources independently described to him the contents of the Forensic Audit report even though he

had not seen it. He pointed out that he only filed the story after interviewing the then Land Bank CEO Alan Mukoki on these allegations. Wa ka Ngobeni insisted that the story, done under extreme pressure, was ninety nine per cent correct.

The Review Panel noted that it was the one per cent inaccuracy that was used by the complainant to attack the newspaper and discredit what was in many respects a good piece of reporting. According to the Panel's report, the original errors were understandable, given the difficulties of deadlines and the unavoidable reliance on second-hand accounts of the contents of the Forensic Audit: "It is apparent that the reporter did his utmost to secure accuracy in good faith and showed skill in getting many details of the report. More difficult to understand is why, when the *Sunday Times* received the Audit Report and it became apparent that some of the reported figures were inaccurate, these were not corrected in the paper. The paper did report some of the correct figures in its report of 20 January 2008, but without ever acknowledging that it had previously erred. The result was that there were contradictory numbers in the public arena, with little indication of which were reliable." (*Sunday Times* Review Panel Report, 2008)

Makhanya said that it was the policy of the paper to publish corrections when errors were discovered, even if there had been no complaint. In this case, there had been more than one complaint and the matter was already before the Ombudsman. The panel submitted that it was still preferable for the newspaper to correct errors promptly once it had established to its own satisfaction that errors had been made: "Where there are clear errors, no matter how trivial, to correct them would show goodwill, remove them from the Ombudsman's consideration and allow him to focus on the more substantive issues. Even when the newspaper acknowledged mistakes, these were dismissed as immaterial in the context of the complaint as a whole; it was not found necessary to explain why the mistakes had not been corrected. A newspaper committed to accuracy should be cautious about dismissing any error as immaterial and should be confident in providing the date and place where the correction was carried. What this revealed was a lack of clear policy and procedure on corrections, leading to what might appear to readers to be a cavalier attitude to the accuracy of details in the story" (*Sunday Times* Review Panel Report, 2008)

In his ruling, the Ombudsman said that the reporter had erred in not putting the allegations to Mkhabela before printing the story. The reporter said he had tried and failed to find a number for Mkhabela and he was mentioned only in passing in the story.

The panel report said that the allegation against Mkhabela was serious and should have been put to him: "Not doing so made the newspaper vulnerable to criticism, exposed it to legal action and undermined the story. It is notable that even after the initial report, no attempt was made to contact Mkhabela. A follow-up interview would have ameliorated the original oversight, and may have stopped his complaint to the Ombudsman in its tracks," the report added.

Another element of the *Sunday Times'* mishandling of the Land Bank story was the newspaper's failure to follow up by not covering a December 2007 news conference in which the government made a major pronouncement on the Land Bank issue: "In any story that affects a person's reputation it is important to follow every nuance as the story unfolds, right up to the time that the person is found guilty or is cleared. The Land Bank story was important for the *Sunday Times* and so it should have covered the government's December conference," the Review Panel said.

The newspaper goes on to say sources have told it that the report "was withdrawn in light of the political embarrassment it could cause President Thabo Mbeki's closest allies, Lulu Xingwana and her predecessor, Thoko Didiza, in the ANC succession battle". According to the Panel report, the alternative reason the newspaper offers for government's rescinding of the decision to withdraw the matter from the prosecuting authorities for internal investigation suggests that the people concerned are guilty: "If the newspaper had elaborated on the reasons the government had given and then proceeded to quote their sources the story might have been adequately balanced," the Panel said.

4.2.2 Transnet Story

The Transnet story was published on August 24, 2008. Then *Sunday Times* editor, Mondli Makhanya, in an interview with this researcher, explained that there was a piece of legislation going through Parliament about the governance of territorial waters and out of that Parliamentary

hearing the *Sunday Times* was able to spot a clear rift between the Department of Environmental Affairs and Transnet. That was the origin of the story, he said. The key claim made in the article was that Transnet secretly sold prime Cape Town coastal land and a vast sea area when it sold the V&A Waterfront to investors from Dubai and London, and that the sale included the transfer of 22km of coastline and 90km squared of sea from Table Bay to Robben Island. The article also alleged that if the Integrated Coastal Management Bill was passed, Transnet would face a potential claim of R20-billion from the purchaser for breach of contract.

The story as written by Mpumelelo Mkhabela, the *Sunday Times* correspondent at Parliament in Cape Town, was then re-written in house and this became the final published version. It was clear there had been significant intervention by editors. As the Review Panel observed, "there is obviously a need for editors to intervene to sharpen language and make the copy flow. But in our view the re-writing of the text in this case appeared to go beyond sharpening the language. The editing gave the story a sensational angle that the reporter appears not to have intended, and that the documentary evidence – seen only by the reporter – did not justify. Without having seen the evidence, the editing should not have taken the course it did. Likewise, the reporter should have objected to the edits to the story" (*Sunday Times* Panel Report, 2008).

In covering both stories the *Sunday Times* made several errors of judgement and could have limited its liabilities if it had exercised more caution in the running the stories. Makhanya said that the fact that the *Sunday Times* has produced some ground-breaking journalism had led to certain arrogance: "We got complacent about how good we were. We can't get it wrong," he said in the interview. But the Review Panel warned in its report that "arrogance of this kind can be dangerous, and perhaps this is the single greatest factor causing the recent missteps."

4.3 The Journalists' Knowledge of the Press Code

Although journalists on the *Sunday Times* have a fair idea of what the Press Code is all about, most of them are not familiar with the actual content of the document. When asked the question - Are you familiar with the contents of the South African Press Code? - all the journalists interviewed responded positively. However, on further investigation, it was clear that some were

not familiar with the specific contents of the code. For instance, when asked about the basic provision of the Press Code on correction of errors, two of the journalists interviewed could not answer the question correctly. “One can always refer to the Press Code if and when the need arises,” Wisani wa ka Ngobeni, told this interviewer. The *Sunday Times* Review Panel said in its report that it was provided an out-dated version of the Press Code when it probed the editorial activities of the weekly in the last quarter of 2008: “The version provided in this document needs to be updated: there have been several changes to the code since this policy document was compiled. It is also not clear why staff should have only extracts of the code, rather than the whole document,” the panel said in its final report. So the *Sunday Times* journalists may not have had sufficient knowledge of the contents of the Press Code since most of them did not have a complete or correct and updated version of the rules which came into effect in 2007. Press Ombudsman Joe Thloloe also buttressed this, saying: “Until about a year ago, I used to go round newsrooms to find out from journalists how many of you have seen or read the SA Press Code. And very few have read it.” (Thloloe: 2011). Kruger also agreed with this finding saying that journalists are “not sufficiently” familiar with the code. “I think that people have a sort of general sense of what is in the code but I think that in terms of the detail people are not aware.” (Kruger, 2011).

In admitting that there may still be gap, Thloloe opined that “people might know about the Press Code, might be aware of it, but what we want to get going is for journalists ‘living the code’ and for it to become part of their daily practice. And I don’t think we have reached that point yet.” (Thloloe: 2011). Makhanya, however cautioned that while the Press Code enables journalists to do accurate and better journalism, it must not become a tick box, “What should actually happen is that it must be internalized.” (Makhanya: 2011). On how journalists could “live the code”, Thloloe said that the Press Ombudsman’s office would embark on “very intensive publicity inside and outside the newsrooms” to get journalists and the public out there to understand what the Press Code is all about: “At the same time, we are looking at ethical courses that we can get institutions to run that will incorporate the Press Code and the Press Council,” (Thloloe, 2011).

