

https://dspace.org/

The functioning and transformation of press self-regulation in a new democratic media landscape: a case study of the South African Press Ombudsman

Kumwenda, Olivia Vitumbiko

2010-07-29T11:25:47Z
http://hdl.handle.net/10539/8324

Downloaded from a DSpace repository. https://dspace.org/

UNIVERSITY OF THE WITWATERSRAND

MA Journalism and Media Studies Research Report

The Functioning and Transformation of Press Self-Regulation in a New Democratic Media Landscape: A Case Study of the South Africa Press Ombudsman

Student: Olivia Vitumbiko Kumwenda **Student Number: 406164**

June, 2010

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

This research report is dedicated to my late mother Tinu Kumwenda. Her love and inspiration lives on, guiding me through-and-through.

Table of Contents

Declaration i

Acknowledgments ii

Abstract iii

1. Introduction 1

1.1. Aim 2

1.2. Background and Motivation 2

1.3. Research Limitations 6

2. Theoretical Framework and Literature Review 7

2.1. The Press in a Democracy 7

2.2. Social Responsibility Theory of the Press 9

2.3. The Case for Press Self-Regulation 13

2.4. Press Councils: An Overview 14

2.4.1. Functions of Press Councils 16

2.4.2. Press Councils, the State and the Law 17

2.5. Press Councils in South Africa 18

2.6. A Critique of Press Councils 21

3. Methodology 24

3.1. Research Design 24

3.2. Data Collection 24

3.3. Interpretation of Findings 30

4. Findings 31

4.1. The Functioning of the Press Ombudsman System 31

4.1.1. Volume of Recorded Complaints 31

4.1.2. How the Complaints Were Dealt With 32

4.1.3. Who Utilises the Press Ombudsman System 35

4.2. Content Examination 37

4.2.1. The South African Press Code 37

4.2.2. Ethical Issues Raised in Complaints 46

4.2.3. Ruling Patterns 47

5. Discussion 55

5.1. The Functioning of Press Self-Regulation in a Democracy 55

5.1.1. The Popularity of the Self-Regulatory Mechanism 56

5.1.2. Who Does the System Favour? ... 57
5.1.3. Who Utilises the System: The Elite versus The Ordinary ... 57
5.2. The Response to Media Transformation and Criticism ... 59
5.2.1. The Response to the Democratic Constitutional and Legal Requirements ... 59
5.2.2. Response to Public and Political Pressure ... 61
5.3. Serving the Public Interest ... 62
5.4. Rolling Controversies ... 64
5.4.1. Calls To Do Away With the Waiver Requirement ... 64
5.4.2. The Proposal for Imposition of Fines ... 65
5.4.3. The Need for a Proactive Self-Regulatory Mechanism ... 65
5.4.4. The Hate Speech Provision Dilemma ... 66
5.4.5. The ANC and the Media Appeals Tribunal ... 67
6. Conclusion ... 68
Appendix A: ... 70
Appendix B: ... 74
Bibliography ... 77

Declaration

I declare that this research report is my own unaided work. It is being submitted for the degree of *Master of Arts* in the *Graduate School of Humanities (Journalism and Media Studies Department) at* the *University Of The Witwatersrand*, Johannesburg. It has not been previously submitted for any degree or examination at any other university.

Name: Olivia Vitumbiko Kumwenda.

Date: June 14, 2010.

Acknowledgments

My sincere appreciation and gratitude goes to my supervisor, Professor Franz Kruger for his constant guidance provided during the course of this research. I am equally grateful to individuals who gave their input through feedback as I progressed with the study and to all who made themselves available for interviews and gave me access to necessary data for the purpose of this research. I gratefully acknowledge my sponsor, Thomson Reuters, for offering me an opportunity to further my education. To my wonderful family and friends, I say thank you for your unconditional love and support. I am especially grateful to my brother Daniel Kumwenda, his wife Agnes and their lovely boys Christian and Melvin, for the unwavering support and inspiration.

Abstract

Press self-regulation has provoked debate and drawn criticism in South Africa since the practice was started over four decades ago following threats of statutory regulation. The practice has gone through various permutations to suit prevailing social and political environments in the country. Focusing on the press ombudsman system as a case study, this research examines the functioning and transformation of press self-regulation in response to the changing media landscape in a democratic South Africa. The research utilises social responsibility theory of the press to provide a theoretical understanding on the need for the press to be self-regulatory. Document analysis and in-depth interviews are the main data collection methods utilised in the study. Using thematic content analysis, the study then draws on themes emerging from the findings to address the research question. The findings show that people from across the range in South Africa utilise the system, albeit to varying extents, and that the system has fairly handled complaints with rulings evenly going for and against the press. The findings also show that through amendments to the Press Code and procedures for handling complaints, the press self-regulatory mechanism has transformed mainly owing to democratic constitutional and legal requirements and public expectations. However, the system has been resistant to some of the criticism, hence there still remains public and political pressure for the system to address the concerns.

1. Introduction

The media in South Africa has experienced remarkable transformation since the end of the apartheid era with regard to ownership, staffing, content, audiences and notions on the role of the media (Berger, 2000). The concept of media transformation will be further discussed in the background section to follow. However, it is worth pointing out that the term 'transformation' has also been used in South Africa in a rhetorical way, as a political weapon[1]. The years around 1994 brought profound change to the South African political landscape, ushering in a democratic government and saw the adoption of a constitution that promoted freedom of expression, among other rights. With the inception of democracy, institutions of society, including the media, were expected to undergo transformation to reflect the new landscape in the country (Radebe, 2006). The calls for change in the media, among other issues, took the form of criticism on the ethical standards in the industry. Concerns on racism, sensational reporting and reporting of new social challenges like HIV and AIDS, are some of the issues which have rendered the media to public scrutiny.

The media, like any industry that provides a public service, and because of its role in shaping public opinion, faces various forms of regulation to ensure that it serves the public. However, in a democratic society the state is expected to have an arms-length relationship with the media in terms of regulation. And beyond the fundamental issues of electronic media regulation — with regard to radio and television — given the restricted nature of the broadcast spectrum and the ordinary constitutional rights and common law, there is no legislation in place to mediate matters of media content. Self-regulation has been explored as an option to make certain that the media serves the public interest and that media operations are in line with the constitutional requirements of a democratic society and reflect the role of media in a democracy.

Self-regulation is broadly seen as a form of constraint on media freedom that is compatible with democracy. However, the concept of press self-regulation has always stimulated wide

[1]The term 'transformation' is understood in different contexts by diverse groups in South Africa. Sparks (2003, p. 18) notes that transformation in South Africa took the form of three simultaneous revolutions. Firstly, the transformation from apartheid to a non-racial society, which involved redrawing the geo-political map of South Africa; secondly, was the transformation from a highly protected, in-ward looking economy into an internationally competitive one; and lastly a rapid move from a primary producing economy based on agriculture and mining to one based on exports of manufactured goods. However, for the purposes of this research, the term transformation has been discussed mainly with reference to the changes in the media since the inception of democracy in 1994, with regard to ownership, content, audiences and the role of media as defined by Berger (2000). The changes also meant a change in the way the press was being regulated.

debate in South Africa. According to Berger (2009), press self-regulation had been the subject of much contestation under apartheid and while the first years after democracy were uncontentious, concerns about inadequacy of the self-regulatory system were raised by the ruling Africa National Congress (ANC) in 2007. The party then called for an enquiry into setting up a Media Appeals Tribunal, a call regarded by media practitioners as one that would stifle press freedom.

1.1. Aim

Against this backdrop, this research makes an exploratory study into the operation and transformation of South Africa's press self-regulation system, which has a long history dating back to the apartheid era. The research looks at aspects of the functioning of the press self-regulation system in the democratic period, where there has been public criticism on the media with regard to ethical standards, as well as criticism on the press self-regulatory system itself. The study looks into how the system has responded to the new democratic media landscape, and the way the operations of system reflect the role of the press in a democratic society. The research specifically examines the functioning of the South African Press Ombudsman, an adjudicating body under the Press Council of South Africa, which became operational in 1997 as a reformation of an earlier system. The research in particular looks at the period between 1997 and 2008.

1.2. Background and Motivation

Since the inception of democracy in South Africa, the country has experienced changes in the media landscape in terms of ownership, staffing, content, audiences and conceptions of the role of media (Berger, 2000). Some of the changes, it is argued, accorded with the transformation, some contributed to the transformation, some ran counter to the transformation, while others counted directly as transformation.