4.4 Application of the Press Code to Investigative Journalism: The *Sunday Times*

A careful study of the South African Press Code reveals that a large number of the rules touch on many aspects of the conduct of investigative journalism. From the first clause which deals with truthfulness, accuracy and fairness through to sections on right of reply, privacy and the need for exceptional care in matters involving dignity and reputation of individuals, the Press Code is a "must know" for any investigative journalist wanting to stay out of trouble with the law and the public. *Sunday Times* political editor Wally Mbhele, who edited the two stories, said in an interview with this researcher that investigative journalists at the weekly are "generally" familiar with the Press Code. "The Press Code is like our Bible. We have its abridged version imprinted in various forms and come handy for everyone in the newsroom. So it is used on a day-to-day basis," Mbhele said. Then *Sunday Times* editor Mondli Makhanya also corroborated this assertion, saying that the paper applies the Press Code on every story "all the time". "We've got the Press Code. Every one of us staff members should have a copy of the Press Code and should read it. It's on every wall. It's in the lift. And we do regular reviews of it. The Ombudsman often comes in just to refresh," (Makhanya: 2011). Going by the views of these two senior editorial staff, it would appear that the Press Code is applied to the letter. However, what happens in actual practice indicates an inconsistency in its application.

For instance, the *Sunday Times* has an Accuracy Check system, an internal mechanism designed to ensure the paper meets the requirements to ensure the accuracy and fairness of their stories and ultimately prevent breaches of the Press Code. Mbhele said that it is mandatory for every journalist to go through the Accuracy Check Form with an editor and sign it ahead of publication. According to Mbhele, reporters are required to keep a record of their accuracy checks and to produce them when asked to do so, particularly in the event of a complaint about the accuracy of a story.

But the Accuracy Check was not completed for the two *Sunday Times* stories being examined. Mbhele (2011) noted: "We applied the code and guidelines as much as we could in the circumstances. But we failed in the accuracy check aspect and for not getting response from the subjects." He said that the Accuracy Check is about the most important step before an investigative story is approved for publication. "But sometimes because of pressure of work or

deadline, some stories slipped this step or it is not done properly as happened in these two stories," said Mbhele.

4.4.1 Breach of Press Code clause 1.5 on Right to Reply

According to the Ombudsman's ruling, the *Sunday Times* was in breach of Clause 1.5 that states: "A publication should usually seek the views of the subject of serious critical reportage in advance of publication ...". Thloloe said: "The newspaper knew that the authors of the forensic report had not interviewed former Land Bank board member, Mr Sam Mkhabela, and that made it important for it to interview him before publishing the allegations. The *Sunday Times'* excuse, that it tried unsuccessfully to obtain contact details for him is not convincing. It could have continued searching after it had gone to print on November 11 and published his side soon thereafter. Berger (2004:50) posits that fairness demands that real efforts are made to get the other side's comment, and the more serious the claims are, the more trouble must be taken. "It is not good enough to make a half-hearted phone call and then take refuge behind the formulae "X" was unavailable for comment. It is also important to allow a reasonable amount of time for the person to formulate a response. It is unfair for reporters to phone somebody half an hour before deadline and expect a response to six months of investigation." (Berger, 2004:42)

He, however, went further to caution that a story cannot be held hostage by somebody's inability or unwillingness to respond in reasonable time. According to him, the response should also be given due weight and prominence in the story. Berger said: "It is unfair to tack a single line of response into the end of an intricate story. The subject of an accusation deserves to be allowed to respond to the various aspects of the story, and for his or her voice to be heard reasonably prominently." He, of course, reasoned that there are occasions when in spite of best efforts, the comments remains elusive. Then in this case, Berger said, the person should be given an opportunity to respond as soon as possible after the initial story appears. This did not happen in the Land Bank story. Rather, the *Sunday Times* went ahead with follow up stories on the saga without correcting most of the inaccuracies contained in its first reports.

According to Berger, journalists need to rise to the challenge of fairness as difficult as it is. “We may have difficulties with the notion of objectivity, but no journalist can do without a commitment to fairness,” he submitted. (Berger, 2004)

4.4.2 Breach of Press Code clause 1.3 on Accuracy

The *Sunday Times* was also in breach of clause 1.3 of the Press Code that states: “Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinions, allegations, rumour or supposition, it shall be presented in such a manner to indicate this clearly.” According to the Press Ombudsman, the bulk of the complaints against the press relate to accuracy, right of reply, the use of anonymous sources and presentation of allegations as facts. But my research shows there is no coherent and consistent application of the code. Former *Sunday Times* political editor, Wally Mbhele said that they had applied the Press Code to the stories, but not sufficiently. “We applied the code and guidelines as much as we could in the circumstances. But we failed by not applying the Accuracy Check to the letter and for not getting response from some of the subjects (Mbhele, 2011).

At the *Sunday Times* the use of Accuracy Check, which is regarded as a quality control mechanism, has been reduced to a routine exercise where journalists just tick the box without an editor ensuring compliance with the contents of the form. “The *Sunday Times* uses an Accuracy Check form which is designed to ensure reporters meet accuracy and fairness requirements. There is, however, no consistency in the use of the form and few consequences for not using it, or for getting facts wrong,” said the *Sunday Times* Review Panel report. Wisani wa ka Ngobeni said that he used to accompany every story with a completed Accuracy Check Form. “But with time, it became a routine procedure, especially if you have sufficiently earned the confidence of your editor who assumes you will always do a thorough job,” said Ngobeni

Former *Sunday Times* editor Mondli Makhanya (2011) admitted this much on the Land Bank and Transnet stories: “We did apply them (the Code) but not one hundred per cent because we should have actually gone all the way, and we should have waited until the person that we are writing

about to come back to us, maybe give him more time, in terms of the Land Bank case, maybe give him more space to respond and in the case of the Transnet story, we should have waited another week as well. We should have done the Accuracy Check." (Makhanya: 2011)

Thloloe stated the need to put things in perspective saying that the few instances of breaches to the code should not suggest that journalists just ignore the code. According to Thloloe, the bulk of the journalists respects the code and applies it. "There are occasions when journalists break the code. And these are few and far between. It's the few that break the code that we need to look at. Why does it happen? I am not saying that we should minimise the fact that we have breaches of the code. No, we shouldn't." (Thloloe: 2011). On the way forward, Kruger said senior editorial staff should provide leadership in the newsrooms through awareness and ensuring application of the code.

4.5 Accuracy and the Accuracy Check

The *Sunday Times* conceded that there were a number of inaccuracies in the two reports. Among the errors was the R2-billion figure in the first Land bank story of November 11, 2007 which was taken down to R1.1billion in the January 20, 2008 follow-up story, without any indication that the earlier story, written before the newspaper got hold of the Forensic Report, had given an exaggerated and incorrect figure. In its first report of November 11, 2007, the *Sunday Times* reported that "Top Land Bank officials siphoned off more than R2-billion meant for farmers to fund their close friends and business associates' luxury golf estates, a sugar mill, equestrian estates and residential developments." However in the January 20, 2008 report, the paper revised the amount down saying that the Land Affairs minister Lulu Xingwana "had commissioned auditors Deloitte to investigate a suspicious loan scheme, through which Mukoki sanctioned more than R1-billion to fund land developments for golf estates, theme parks and residential property. The funds should have been directed to needy farmers." (*Sunday Times*, August 11, 2007)

"In a story where a journalist has to rely on what s/he is told by other people, s/he has to check and crosscheck to ensure that s/he has as accurate a story as possible. There is always the danger

of inaccuracies creeping in," the Ombudsman said in his ruling against the newspaper. According to Kruger, accuracy is non-negotiable: "People can use a few errors to discredit a good story," he said (Kruger, 2011)

The Accuracy Check Form, which reporters are obliged to fill in for every story they file is designed to ensure that every reporter meets the requirements of accuracy and fairness of their stories. They are meant to go through it with a senior colleague, either a journalist or editor. The basic elements in Form are as follows:

- Names of reporter, news editor and checker
- Slug, synopsis and background of the story
- How did the report originate? Prime source and other contacts addresses and telephone numbers.

CHECKLIST

- Are all names correct and spelt correctly?
- Are all figures and percentages correct?
- Are all dates and ages correct?
- Are all facts correct? (Are there two on the record sources?)
- Are quotations correct (check against notebook/tape)?

CONTENT

- Are you satisfied that the story is accurate?
- Are you satisfied it is angled correctly?
- Are you satisfied that it is fair to all parties?
- Did you contact all parties involved?
- If not, what steps did you take to contact them?

LEGALS

- What legal problems do you foresee?
- Were you threatened with legal action?
- Does this report need to be checked by lawyers?