With regard to the changes in ownership of the media, Berger (2000) contends that parallel with changes in the nationality of ownership and internationalisation of the South African media economy (with the entrance of foreign investors into the local market), changes also took place in both the form and the racial character of the ownership of several media groups. Not only did black capitalist ownership of the press came into play, but unions, women's groups and even a development trust entered the picture. This made a significant difference to what Berger describes as "racist and purely corporate concentration" pre-1994 when the

mainstream media was dominated by a few white-owned or controlled groups. Prior the transformation, the big newspaper players included Times Media Limited (TML), Argus Holdings Ltd, Perskor and Nasionale Pers. New neoliberal economic policies, in particular the Growth, Employment and Redistribution (GEAR) programme, provided a fertile climate for investment (Berger, 2000). The transformation in the ownership of newspapers companies saw, among others, Times Media Limited (TML) being acquired by the black-owned National Empowerment Consortium in 1996, while Argus was acquired by the Independent Newspapers Group, an Irish based global media conglomerate. Nasionale Pers, commonly referred to as Naspers, also joined the restructuring fray by relinquishing part-control of *City Press* to a black investment group Dynamo (although the shares were sold back to Naspers in 1998), while Perskor later merged with Caxtons to form a new company (Berger, 2000).

The transformation also saw changes in staffing in the media organisations. According to Berger (2000) under apartheid, most media serviced white audiences and their interests. In the new South African environment, a transformed role of the media required a change in the imbalances in media staffing towards demographic representivity, particularly racial representivity, and also along gender lines. The transformation in staffing was also reflected in journalist's organisation where for instance, "the South African National Editors Forum was formed in 1996, through a merger of the newspaper-based and predominantly white Conference of Editors and the cross-media Black Editors Forum" (Berger, 2000, p. 11).

In the midst of the transformation, the media has also been at the centre of criticism over its operations in relation to democratic principles. Criticisms on issues of representation and racism in the media, sensational reporting, reporting of new social challenges like HIV and AIDS, raged.

In 1994, South Africa adopted a Constitution outlawing racism, plus passed two laws outlawing hate speech (Film and Publications Act 65 of 1996; Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000). Apart from changes in ownership and staffing, therefore, similar changes were expected in media representation, in terms of news coverage and content (Berger 2000). A case in point is when in 1997 the *Sunday Independent* newspaper and its sister newspapers revealed details of an arms deal between South Africa and Saudi Arabia, resulting into "a wider row about race and the role of the media" (Kruger, 2004, p. 133). Following the publication of the story, the debate on whether publishing the details of the arms deal jeopardised the national interest while serving the public's right to

know raged. The then Minister of Defence Joe Modise went against the argument that the public had a right to know about the arms deals while the newspapers defended the public's right to know. No black editor, it was argued, came out in support of the disclosure of Saudi Arabia as the destination for South African arms, turning the matter into a race issue. One of the black journalists in support of government's position Thami Mazwai, the publisher of Mafube Publishing said the case showed the problem of continuing foreign and white [media] ownership (Kruger, 2004). As Kruger argued: "there they were, the big issues of the post-apartheid media, all on the table because of an arms deal: transformation, role and race" (Kruger, 2004, p. 133).

And in 1998, the South African Human Rights Commission (SAHRC) instituted an investigation into racism in all the media in South Africa. The ambit of the investigation included an examination of the representation and treatment of racism; and whether the media was "sensitive to equality as pertains to race, ethnic or social origin, colour, culture, language or birth" (Rossouw, 2005, p. 223). The SAHRC found that the South African media 'reflect a persistent pattern of racist expressions and content of writing', that 'such expressions cause or have the effect of causing hurt and pain'. The commission made several recommendations, among which was a need for a review of journalists' codes of conduct.

> It is recommended that the current codes of conduct and various declarations that exist be reviewed in the light of these hearings and this report, to ensure that they are consistent and in line with the current constitutional requirements and that they properly reflect the role of the media in a democratic society (SAHRC Faultlines Report, 2000, p. 93).

In addition to the concerns on racism in the media, the introduction of tabloid newspapers into the South African market in 2001 was also a cause for concern among media critics. The emergence of the tabloids was met with strong criticism over their role in a democratic society and their lack of adherence to journalism ethics. According to Wasserman (2008), much of the barrage of criticism was based on moral grounds, such as the tabloids' sensational approach, lack of respect for privacy and lewd content. It was also suggested that the tabloids were not good for the hatchling South African democratic society. But those in favour of the tabloid newspapers argued that the tabloids served the population that was left out of the mainstream media, which it is argued target mostly the elite in society (Wasserman, 2008).

In essence, the political and social transformation, shifts in public attitudes and social challenges like HIV and AIDS are some of the factors that impacted on the operation of the media. For instance, media reports in 2000 speculating that spokesman for the President Parks Mankahlana died of an Aids-related illness raised a controversial debate on reporting HIV and AIDS related stories (Kruger, 2004). Questions were raised as to whether it was in the public interest for such information to be published, the consequences of publishing the information and if this wasn't a violation of one's privacy. A similar debate arose again in 2002 following the death of an Aids dissident Peter Mokaba, who it was also speculated died of an Aids-related illness. However, the row over Mankahlana's story made the media to treat the second case (Mokaba's story) more cautiously (Kruger, 2004).

Generally, the public expected the media to behave in a different tradition, in line with democratic principles and with improved journalistic standards than was the case in the apartheid era, where the conservative media largely served as mouthpieces of the apartheid government. On the other hand the apartheid alternative media mostly helped in the struggle against the apartheid regime by giving voice to the oppressed (Wasserman, 2008). As Harber (2004, p. 80) argues, "previously [in the apartheid regime], the litmus test for credibility was one's attitude toward apartheid and the liberation movement; now credibility was based on traditional journalistic virtues such as accuracy, reliability, and honesty".

The transformation also meant a change in the way the media was regulated. As Kruger (2009) points out, there are some features common to new democracies that impact strongly on the media landscapes and, as a result, on Media Councils. According to Da Silva and Paulino (2007), even though Press Councils have been in existence since 1916, the year that a first press council was founded in Sweden, Press Councils experiences are still under construction, needing to be developed daily, structured and studied. For instance, Harrison (2006) says in response to concerns about invasion of privacy and accuracy of reporting [especially by the tabloid press], Britain's Press Complaints Commission (PCC) has, on several occasions, amended its rules. For example, the problem of harassment of individuals [by the press] was revisited in 1997 after Princess Diana died in a car crash in Paris while trying to escape from pursuing paparazzi. Clause 4 of Britain's PCC's Code of Practice was amended to advise that material obtained through 'persistent pursuit' should be published only if the editor is convinced it does not breach the Code (Harrison, 2006, p. 116).

In South African press history, the concept of self-regulation dates back to the apartheid era and it has always been a subject of controversy (Berger, 2009). The debate on self-regulation will be further discussed in the literature review. However, although self-regulation in South Africa dates back to 1960's, research on self-regulation in South Africa, where the press is left to regulate themselves and be accountable to the public, has only focused on the structure and composition of the Press Councils. With the transformation in the media landscape, directly or indirectly affecting the application of journalistic ethics, the question remains as to how the self-regulation system in South Africa has functioned and responded to the new democratic South Africa.

This research seeks to generate a deep understanding of how the practice of self-regulation has evolved as the country experiences transformation in the media landscape in the democratic era and how operations of the self-regulation system reflect the role of media in a democracy. To address this research question, the study examined aspects of the functioning of the South African Press Ombudsman system, which became operational in 1997 as a reformation of an earlier system. The study looks at the trend in the volume of complaints lodged at the office since 1997; who has been using the system; over which ethical issues and how has the system dealt with complaints. The study further examines the changes to the Press Code and procedures for handling complaints since the office was set-up to reflect the changes in the democratic media landscape, as well as the general transformation in a democratic society.

1.3. Research Limitations

A limitation to this research is that although the broad area of the study looks at self-regulation in the democratic period (from 1994), the research only looks in detail at the period from 1997 because this is when the Press Ombudsman office was set up. This means that the period between 1994 and 1997 is not adequately covered but a summary of how the Press Council was functioning before the establishment of the Press Ombudsman office is discussed.

2. Theoretical Framework and Literature Review

This review seeks to highlight important theories and literature in order to provide a clear theoretical basis for this study. To address the question on how press self-regulation has evolved in the new democratic media landscape, this research mainly draws on social responsibility theory of the press, which was formed on the fundamental basis that "freedom of the press and responsibility of the press are mutually complementing principles" (Hong-won, 2008, p. 129).

The first part of this section draws on liberal theory of the press, which gives an insight into the democratic role of the press, and is a build-up to a review on social responsibility theory of the press, discussed in the second part of the section. Social responsibility theory, among other issues, deals with media accountability under which the practice of self-regulation falls. Social responsibility theory, it has been argued, is a possible basis for establishing an ethical journalism system since it emphasizes, as a central principle, that journalists are obliged to be responsible to society. This is regarded as one of the "normative" ideologies of the media in society.

The third part of this section discusses literature on press self-regulation, and lastly on Press Councils. The literature includes criticism facing Press Councils. This is to provide a clear understanding of why the research question was generated.