ADDITIONAL CHECKING

- Do you object to us contacting your source for checking?
- Do you object to them receiving a questionnaire?
- Did you find this form helpful?
- What suggestions do you have to improve it?

Ngobeni conceded that it was difficult to complete the Accuracy Check Form correctly when working under a "very tight deadline". "As journalists, we do our best to ensure that we answer all the questions in the Accuracy Check Form correctly but it is not always possible. There will always be some missing gaps we overlook because the story has to go," Ngobeni said. The *Sunday Times* Review Panel also notes that there is no consistency in the use of the form and few consequences for not using it or for getting facts wrong.

The *Sunday Times* Review Panel Report (2008) said: "We discussed this process with reporters and seniors and reviewed completed forms from the last three years. It was clear to us there is no consistency in the use of the form. Some reporters stated that it was "filed and then forgotten", there were time constraints in completing it, and it was not useful because "it is blind to tone". There were also complaints that some reporters appeared to be exempt from the check." Makhanya admits: "Unfortunately these two stories were not subjected to our accuracy check which is the fault on our side, both as the editorial management and the people who were doing the story. An investigative story should be put through a very, very rigorous process. But I think that in these two particular instances, we skipped a step and that step was the Accuracy Check" (Makhanya, 2011).

Mbhele also conceded that the stories were not sufficiently interrogated by senior editors. A well-maintained system of accuracy checks should have alerted the journalist and editors to the fact that allegations were being made in the article that could not be backed up. Some rigorous questioning and examination of documents by at least one senior not close to the story would have picked up the problem.

The result of the observed inconsistency in the use of the Accuracy Check is its failure to pick up problems in the stories which eventually resulted in breaches of the Press Code. Effective use of the Accuracy Check by ensuring compliance with the checklist, content and legal aspects of the form would have saved the paper from the breaches ruled against it by the Press Ombudsman. Among the question in the Accuracy Check Form that would have prevented the lapses in the reports if answered correctly are: Are all figures and percentages correct?

4.6 **Breaches of the Press Code**

Speaking at the formal presentation of the newly reviewed Press Code on 10 October, 2011, the Press Ombudsman Joe Thloloe maintained that the standard of South African journalism is not a serious problem, but he does admit that poor reporting is on the increase. According to Thloloe, the number of complaints received by the Press Ombudsman has increased from 213 in 2010 to 300 for 2011. “It's rather isolated. It's not as if the South African press has gone all out to be irresponsible," said Thloloe at the launch. But he adds that one complaint is one too many (Thloloe, 2011).

According to the Ombudsman, the most common breaches of the code relate to inaccuracy, right of reply, the use of anonymous sources and presentation of allegations as facts. With regard to the two stories under examination, the *Sunday Times* was in breach of several provisions of the Press Code as indicated in the Ombudsman’s ruling against the newspaper. In its ruling on the Land Bank Case, the *Sunday Times* was in breach of clause 1.3 of the Code which covers accuracy: “Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinions, allegations, rumour

or supposition, it shall be presented in such a manner to indicate this clearly". It was also in breach of clause 1.5 of the code by denying Mukoki and Mkhabela sufficient space and right of reply at the time of publication. Clause 1.5 of the code states: "A publication should seek the views of the subject of serious critical reportage in advance of publication. However, while the *Sunday Times* reported that Minister Lulu Xingwana instructed the Land Bank and Mukoki to enter into a mutual separation of his contract, Mukoki said that the settlement was initiated by himself as early as November 2006. The Ombudsman upheld Mukoki's complaints because there was no indication that the reporter asked Mukoki about his separation settlement. The Ombudsman was also clear that the reporter had erred in not putting the allegations to Mkhabela before printing the story. The reporter said he had tried and failed to find a number for Mkhabela and he was mentioned only in passing in the story. The *Sunday Times* panel noted that even after the initial report, no attempt was made to contact Mkhabela. A follow-up interview would have ameliorated the original oversight, and may have stopped his complaint to the Ombudsman in its tracks. Nevertheless, the allegation against Mkhabela was serious and should have been put to him.

The *Sunday Times* also conceded that there were a number of inaccuracies in the two reports which in itself constitute a breach of clause 1.1 of the code that states: "The press shall be obliged to report news truthfully, accurately and fairly." Although the newspaper later reported the correct figures in its subsequent editions, it did not acknowledge that the earlier figures were incorrect, thus leaving contradictory figure in the public arena. This is a breach of clause 1.6 of the code that states: "A publication should make amends for publishing information or comment that is found to be inaccurate by printing, promptly and with appropriate prominence, a retraction, correction or explanation.

The Ombudsman ruled that the Forensic Audit contents should be treated as allegations rather than facts unless and until they were tested in court. "Good practice in journalism is to treat allegations as just that until they are proved to be true in a court of law," the Ombudsman said in his ruling. The *Sunday Times* panel also buttressed this position, saying that the newspaper had not exercised sufficient care and should have reported the Forensic Audit's content as claims and allegations rather than fact. The Ombudsman found that the newspaper should have

acknowledged its mistake over the amount of money involved; and that Mukoki's side of the story should have been carried more fully (Ombudsman Ruling, 2008).

4.6.1 Balance and Right to Reply

Another key finding of this study is the importance the *Sunday Times* investigations attached to balance and right of reply. The *Sunday Times* was in breach of clause 1.5 of the code by denying Mukoki and Mkhabela the right of reply in the original Land Bank article. . Clause 1.5 states: "A publication should seek the views of the subject of serious critical reportage in advance of publication…. If the publication is unable to obtain such comment, this shall be stated in the report." However, regarding a mutual separation of his contract, the Ombudsman upheld Mukoki's complaints because there was no indication that the reporter asked Mukoki about his separation settlement. The Ombudsman was also clear that the reporter had erred in not putting the allegations to Mkhabela before printing the story. Ngobeni said he had tried and failed to find a number for Mkhabela and he was mentioned only in passing in the story. "I had just over 24 hours to file this story and all efforts to get Mkhabela's telephone numbers failed and I had a marching order that the story must go that particular weekend to avoid being scooped by others", Ngobeni said in the interview.

The *Sunday Times* panel noted that that even after the initial report, no attempt was made to contact Mkhabela. A follow-up interview would have ameliorated the original oversight, and may have stopped his complaint to the Ombudsman in its tracks. Nevertheless, the allegation against Mkhabela was serious and should have been put to him. Not doing so made the newspaper vulnerable to criticism, exposed it to legal action and undermined the story. A follow-up interview would have ameliorated the original oversight, and may have stopped his complaint to the Ombudsman in its tracks.

Editor Mondli Makhanya told the Review Panel that he thought that in retrospect the story should probably have been held a week to allow more time for it to be completed. "We should have waited until the person that we are writing about came back to us, maybe give him more time, in terms of the Land Bank case, maybe give him more space to respond and in the case of

the Transnet story, we should have waited another week as well," Makhanya said in my interview.

The editing process should have picked up that there were individuals against whom serious allegations were being made who had not been contacted. There should have been more careful consideration given to either holding the story or publishing it with these names omitted. This points to a need to tighten up on editing procedures to identify and deal with instances where serious allegations are being made without the subject being given a chance to respond. A related area that could do with clarification is how far reporters need to go to seek comment from somebody who is subject to critical reporting. (*Sunday Times* Review Panel, 2008)

When probed further thus "This question of waiting for a subject to respond, I am also a journalist and I know the pressure on journalists to publish. How do you manage this pressure of deadline?" Makhanya responded: "You always run the risk, people will delay responding in the hope that you won't publish. And once you don't publish, they use other spin publications. Often times we are compelled to publish without response. It is a risk. You think you have given the subject reasonable time to respond and the response is not forthcoming. It's a Catch-22 situation and we got caught in the situation in the case of the Land Bank story," Makhanya said. This position demonstrate the real dilemma and tough choices editors always have to make between applying the Press Code to the letter and the reality of publishing stories faced by journalists on a daily basis. Balancing these daunting demands remains a test of a journalist's professionalism, experience and the will to do the right thing.