2.1. The Press in a Democracy

McChesney (1998) argues that Jurgen Habermas' notion of the public sphere, meaning a place where citizens interact that is controlled by neither business nor the state, has provided an operating principle for democratic media. In a democracy, freedom of expression guarantees citizens' right to speak and write openly without state interference. Freedom of expression also guarantees the right to inform the public and to offer opinion, to advocate change and to give the minority the opportunity to be heard. A democratic society requires diverse views and news sources — a marketplace of ideas — to allow the public choose what it wishes to read and believe about public affairs (Hachten, 2005). The press has been acknowledged as the best instrument for "enlightening the mind of man, improving him as a rational, moral and social being" (Rafferty, 1975, cited in Hachten, 2005, p. 30). It is therefore, imperative that the press be free from government control and influence, and that in

order for truth to emerge, all ideas must get a fair hearing; there must be a "free market place" of ideas and information (Siebert et al, 1956, p. 3).

However, the role of the press in society has been subject to contestation. Debate on press freedom has mainly centred on the expectations of what the media should do in a democracy.

Liberal theory argues that "the freedom to publish in the free market ensures that the press reflects a wide range of opinions and interests in society" (Curran, 2003, p. 346). The free market, argues Curran (2003), supposedly makes the press a representative institution as it represents the people to authority and voices out views and opinion on matters of public interest on behalf of the people. According to Curran (2000), the media is expected to monitor the full range of state activities and fearlessly expose abuses of official authority. He further states that only by anchoring the media to the free market is it possible to ensure the media's complete independence from government. Liberal theory summarises four key functions of the press in a democracy, which include informing the public, scrutinising government, staging public debate and expressing public opinion (Curran, 2003).

However, liberal theory has since been critised. Curran (2000) contends that liberal theory principles derive mostly from the eighteenth century when the principal 'media' were public affairs-oriented newspapers. Much has changed since then compelling a critical rethinking of liberal theory. Curran (2000) states that while the watchdog role of the media is important, it is perhaps idealistic to argue that is should be paramount. Curran (2003) contends that the argument that the processes of market democracy make the press a representative institution ignores the privileged position of capital in the seemingly open contest of the free market.

Curran (2003) contends that by contrast to the traditional liberal theory of the eighteenth century, the press in the twenty-first century is now primarily part of the entertainment industry. He writes, "even many, so called 'news media' allocate only a small part of their content to public affairs and a tiny amount to disclosure of official wrong-doing. In effect, the liberal orthodoxy defines the main democratic purpose and organisational principle of the media in terms of what they do not do most of the time" (Curran, 2000 p. 122). In his alternative approach to the liberal theory, Curran (2000) argues that a democratic media system needs to have a well-developed, specialist media tier, serving differentiated audiences, which enables different social groups to debate issues of social identity, group interest, political strategy and normative understanding on their own terms.

It follows then that instead of representing only private and partisan interests, the press is expected to represent the public interest, a concept that has become popular for protecting press freedom that is enjoyed in most democracies worldwide including South Africa. The concept has also become one important source of media responsibility, as scholars have argued that "if media owes nothing to the society, discussing media responsibility will be pointless" (Hong-won, 2008, p. 135). Basically this means that press freedom is not absolute. With the freedom, comes responsibility. In a democratic society, the press should be able to comment freely on politics, people and events, to critise or support public figures and institutions, and to serve as a platform for others to declare radical or dissenting views. In return, the public expects the press to uphold certain standards, be mindful of the rights of those in the news, and to remain accurate in its reporting. That is, the press should be accountable to the public it serves.

2.2. Social Responsibility Theory of the Press

The call for a free and responsible press is rooted in social responsibility theory of the press, articulated by Siebert et al (1956). The theory is also one of the six normative media theories articulated by McQuail (1987) that developed from the four press theories of Siebert et al (1956). Normative theories, according to McQuail (1987), deal with ideas of how the media ought to or are expected to operate. He lists the other five theories as authoritarian theory, free press (libertarian) theory, soviet media theory, development media theory and democratic-participant media theory. These theories, McQuail (1987) argues, entail a range of ultimately specific criteria to guide practice or to help assess how the media actually do their work in practice.

Freedom of expression is a moral right with an aspect of duty to it, according to social responsibility theory. The theory originated in 1947 from an American initiative, the Commission of Freedom of the Press, better known as the Hutchins Commission. Its main thrust was "the increasing awareness that in some important respects the free market had failed to fulfil the promise of press freedom and to deliver expected benefits to society" (McQuail, 1987, p. 116).

This came at a time when it was noted that the liberal press was under the dominance of a few wealthy media tycoons. As argued by McChesney (1998), the liberal notions of free speech were crafted in a world where speech was not regarded as a commercial enterprise.