4.6.2 Fairness, Facts and Allegations

The Ombudsman ruled that the Forensic Audit contents should have been treated as allegations rather than facts unless and until they were tested in court. "Good practice in journalism is to treat allegations as just that until they are proved to be true in a court of law. For example, when a person is charged with rape and appears in court, news coverage assumes him to be innocent until the court pronounces him guilty. As the evidence is led in court, it is clear that these are

only allegations and his defence is given equal prominence. It is also not assumed that a rape did take place – the court might find it was consensual sex that had occurred.

"Even after the person has been convicted, news stories can refer to him as a rapist only after the appeals process has been completed. A newspaper that called him a rapist before this process was completed risks a suit for defamation if he is eventually acquitted.

The findings and conclusions of forensic auditors would be led as evidence in court, if it was appropriate, and the auditors would be cross-examined to test their evidence in the normal way that courts do. Their word is not gospel," the Ombudsman said in his ruling.

This is a clear breach of clause 1.3 of the South African Press Code that states: "Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinions, allegations, rumour or supposition, it shall be presented in such a manner to indicate this clearly." Perhaps, one of the most scathing criticisms of the Land Bank stories was reporting allegations as fact.

4.7 Factors Responsible for Breaches of the Press Code

In order to examine some of the factors responsible for breaches of the Press Code by the *Sunday Times*, it is necessary to understand the newspaper's editorial operations and the environment in which the journalists' work. The *Sunday Times* coordinates its editorial operation from its Rosebank, Johannesburg headquarters. The newsroom is headed by a Deputy Managing Editor (DME) News, with bureau chiefs in Durban and Cape Town, and an Acting News Editor in Johannesburg. The Deputy Editor oversees both the DMEs for news, features, production, legal/campaigns as well as the Foreign Editor. The subbing process is overseen by the DME: production, who reports to the Deputy Editor. There was no Chief Sub-Editor for the main body of the paper at the time the Land Bank and Transnet stories were published. AChief Sub Editor has since been appointed following the recommendation of *Sunday Times* Review Panel.

The weekly Johannesburg newsroom diary meeting, held every Tuesday, is the start of the process. Here, journalists and editors brainstorm story ideas, brief and de-brief reporters and decide the main task for the week ahead. The bureaus also have regular meetings to discuss the paper and diary. The *Sunday Times* has developed a particular style of operating that places enormous authority in Conference, a weekly meeting of senior editorial staff of the publication. Conference finalises the diary, decides angles and story placements, chooses the splash (front page lead story) and writes major headlines. The national news editor receives assistance from editors on the desk who have other primary responsibilities, and who then channel stories when they have not been involved in briefing or debriefing the reporters.

Through the interviews and discussions with the journalists involved in these two stories it is clear that a variety of factors have an impact on the way stories are handled and these may lead to the specific breaches of the Press Code.

4.7.1 **Late Arrival of Material**

This has been identified as a primary reason for the inability to thoroughly check content ahead of publication. Makhanya said that, ideally, every reporter or team of journalists working on an investigation are expected to turn in their stories on the Thursday preceding the Sunday publication. But in practice, he explained, this is not always so as some stories will arrive late in the week due to one reason or the other. "I always wish stories could arrive earlier than normal so we can have time to work on it but is not always the case. Newspapers and media houses are live things. The story can rot or go stale – perishable commodity (Makhanya, 2011).

The news-gathering process is light at the start and heavy at the end of the week. All newspapers experience increased pressure as deadlines approach. For the *Sunday Times*, Friday and Saturday are the busiest days. The *Sunday Times* Review Panel also found that the paper has so much last-minute pressure on a Saturday afternoon that it undermines effective editing. According to the Panel, stories were being finalised too late and mistakes were slipping through as a result. The Panel admitted that although late-breaking stories will always bring a last-minute rush, but said it learnt that much of the late copy was material which could have been submitted earlier in the

week. Makhanya, in acknowledging this issue, said many efforts had been made to push copy through earlier in the week with insufficient success. "These stories also happened to have arrived very late in the day. They should have arrived much earlier on the Thursday deadline, allowing us to edit them more rigidly." (Makhanya, 2011). According to Williams (2003), "news work is focussed on the 24-hour news cycle, deadlines, inverted pyramid story writing, news beats, and space and time constraints. Within all media organisations, routines develop as a way of minimising the risks of production, which can include a range of considerations from being involved in a libel suit, protecting individual workers from criticism by their peers and the public, the duplication of efforts or increasing costs" (Williams, 2003:108-9).

4.7.2 Insufficient Knowledge/Awareness of the Press Code

According to Makhanya, the *Sunday Times* applied the Press Code in every story it published but not one hundred per cent. "Everything we do, we apply the Press Code. We have to keep refreshing people's knowledge on Press Code and applying ethics… to ensure people are not bridging it in any way, on appointment, you have to sign a form saying you have read the Press Code and you're ready to abide by the code of ethics and we abide by them. And you can actually be disciplined. So both the ethics and accuracy enhance our standards." (Makhanya: 2011) Mbhele said that the Press Code is imprinted in various forms and come handy for everyone in the newsroom. "So it is used on a day-to-day basis," said Mbhele. However, a situation where the *Sunday Times* Review Panel was provided an out-dated version of the Press Code when it probed the editorial activities of the weekly in the last quarter of 2008 was not a good advertisement of *Sunday Times* journalists' awareness of changes to the code. The version provided in this document needs to be updated: there have been several changes to the code since this policy document was compiled. It is also not clear why staff should have only extracts of the code, rather than the whole document," the panel said in its final report. From this observation, it is clear that the *Sunday Times* journalists may not have sufficient knowledge of the contents of the Press Code since most of them did not have a complete, correct and updated version of the institutional document. What is however constant is that journalists are aware of the code but may not be sufficiently knowledgeable of the detail content of the code.

4.7.3 Lack of Legal Checking

Both the Land Bank and Transnet stories raised legal issues that required legal advice. Makhanya said that the paper had in-house lawyers and also retained external legal advisors who are briefed on an ad hoc basis for stories that raised legal issues. According to Makhanya, neither of the two controversial stories was referred for legal checking. According to him, the *Sunday Times* was confident that the paper would have the defence of truth in the public interest. "We felt that the defence of truth in the public interest will see us through whatever legal issues that may arise from the stories," said Makhanya.

The Review Panel said: "We have some difficulties with the merits of this approach. Firstly, the lawyer is a fresh eye on a problematic story and would generally take a cautious approach to the verification of facts. While the paper is always free to disregard a cautious view, it remains valuable for them to hear and consider it. Secondly, a lawyer reviewing a controversial story will be able to assess the defence of truth in the public interest with reference to admissible evidence available to the paper at the time of publication. For instance, in the first Land Bank story, the forensic report that formed the basis of the claims was not available to the newspaper at the time of publication. A similar point applies to the Transnet story. In these circumstances, a defence of truth would probably not be successful as the paper might have difficulty proving it. Thirdly, even if this defence holds good, a lawyer may suggest changes which can lessen the chances of being sued without changing the substance of the story" (*Sunday Times* Review Panel Report, 2008). It is therefore surprising that the *Sunday Times* did not seek external legal advice on the two problematic stories.

4.7.4 Editing, Re-writing and Over-writing

In view of the errors in the Land Bank and Transnet stories, the journalists agreed that there is the need to tighten the editing process at The *Sunday Times*. "They could be much stronger. We

must make them tighter so much that if mistakes happen, it must be too difficult to detect," Makhanya said. For Mbhele, every writer or editor needs an editor. "So, in order to keep our stories tighter and free of unpardonable errors, editors need to be more thorough and more meticulous and should always allow for another look before publishing. Every mistake, be it factual or grammatical, is an indictment of the gate keeping function" (Mbhele, 2011)

The absence of a Chief Sub Editor also played a major role in contributing to some of the inaccuracies spotted in the two reports resulting in breaches of the code. Makhanya said that the Deputy managing Editor in charge of production performed the duty of a Chief Sub. The *Sunday Times* Panel said that it was "struck" by the extent of rewriting it saw when it looked at different versions of randomly selected stories as they made their way through the editing process. In several cases, two sharply different versions were generated on the news desk. Accordingly, the view of the panel is that a legitimate story was obscured by over-writing.

4.7.5 The Role of Deadlines

According to the findings, deadlines played a significant role in the lapses identified in the Land Bank and Transnet stories. Ngobeni said he had just over 24 hours to deliver the Land Bank story. "I had just over 24 hours to file this story and all efforts to get Mkhabela's telephone numbers failed and I had a marching order that the story must go that particular weekend to avoid being scooped by others" (Ngobeni, 2011). "Obviously, deadlines are the bane of our lives. Stories must go and you can always do more on a story. But deadline always restrict you. But it also focuses you. I always wish stories could arrive earlier than normal so we can have time to work on it but is not always the case. Newspapers and media houses are live things. The story can rot or go stale – because news is a perishable commodity," Makhanya said. The late arrival of material has been identified as a primary reason for not meeting deadlines and the inability to thoroughly check content ahead of publication. Makhanya said that, ideally, every reporter or team of journalists working on an investigation are expected to turn in their stories on the Thursday preceding the Sunday publication. But in practice, he explained, this is not always so as some stories will arrive late in the week due to one reason or the other.

5. Discussion

On the basis of the findings, this section aims to discuss how the Press Code is being applied to investigative journalism at South African Newspapers. The discussion specifically focuses on determining how knowledgeable the journalists' are on the Press Code as well as its application to two *Sunday Times* investigative stories that became problematic - the Land Bank and the Transnet stories - and attempts to determine whether the code informs the decisions taken. It also considers how the breaches of the code came about and why, in order to explain the consequences of the breaches for the South African media. The main thrust of the discussion is that sufficient knowledge of the Press Code and its conscientious application by journalists could prevent some of the breaches observed in the course of publishing these two stories.

The discussion will go on to show that if well managed by the journalists and the industry, correct application of the Press Code could be of great help and a force for good as a guide for best practice of the journalism profession on the one hand, and save the self-regulation system and the print media generally from criticisms of slack journalism. Finally, it will look at the issue of public interest versus the individual's rights to privacy and fairness, as well as some of the critiques of the Press Code. The discussion takes the form of themes considered as pertinent to address the research questions in relation to the theoretical framework especially where the literature helps to explain the emerging issues.

5.1 The Journalists' Knowledge of the Press Code

That investigative journalists at South African newspapers are aware of the existence of the Press Code and have "a fair idea" of what it is all about is not in doubt, going by the findings of this study. What remains lacking, however, is a detailed and precise knowledge of the content of the code to guide the journalists in making informed decisions in their day-to-day practice. For instance, when asked about the basic provision of the Press Code on correction of errors, two of the journalists interviewed could not answer the question correctly. "One can always refer to the

Press Code if and when the need arises," Wisani wa ka Ngobeni, who investigated and authored the Land Bank reports told this interviewer. Suffice to say that a large proportion of the Press Code touched on most aspects of the conduct of investigative journalism. From the first clause which deals with truthfulness, accuracy and fairness through to sections on right of reply, privacy and the need for exceptional care in matters involving dignity and reputation of individuals, the Press Code is a "must know" for any investigative journalist wanting to stay out of trouble with the law and the public. Therefore, investigative journalists, more than any other class of journalists, are required to have a thorough understanding of the Press Code which can be used as a guide for good practice of the profession.

Press Ombudsman Joe Thloloe told me in an interview that his office is embarking on an intensive publicity campaign to familiarize journalists in the newsrooms with the Press Code following the launch of the reviewed Press Code which took effect from 15 October 2011. "We will now have big posters with the Press Code in newsrooms right across the country. We have distributed our brochure with the Press Code and the Press Council. And we, myself and the deputy Press Ombudsman, will intensify talking to journalists in newsrooms to familiarize them with the content of the code (Tholoe, 2011). In buttressing this, Franz Kruger stressed the need for news editors to "show leadership in newsrooms" by promoting awareness of the Press Code and ensuring its regular application (Kruger, 2011)

Another argument regarding journalists' mastering of the Press Code is that rather than turn the code into a "tick box", as Mondli Makhanya puts it, the code should actually be internalised and remain in the subconscious of journalists. For journalists to be able to "live the code" and for it to become part of their daily practice, Thloloe called for continuous education in form of newsroom tutorials and introducing the Press Code into the curriculum of journalism education. "One of the things I tell editors when I go visiting newsrooms is for them to take one or two cases where the newspaper has been involved and review it in a way that people can sit around and talk about why we got this story wrong and where we got it right etc. In that way, people will become familiar with the code and with the practices of the code. At the same time, we are also looking at ethical courses that we can get institutions to run that will incorporate the Press Code and the Press Council. So it's a multi-pronged campaign that we are looking at (Thloloe, 2011).

5.2 The Press Code and its Application in Practice – Does it Inform the Decisions Journalists take?

Among the major findings of this study open for discussion is the wide gap observed between application of Press Code and the reality of day-today journalism practice. While the journalists claim they apply the code to every story they publish, what obtains in real practice is an inconsistent application of the code as demonstrated by both the journalists and the editors who handled the controversial Land Bank and Transnet stories in the *Sunday Times*. The influential weekly was in breach of the code in several respects largely because of its failure to apply the Press Code in practice. From the findings, the basis of the breaches could be traced to the failure of the newspaper to fully utilise its Accuracy Check, an internal mechanism designed to ensure that the paper met the requirements to ensure the accuracy and fairness of their stories and ultimately prevent breaches of the code. A closer examination of the Accuracy Check form indicated that the system could have picked up most of the observed errors if the form was correctly completed. For example, the inaccurate figure of R2-billion reported as the money "siphoned off" by Mukoki and associates in the Land Bank story could not have arisen if the reporter correctly answered the questions in the checklist section of the Accuracy Check. For example, the question: are all figures and percentages correct? would have picked up the incorrect N2 billion figures reported in the story. The same goes for the Transnet story where there was no justifiable evidence that Transnet sold the area depicted in the diagram *Sunday Times* published in the report. In its statement refuting *Sunday Times* claims, Transnet said that the sale of the V&A Waterfront to Lexshell did not include the "ocean area up to Robben Island" as reported by *Sunday Times,* explaining that no land or sea areas were part of the sale transaction. "At no stage has Transnet stated that it owns the sea, sea-shore and sea-bed in the terms reported. Transnet has stated that it owns the ports and the land and water areas within the ports by virtue of the Legal Succession to the South African Transport Services Act and the National Ports Act," said the state-owned transport utility, adding that it could not have sold what it did not own. Also, the question: did you contact all parties involved? Would have limited the embarrassment as Transnet said it was not contacted for comment by the *Sunday Times* before publishing the story.

The above examples, demonstrate that the application of the Press Code differs considerably from what actually happens in daily practice. The reasons for this variation may depend on a number of factors ranging from the environment in which the journalists operate and the willingness of the journalists to abide by and apply the code to the letter. From the foregoing, it can be deduced that the Press Code does inform decisions journalists take but not at all times.

5.3 What Went Wrong – How the Breaches of the Press Code at the *Sunday Times* Came About and Why?

In his summary of what went wrong at the *Sunday Times*, Makhanya said that the series of embarrassing retractions and breaches of the Press Code as found by the Ombudsman "was a combination of accuracy procedures not being followed to the letter and overenthusiastic editing on the part of editorial management". Makhanya also said that the fact that the *Sunday Times* has produced some ground-breaking journalism had led to certain arrogance. "We got complacent about how good we were. We can't get it wrong," he said. But the Review Panel warned in its report that "arrogance of this kind can be dangerous, and perhaps this is the single greatest factor causing the recent missteps."

What went wrong at the *Sunday Times* resulting in breaches of the Press Code can be discussed under three broad categories:

i Failure of the gatekeeping function which manifests itself in over-writing, inaccuracies creeping in without editors picking it up and reporting allegations as facts.

ii Right of reply - seeking and getting views of subjects of critical reportage

iii Pressure of deadlines and unwarranted rivalry to avoid not being scooped by other publications.

i. Failure of the Gatekeeping Function

My findings show that the *Sunday Times* made several errors of judgement in covering the Land Bank and Transnet stories and could have limited its liabilities if it had exercised more caution in running the stories. The in-house re-writing of the Transnet story, for instance, introduced some elements not intended by the reporter who was actually privy to the facts of the story. This significant interventions by editors often amounted to an overkill, especially when the re-write editor prioritised the *Sunday Times* style over the accuracy of the story. The Review Panel observed: "There is obviously a need for editors to intervene to sharpen language and make the copy flow. But in our view the re-writing of the text in this case (Transnet) appeared to go beyond sharpening the language. The editing gave the story a sensational angle that the reporter appears not to have intended, and that the documentary evidence – seen only by the reporter – did not justify. Without having seen the evidence, the editing should not have taken the course it did (*Sunday Times* Panel Report, 2008).