But all this began to change by the end of the nineteenth century with the emergence of monopoly capitalism and "likewise, the newspaper industry became organised in chains and became vastly less competitive as the largest newspapers were able to bury their rivals" (McChesney, 1998 p. 5). The owners and managers of the press determined which persons, which facts, and which versions of the facts reached the public. Because of this, the public became suspicious of the press. This uneasiness was the basis for developing the social responsibility theory, "that 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 presented 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, p. 5).

Basically, it was felt that the "free market" of ideas and information was not just a business venture, but the press had to be responsible and accountable to the public it served. It followed that the theory proposed that the media take it upon themselves to elevate their standards, providing citizens with the sort of raw material and guidance they need to govern themselves. As Berry et al (1995, p. 76) write; "it is urgent that the media do this, social responsibility theorists warn, or an enraged public will allow, if not force, the government to take steps to regulate the media".

Following the publication of *A Free and Responsible Press* (the report of the Hutchins Commission) publishers, chiefly on their own volition, began to link responsibility with freedom. They formulated codes of ethical behaviour, and they operated their media with some concern for the public good (Siebert et al, 1956). However, it is important to point out that although the call for a responsible press was largely elaborated in *A Free and Responsible Press*, journalists had prior to the Hutchins Commission started recognising the art of writing as a profession requiring ethical codes of conduct, according to Allan (1999). He contends that just like certain occupational groups, such as 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. For instance, in 1923 the American Society of Newspaper Editors announced their 'canons' of journalism, one of which read: "impartiality — sound practice makes clear distinction between news reports and expressions of opinion. News reports should be free from opinion or bias of any kind" (Allan, 1999, p. 24).

McQuail (1987, p. 117) stated the main principles of social responsibility as follows:

- Media should accept and fulfil certain 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 standards 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.

In South Africa, the print media's willingness to self-regulate and agree to adhere to basic principles codified in the South African Press Code, is a practical example of the social responsibility theory principle that the media should be self-regulating in the framework of law and established institutions. This has been regarded as an alternative to state regulation, mostly deemed as unconstitutional and not conducive for press freedom. However, this does not mean that the South Africa media system is entirely governed by social responsibility theory. As McQuail (1987, p. 110) argued, "no actual media system is governed by any one 'pure' theory of the press, nor does practice always follow what seems to be the appropriate theory very closely. Most systems reflect the workings of different (even inconsistent) elements from different theories". South Africa is no exception.

For instance, in his study on the application of comparative media systems theory to South African (based on findings of Dan Hallin and Paolo Mancini's work , which compared the relationship between the media and the political systems in 18 countries in Europe and North America), Hadland (2007) concluded that South Africa's media system falls largely into the Polarised Pluralist model, which is found in countries with a late transition to industrialised democracies and have developed an environment in which party politics and the media are frequently closely integrated. The other two models were identified as the Democratic Corporatist model that tend to have a long tradition of limits on state power, strong social welfare policies and a history of Protestantism and Calvinism, and the Liberal model, which

is to be found in countries like United States and United Kingdom, where commercial newspapers developed early and expanded with little state involvement (Hadland, 2007). According to Hadland (2007), the Three Models paradigm is founded on the *Four theories of the press* (1956) of Siebert *et al*, which argued that a country's press always takes on the form and coloration of the social and political structures within which it operate.

Hadland (2007) further concluded that although the South Africa's media system falls largely into the Polarised Pluralist model, it retains strong liberal model traits. This supports McQuail (1987) argument that no media system is governed by one 'pure' theory. However, this research mainly utilises the normative social responsibility theory, whose principles also apply to South African media, to establish how the functioning of South African press self-regulatory mechanism, which guides the press to what is expected of them and hold the press accountable, reflect the role of the media in a democratic society, where the notion of serving the public interest is vital.

Nevertheless, social responsibility theory, although broadly accepted, has not fallen short of criticism. The theory has been criticised for failing to provide an effective base for media responsibility. Hong-won (2008) notes that social responsibility theory finds philosophical basis of freedom of the press from the moral duty to serve the public, but this has a critical problem because there is no way to intervene into the media when they refuse to accept responsibility. He then advances the notion of accountability, arguing that the concept provides theoretical basis to make up for the shortcomings of social responsibility theory by expanding media responsibility to a wider range including moral and legal responsibility (Hong-won, 2008).