Several inaccuracies in the two reports also point to a failure of the gate keeping function to ensure relatively error-free copy. In its first report of November 11, 2007, the *Sunday Times* reported that "Top Land Bank officials siphoned off more than R2-billion meant for farmers to fund their close friends and business associates' luxury golf estates, a sugar mill, equestrian estates and residential developments." However in the January 20, 2008 report, the paper revised the amount down saying that the Land Affairs minister Lulu Xingwana "had commissioned auditors Deloitte to investigate a suspicious loan scheme, through which Mukoki sanctioned more than R1-billion to fund land developments for golf estates, theme parks and residential property. The funds should have been directed to needy farmers" (*Sunday Times, 11* August, 2007).

Regarding reporting allegation as fact, many allegations contained in the Land Bank and Transnet stories were presented as facts, thus passing a guilty verdict on the subjects before the public. The Ombudsman ruled that the Forensic Audit contents should have been be treated as allegations rather than facts unless and until they were tested in court. "Good practice in journalism is to treat allegations as just that until they are proved to be true in a court of law" (Thloloe, 2008).

ii. Right of reply / seeking and getting views of subjects of critical reportage

Clause 1.5 of the Press Code states: "A publication should usually seek the views of the subject of serious critical reportage in advance of publication ...". But as happened in the Land Bank reports, Transnet said it was not contacted for comment by the *Sunday Times* before publishing the story. "We were not afforded an opportunity by the *Sunday Times* to comment on the article before its release. Had we been granted this opportunity it would have allowed us to present the facts and limit the embarrassment and damage that the article has caused to Transnet. This is particularly disconcerting in light of the fact that several weeks ago – when the matter was first reported in the media – Transnet issued a media statement clarifying the very same issues that are the subject of the *Sunday Times* article," said Transnet in refuting the report. Berger (2004) posits that fairness demands that real efforts are made to get the other side's comment, and the more serious the claims are, the more trouble must be taken. "It is not good enough to make a half-hearted phone call and then take refuge behind the formulae "X" was unavailable for comment. It is also important to allow a reasonable amount of time for the person to formulate a response. It is unfair for reporters to phone somebody half an hour before deadline and expect a response to six months of investigation" (Berger, 2004).

He, however, went further to caution that a story cannot be held hostage by somebody's inability or unwillingness to respond in reasonable time. According to him, the response should also be given due weight and prominence in the story. Berger said: "It is unfair to tack a single line of response into the end of an intricate story. The subject of an accusation deserves to be allowed to respond to the various aspects of the story, and for his or her voice to be heard reasonably prominently." He, of course, reasoned that there are occasions when in spite of best efforts, the comment remains elusive. Then in this case, Berger said, the person should be given an opportunity to respond as soon as possible after the initial story appears. According to Berger, journalists need to rise to the challenge of fairness as difficult as it is. "We may have difficulties with the notion of objectivity, but no journalist can do without a commitment to fairness," he submitted (Berger, 2008).

iii. Pressure of deadlines and unwarranted rivalry to avoid not being scooped by other publications

Deadlines played a significant role in the lapses identified in the Land Bank and Transnet stories. Ngobeni said he had just over 24 hours to deliver the Land Bank story. Mondli Makhanya said: "Obviously, deadlines are the bane of our lives. Stories must go and you can always do more on a story. But deadline always restrict you. But it also focuses you. I always wish stories could arrive earlier than normal so we can have time to work on it but is not always the case. Newspapers and media houses are live things. The story can rot or go stale – because news is a perishable commodity." The late arrival of material has been identified as a primary reason for not meeting deadlines and the inability to thoroughly check content ahead of publication. He explained that in practice, it is not always possible to get stories in on prescribed deadlines as some stories will arrive late in the week due to one reason or the other. But beyond this, the unwarranted rush to publish exclusives ahead of rival publication also played a role in rushing stories through without proper authentication and verification.

Shoemaker and Reese explain with reference to Tuchman that journalists under the pressure of deadline do not have time to reflect on whether they have found the "truth" in their stories. They, therefore, need a set of procedures to follow which will protect them from libel suits and criticism of bias. These procedures include the use of verifiable facts, using quotation marks and attributing statements to sources (Shoemaker & Reese, 1996:113)

Manning (2001) maintains that "each form of news output may function to a different cyclical rhythm but it is deadlines, more than anything else, which shapes how each journalist goes about her or his work, and which determines both his constraints and opportunities of the job. In other words, most news journalists have to meet deadlines as a matter of routine, and they will develop a number of techniques and organisational practices to accommodate this imperative. This is where human agency meets social structure" (Manning, 2001:54). In my view, editorial deadlines are not meant to be a journalist's albatross. Rather, it is an imperative designed to make journalists perform to the best of their ability on a given assignment within a specified timeframe.

5.4 Is the Press Code a Help or Hindrance? Can it Be a Force for Good as a Guideline for Best Working Practice?

The existence and application of a code of ethics in any media system is seen as an invaluable asset to industry and the society at large. The Press Code helps to keep journalists within reasonable limits of acceptable behaviour and standards in order to maintain sanity within the system. "It helps. You need to behave and stick to it in order to maintain credibility with your audiences, failing which would lead to a collapse of the credibility of the media. We can't do our jobs if people don't trust us and we need to behave properly in a way that the public can trust us," journalism ethics scholar Franz Kruger said in my interview (2011)

A code that is adopted and adhered to by newspapers voluntarily, encourages co-operation with the system, and is, in the words of Kruger, 'an attempt to balance the need for some accountability with the desire to safeguard media freedom' (Kruger, 2009:13).

In a democracy, a Press Code that works can be a force for good as a guideline for best working practice in that it helps promote high ethical standard and professionalism. The Press Code of practice is central to self-regulation. It is the instrument on which reporters and editors should rely to guide them in decisions on whether a practice is acceptable or not, and it provides the yardstick by which the Press Council, through the Ombudsman, assesses complaints. Therefore, only a code drafted by journalists themselves would command the necessary authority to deliver universal compliance. A code of ethics publicly defines the functions, rights and duties of journalists and thus provides journalists with guiding principles on how to best exercise their profession. The absence of a code of ethics that is respected by practitioners and keep them within reasonable bounds is an invitation to total anarchy in society. Although Kruger conceded that it is not possible for all journalists to be honorable to abide by the rules all the time: "You know as human being, people are fallible and flawed; of course, we want the media to be responsible and adhere to ethics," said Kruger (2011).

Kruger, however, warns that the interpretation of the Press Code should not be seen as an attempt to make the press "toe the line"; a stance he said would prevent the press from performing its statutory role of watchdog of the society. "The point is that we don't want the media to toe the line. That's exactly the point. What we want is journalism and media that is free to do their job.

Of course we want the media to be responsible and adhere to ethics. The Ombudsman is not the only institution that regulates the press. There are defamation laws," Kruger said.

If journalists work according to agreed ethical standards of behaviour - based on accuracy, fairness, independence and accountability – they are less likely to fall foul of the law. Indeed, codes of ethics ensure that press freedom prevails**.** So, all good journalists should pay continual attention to codes of ethics. For media owners and publishers, a code is protection against criticism and legal action; for journalists, it serves as a standard against public criticism. Journalists must abide by the fundamental standards set by the institution they work for. By accepting employment, they are understood to have approved its code of ethics, the compass that prevents deviation from agreed standards of good journalism. Some news outlets include a formal undertaking to abide by the code in their contracts of employment. Others prefer a non-binding approach, coupled with a staunch commitment to ethics. The code of ethics is not an official legal document and the press council does not make judicial decisions. Members need personal and professional moral integrity rather than any law-related knowledge.

In the South African context, there has been considerable interest by the public in the activities on the Press Ombudsman and the Press Code over the past five years. This increased interest, whether positively or otherwise, is an indication of the South African public's recognition of the Press Code as a set of rules guiding journalism practice.

5.5 Gauging Public Interest versus Individual's Right to Privacy and Fairness

According to Ombudsman Joe Thloloe there is a defence of public interest in some of the issues that the Ombudsman has handled. "For example, in news and comment, the press should exercise exceptional care in matters involving the private lives of individuals bearing in mind that any right to privacy may be overridden by public interest," said Thloloe. He goes further: "We respect all the laws of the country, we respect the privacy of individuals, we respect the dignity but if there is overriding public interest of why we shouldn't respect individuals right, then we will listen to the newspaper's defence (Thloloe, 2011).

Perhaps, the new clause on dignity and reputation added to the newly reviewed code is aimed at addressing some of the concerns raised by affected members of the public on the matter. Clause 5 now states: The press shall exercise exceptional care and consideration in matters involving dignity and reputation, bearing in mind that any right to privacy may be overridden only by a legitimate public interest.

6. Conclusion

The Press Code has become a topical issue within the South African media but not much has been done to examine how it works in practice. A study of the application of the South African Press Code in relation to investigative journalism becomes necessary in view of public criticism of breaches of the code in the course of investigations by newspapers in recent years. This study demonstrated that investigative journalists at South African newspapers are aware of the Press Code and have "a fair idea" of what it is all about but lacked the basic knowledge of its content to guide them in making informed decisions in their day-to-day practice.

The study also demonstrated that breaches of the Press Code in the Land Bank and Transnet stories published by the *Sunday Times* were largely due to its failure to properly apply the Code. This researcher identified what went wrong at the *Sunday Times,* resulting in breaches of the Press Code as; failure of the gatekeeping function, manifesting in over-writing, inaccuracy and reporting allegation as fact: failure to seek and get views of subjects of critical reportage as well as pressure of deadline and unwarranted rush to publish in order to scoop rival publications. The study also showed that application of the Press Code in any media system is seen as an invaluable asset to industry and the society at large as it could help to keep journalists within reasonable limits of acceptable behaviour and standards in order to maintain sanity within the system.

Sufficient knowledge of and conscientious application of the Press Code by journalists could prevent some of the breaches observed in the course of publishing the two *Sunday Times* stories that were publicly challenged. This position goes on to show that if well managed by the

journalists and the industry, correct application of the Press Code could be of great help and a force for good as a guide for best practice of the journalism profession on the one hand, and as well save the self-regulation system and the print media generally from criticisms bordering on slack journalism.

Appendix A

Interview questions (media experts)

1. Do you think journalists are familiar with the Press Code?

2. How do you think we can reach that point whereby journalists would be able to "live the code"?

3. The review of the Press Code was informed by?

4. Do you think the provisions of the Press Code are adequate at addressing concerns being raised by the public?

As it stands now it has been addressing issues that have been raised by people who are complaining. For example last year (2010) we had 213 complaints and those complaints relates to the contents of the code as it exists now. But we are also looking at ways in which we can strengthen the code and we have had hundreds of suggestions of how we can improve the code.

5. What aspects of the code are you actually reviewing?

6. And when are we likely to have a new set of Press Code?

7. What is your take on the application of the code and actual practice?

8. From our discussion, it's not as if journalists are not aware of the press code, it's now the question of application of the code

9. The Press Code itself, for journalists, Do you see it as a help or hindrance?

10. How do the two codes interface?

11. What measures are in place to ensure more awareness and regular application of the Press Code?

12. Generally do you agree that there is gap between the Press Code in theory and what obtains in actual practice?

13. In your own view what do you think is responsible for these "few" breaches?

14. The Press Code as an instrument of self-regulation and a framework for good working practice – what are your general thoughts about it?

15. There have been calls for Ombudsman to be able to impose stiffer penalties. Is this one of the things the ongoing review is considering?

16. Also the issue of waving your right to legal procedure, is it one of the amendments you're considering?

17. Unlike the past where some sections were reviewed, is this a complete overhaul.

18. There is also concern about the composition of the press appeal panel, that it contains mostly journalists.

19. What kind of cooperation are you getting from the industry in terms of the rulings of the Ombudsman?

20. And the issue of public interest and right of individuals, do you have issues with the issue of public interest vs. the right of individuals?

Appendix B

Interview questions (journalists)

1. How did the Land bank/Transnet story unfold?

2. What are the processes the storie(s) passed through?

3. What is the nature of the criticisms and from which quarters?

4. Are the criticisms justified or not? Why?

5. Are you familiar with the contents of the Press Code and the Avusa editorial guidelines?

6. How did you apply the Press Code and the Avusa guideline in these instances?

7. How often do you refer to the Press Code in the course of duty?

8. Does it inform decisions you take while working on a story?

9. How does the Press Code interface with Avusa in-house regulations?

10. Tell me your personal experience with application of code?

12. How do you take decisions about public interest versus the right of individuals regarding fairness and accuracy?

13. How does its application guide in taking decisions about ethics and standards?

14. Is Press Code seen as help or hindrance?

15. The Ombudsman found Sunday Times in breach of sections 1.3 (i.e facts) & 1.5 (seeking a response) of the Press Code? What's your take on this?

16. What do you think are the reasons for the beaches?

17. Where did things go wrong in each case and Why?

18. What is the editorial management's reaction?

19. What are others reactions after publication?

20. What do you think are the remedies?

21. What is the role of deadlines in the handling of the stories?

22. What are the challenges/constraints experienced during investigations?

23. What are your thoughts on the watchdog role of the press?

24. What is your take on the provisions of the Press Code relating to investigative journalism generally?

25. What is your assessment of the gate keeping function?

Appendix C

The South African Press Code

Updated rules to take effect from October 15 2011

Preamble

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

Section 16 of the Bill of Rights states that:

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

a) Freedom of the press and other media;

b) Freedom to receive and impart information or ideas;

c) Freedom of artistic creativity; and

d) Academic freedom and freedom of scientific research.

(2) "The right in subsection (1) does not extend to:

a) Propaganda for war;

b) Incitement of imminent violence; or

c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm."

The press holds these rights in trust for the country's citizens; and it is subject to the same rights and duties as the individual. Everyone has the duty to defend and further these rights, in recognition of the struggles that created them.

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

As journalists, we commit ourselves to the highest standards of excellence, to maintain credibility and keep the trust of our readers. This means striving for the maximum truth, avoiding unnecessary harm and acting independently.

We adopt the following Code:

1. Reporting of News

1.1 The press shall be obliged to report news truthfully, accurately and fairly.

1.2 News shall be presented in context and in a balanced manner, without any intentional or negligent departure from the facts whether by distortion, exaggeration or misrepresentation, material omissions, or summarisation.

1.3 Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinions, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.

1.4 Where there is reason to doubt the accuracy of a report and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be mentioned in such report.

1.5 A publication should seek the views of the subject of serious critical reportage in advance of publication; provided that this need not be done where the publication has reasonable grounds for believing that by doing so it would be prevented from publishing the report or where evidence might be destroyed or sources intimidated. If the publication is unable to obtain such comment, this shall be stated in the report.

1.6 A publication should make amends for publishing information or comment that is found to be inaccurate by printing, promptly and with appropriate prominence, a retraction, correction or explanation.

1.7 Reports, photographs or sketches relating to indecency or obscenity shall be presented with due sensitivity to the prevailing moral climate. A visual presentation of sexual conduct should not be published, unless public interest dictates otherwise.

1.8 Journalists shall not plagiarise.

2. Gathering of News

2.1 News should be obtained legally, honestly and fairly, unless public interest dictates otherwise.

2.2 Press representatives shall identify themselves as such, unless public interest dictates otherwise.

3. Independence & Conflicts of Interest

3.1 The press shall not allow commercial, political, personal or other non-professional considerations to influence or slant reporting. Conflicts of interest must be avoided, as well as arrangements or practices that could lead audiences to doubt the press's independence and professionalism.