In summation, social responsibility theory of the press has advocated for the media to serve the public interest. According to Bertrand (2005), journalists can only achieve this purpose if they enjoy independence from financial and political pressures and enjoy the support of the public. He then argues that there is no way the profession can obtain public support unless it listens to readers, listeners, or viewers. That is, unless it is accountable to those it serves.

However, as Kruger (2009, p. 10) contends the case of providing checks and balances to the media poses a problem. Who is going to watch the watchdogs and how can this be done without infringing press freedom? How can we have a fully accountable press in a free market economy? Some would argue that the answer lies in the mechanism of self-regulation, discussed in following section.

2.3. The Case for Press Self-Regulation

Article 19 (2005, p. 17) describes press self-regulation as the process "where journalists and publishers come together to form rules of conduct for journalism and to make sure these rules are obeyed". As part of this, the Article states, the journalists and publishers provide a means by which people who feel aggrieved by a particular news or information item can have their case heard by a fair tribunal. In essence, in self-regulation, journalists are left to regulate themselves to ensure that they fulfil their expected role and are accountable to the public.

According to Pinker (2002), the case for self-regulation rests on the premise that in complex democratic societies self-imposed rules are likely to carry a greater moral authority and, consequently, work with greater effectiveness than externally imposed legal rules. Oosthuizen (2002) notes that initiatives by the media to institute codes of conduct (on a voluntary basis) are informed by societal expectations about media conduct. He argues that these societal expectations are articulated by normative media theories, which map out a particular role for the media. In general, society would expect the media to adhere to general societal norms or values that are desirable (Christians et al. 1991, cited in Oosthuizen, 2002).

Fundamental to self-regulation is the principle of voluntary compliance, according to Article 19 (2005). Law courts play no role in adjudicating or enforcing the standards sets and those who commit to them do so not under threat of legal sanction, but for positive reasons, such as the desire to development the credibility of their profession. Berger (2007) notes that this form of regulation exists in between the 'law' and its agencies, on the one hand, and on the other hand 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, p. 2) further states that "the system drafts in peer and citizen pressure to promote adherence to journalist standards and perhaps even more importantly, to help interpret and define what these standards should mean in given concrete cases". He contends that 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." 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.

Press self-regulation is an internationally accepted practice, common to democracies around the world and the principles applied are more or less similar. There is, however, no universally applicable blueprint for self-regulation that countries can adopt ready-made for their own particular needs, the reason being that self-regulation depends on the voluntary compliance of all parties involved in its activities, according to Pinker (2002). He further argues that a self-regulatory system can only work effectively if its codes of ethical conduct are based on the civic traditions and customary values of the industry which it oversees and the general public which it serves and protects. In other words, in self-regulation, codes of conduct must be informed by the realities of everyday professional practice and the expectations of the people being served. These practices and expectations are, in turn, underpinned by their attachment to more general principles of ethical conduct and formal doctrines of natural rights and obligations (Pinker, 2002).

Bertrand (2005) notes that self-regulation is sometimes confused with media accountability. He says media accountability does include self-regulation, but it is a far wider concept. Accountability, Bertrand (2005) argues, implies being accountable to the public, while regulation involves only political rulers and self-regulation involves only the media industry, and media accountability involves the press, the profession and the public. He lists at least 80 media accountability systems, ranging from ethics columns, in-house critics, petitions, accuracy and fairness questionnaires, among others. He, however, contends that a Press Council, is one institution that normally gathers representatives of the three groups — the press, the profession and the public — to adjudicate complaints by users against the press. He further argues that a press council is potentially the best media accountability system. He writes: "I believe [Press Councils] are a great kind of Non-governmental Organisation and could be the ultimate media accountability system because a tripartite press council is permanent, democratic, independent, flexible, multifunctional body that brings together and represents the people who own the power to inform, those who possess the talent to inform and those who have the right to be informed" (Bertrand, 2005, p. 6).

2.4. Press Councils: An Overview

The history of the Press Councils dates back to 1916 when the Swedish Court of Honour, generally regarded as the first Press Council, was established (Kruger, 2009). The tribunal received complaints from the public and also took on industrial matters, such as disputes between newspapers companies and disputes between employers and employees concerning

for instance salaries and contracts (Article 19, 2005). Later, other countries followed the Swedish example and the concept of self-regulation spread across regions. In the United States, *A Free and Responsible Press* recommended "reform from within" the industry while in Britain, the new post-war Labour government appointed a royal commission to inquire into the press and its 1949 report suggested, among other things, that a Press Council be established (Hachten & Giffard, 1984, p. 51). Essentially, in the model of Press Councils, the industry draws up a Code of Practice and updates it from time to time, and possible breaches of the Code are considered by the Press Council or the Press Ombudsman and thereafter rulings are made to resolve the complaints.