3.2 Journalists shall not accept a bribe, gift or any other benefit where this is intended or likely to influence coverage.

3.3 The press shall indicate clearly when an outside organisation has contributed to the cost of newsgathering.

3.4 Editorial material shall be kept clearly distinct from advertising.

4. Privacy

4.1 The press shall exercise exceptional care and consideration in matters involving the private lives and concerns of individuals, bearing in mind that any right to privacy may be overridden only by a legitimate public interest.

4.2 The identity of rape victims and victims of sexual violence shall not be published without the consent of the victim, or in the case of children, without the consent of their legal guardians.

4.3 The HIV/AIDS status of people should not be disclosed without their consent, or in the case of children, without the consent of their legal guardians.

5. Dignity & Reputation

The press shall exercise exceptional care and consideration in matters involving dignity and reputation, bearing in mind that any right to privacy may be overridden only by a legitimate public interest.

6. Discrimination & Hate Speech

6.1 The press should avoid discriminatory or denigratory references to people's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental disability or illness, age, or other status, except where it is relevant to the matter reported.

6.2 The press should not refer to a person's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental disability or other status in a prejudicial or pejorative context, except where it is relevant to the matter reported.

6.3 The press has the right and indeed the duty to report and comment on all matters of legitimate public interest. This right and duty must, however, be balanced against the obligation not to publish material which amounts to hate speech.

7. Advocacy

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

7.1 Making fact and opinion clearly distinguishable;

7.2 Not misrepresenting or suppressing relevant facts; and

7.3 Not distorting the facts.

8. Comment

8.1 The press shall be entitled to comment upon or criticise any actions or events of public interest, provided such comments or criticisms are fairly and honestly made.

8.2 Comment by the press shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to.

8.3 Comment by the press shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair account of all available facts which are material to the matter commented upon.

9. Children

For purposes of this Code, "child pornography" shall mean: "Any image or any description of a person, real or simulated, who is or who is depicted or described as being, under the age of 18 years, engaged in sexual conduct; participating in or assisting another person to participate in sexual conduct; or showing or describing the body or parts of the body of the person in a manner or circumstances which, in context, amounts to sexual exploitation, or in a manner capable of being used for purposes of sexual exploitation."

9.1 Child pornography shall not be published.

9.2 Exceptional care and consideration must be exercised when reporting on matters where children under the age of 18 are involved. If there is any chance that coverage might cause harm of any kind to a child, he or she should not be interviewed, photographed or identified unless a custodial parent or similarly responsible adult consents or a public interest is evident.

9.3 The press shall not identify children who have been victims of abuse or exploitation, or have been charged with or convicted of a crime.

10. Violence

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

11. Headlines, Posters, Pictures & Captions

11.1 Headlines and captions to pictures shall give a reasonable reflection of the contents of the report or picture in question.

11.2 Posters shall not mislead the public and shall give a reasonable reflection of the contents of the reports in question.

11.3 Pictures shall not misrepresent or mislead nor be manipulated to do so.

12. Confidential & Anonymous Sources

12.1 The press has an obligation to protect confidential sources of information.

12.2 The press shall avoid the use of anonymous sources unless there is no other way to handle a story.

Care should be taken to corroborate the information.

12.3 The press shall not publish information that constitutes a breach of confidence, unless a legitimate public interest dictates otherwise.

13. Payment for Articles

The press shall avoid chequebook journalism where informants are paid; particularly when criminals are involved, except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

Below is the amended version of the press code.

Preamble

WHEREAS:

Section 16 of the Constitution of the Republic of South Africa enshrines the right to freedom of expression as follows:

(1) Everyone has the right to freedom of expression, which includes:

(a) Freedom of the press and other media;

(b) Freedom to receive or impart information or ideas;

(c) Freedom of artistic creativity; and

(d) Academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to

(a) Propaganda for war;

(b) Incitement of imminent violence; or

(c) Advocacy of hatred that is based on race, ethnicity, gender or religion,

and that constitutes incitement to cause harm.

The basic principle to be upheld is that the freedom of the press is indivisible from and subject to the same rights and duties as that of the individual and rests on the public's fundamental right to be informed and freely to receive and to disseminate opinions; and

The primary purpose of gathering and distributing news and opinion is to serve society by informing citizens and enabling them to make informed judgments on the issues of the time; and

The freedom of the press allows for an independent scrutiny to bear on the forces that shape society.

NOW THEREFORE:

The Press Council of South Africa accepts the following Code which will guide the South African Press Ombudsman and the South African Press Appeals Panel to reach decisions on complaints from the public after publication of the relevant material.

Furthermore, the Press Council of South Africa is hereby constituted as a self-regulatory mechanism to provide impartial, expeditious and cost-effective arbitration to settle complaints based on and arising from this Code.

Definition

For purposes of this Code, “child pornography" shall mean: “Any image or any description of a person, real or simulated, who is or who is depicted or described as being, under the age of 18

years, engaged in sexual conduct; participating in or assisting another person to participate in sexual conduct; or showing or describing the body or parts of the body of the person in a manner or circumstances which, in context, amounts to sexual exploitation, or in a manner capable of being used for purposes of sexual exploitation."

1. Reporting of News

1.1 The press shall be obliged to report news truthfully, accurately and fairly.

1.2 News shall be presented in context and in a balanced manner, without any intentional or negligent departure from the facts whether by:

1.2.1 Distortion, exaggeration or misrepresentation;

1.2.2 Material omissions; or

1.2.3 Summarisation.

1.3 Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinions, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.

1.4 Where there is reason to doubt the accuracy of a report and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be mentioned in such report.

1.5 A publication should usually seek the views of the subject of serious critical reportage in advance of publication; provided that this need not be done where the publication has reasonable grounds for believing that by doing so it would be prevented from publishing the report or where evidence might be destroyed or witnesses intimidated.

1.6 A publication should make amends for publishing information or comment that is found to be inaccurate by printing, promptly and with appropriate prominence, a retraction, correction or explanation.

1.7 Reports, photographs or sketches relative to matters involving indecency or obscenity shall be presented with due sensitivity towards the prevailing moral climate.

1.7.1 A visual presentation of sexual conduct may not be published, unless a legitimate public interest dictates otherwise.

1.7.2 Child pornography shall not be published.

1.8 The identity of rape victims and victims of sexual violence shall not be published without the consent of the victim.

1.9 News obtained by dishonest or unfair means, or the publication of which would involve a breach of confidence, should not be published unless a legitimate public interest dictates otherwise.

1.10 In both news and comment the press shall exercise exceptional care and consideration in matters involving the private lives and concerns of individuals, bearing in mind that any right to privacy may be overridden only by a legitimate public interest.

2. Discrimination and Hate Speech

2.1 The press should avoid discriminatory or denigratory references to people's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental disability or illness, or age.

2.2 The press should not refer to a person's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental illness in a prejudicial or pejorative context except where it is strictly relevant to the matter reported or adds significantly to readers' understanding of that matter.

2.3 The press has the right and indeed the duty to report and comment on all matters of legitimate public interest. This right and duty must, however, be balanced against the obligation not to publish material which amounts to hate speech.

3. Advocacy

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

3.1 Making fact and opinion clearly distinguishable;

3.2 Not misrepresenting or suppressing relevant facts;

3.4 Not distorting the facts in text or headlines.

4. Comment

4.1 The press shall be entitled to comment upon or criticise any actions or events of public importance provided such comments or criticisms are fairly and honestly made.

4.2 Comment by the press shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to.

4.3 Comment by the press shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair account of all available facts which are material to the matter commented upon.

5. Headlines, Posters, Pictures and Captions

5.1 Headlines and captions to pictures shall give a reasonable reflection of the contents of the report or picture in question.

5.2 Posters shall not mislead the public and shall give a reasonable reflection of the contents of the reports in question.

5.3 Pictures shall not misrepresent or mislead nor be manipulated to do so.

6. Confidential Sources

The press has an obligation to protect confidential sources of information.

7. Payment for Articles

No payment shall be made for feature articles to persons engaged in crime or other notorious misbehaviour, or to convicted persons or their associates, including family, friends, neighbours

and colleagues, except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

8. Violence

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

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