Many European countries such as Austria, Germany, the Netherlands, Norway, Sweden, United Kingdom and Australia have Press Councils (Ronning, 2002). While there is no Canadian national Press Council, five of the provinces have their own councils, and four provinces have a regional council. The concept of Press Councils has also never taken hold in the United States as councils exist in only a handful of states (Kruger, 2009). Some countries, like France, have no Press Councils. In some countries, newspapers have appointed their own Ombudsmen to consider readers' complaints and make recommendations to the editors (Ronning, 2002). The African continent has also witnessed the establishment of media self-regulatory bodies in most countries in the past decade. In Southern Africa, self-regulation is practiced in countries like South Africa, Tanzania, Malawi, Zambia and Botswana with South Africa and Tanzania having two of the oldest councils in the region (Kruger, 2009).

Press Councils come in various shapes as they vary with regard to the composition of their membership, their sphere of activity, their sources of funding and the extent to which their activities are regulated by statute (Bertrand, 2005; Pinker, 2002). For instance, some do not accept publishers as in Switzerland, or do not accept journalists as in the United Kingdom, or do not accept the public like in Germany. Sweden and the United Kingdom, have self-regulatory councils that administer codes of practice which rely entirely on voluntary compliance and they do not receive any form of government funding, while the Germany council receives a small 'no string attached' government grant (Pinker, 2002).

No Press Council can fulfil its functions without a steady and secure income. According to Pinker (2002), various funding methods have been tried but the options are narrow simply because of the need to preserve independence. Press Councils may be funded by the publishing industry, by the journalist or by a combination of both and sometimes with

government assistance (Article 19, 2005). But Pinker (2002) argues that of paramount importance is that self-regulatory councils are funded in ways which guarantee their independence from external controls and influence of the part on government or of the more interventionist publishers. Pinker (2002) notes that those countries in which the state wholly funds press regulation tend to have the most discredited Press Councils with real or perceived interference in press freedom by government. The options for funding vary from country to country and in many countries the most desirable way of funding is by the industry, as a way of ensuring that the services of the Press Council are free while at the same time guaranteeing its freedom from the state.

Bertrand (2005) contends that the norm is the tripartite Press Council with publishers and owners, editors and journalists as well as the broader public involved. Ideally, Press Councils do not act as restraining instruments. In many cases the media institutions are more interested in joining and funding the councils and carrying out their decisions, for the councils end up serving as agencies which promote understanding between parties, avoiding legal proceedings which are more expensive (Da Silva and Paulino, 2007).

2.4.1. Functions of Press Councils

The core function of Press Councils is adjudication. Press Councils have authority to hear and decide on cases of individual complaints against the news media and the guidelines may differ from country to country. According to Article 19 (2005) a Press Council will publish a code of conduct with the approval of journalists and media organisations, and the newspapers within the country commit themselves to the code of conduct. The Press Council then accepts complaints from any member of the public who believes a published article infringes the code. Council members then adjudicate on the complaints and publish the findings. In most cases, Press Councils do not impose financial penalties. The value of an effective Press Council is that it provides a process that is quicker and less expensive in resolving the complaints than a court hearing.

Defending press freedom has been regarded as another function of Press Councils. Article 19 (2005) states that many Press Councils see the task of hearing complaints as part of a wider responsibility of defending press freedom. The Article notes that some bodies publish annual reviews discussing media concerns and at times lobby government for changes in the law. Some Press Councils fulfil only the first function of a complaints body, but in doing so they balance the rights of the individual and the rights of the press to freedom of expression.

In some instances, Press Councils have dealt with threats within the industry, such as concentration of ownership. For instance, the Press Council Act of India (1978) stated, among other functions, that the Council shall concern itself with developments such as concentration of or other aspects of ownership of newspapers and news agencies which may affect the independence of the press.

2.4.2. Press Councils, the State and the Law

As a self-regulatory mechanism, a Press Council is set up as an alternative to state regulation, and many were founded to avoid government interference. For example, Kruger (2009, p. 13) says in Britain a Press Council had been set up in 1953, but "was widely criticised for its inability to curb the excesses of the tabloid press". Later an inquiry by Sir David Calcutt recommended the establishment of a Press Complaints Commission (PCC) to replace the council. The PCC was given 18 months to prove itself or face being turned into a statutory body. The same has been the case in South Africa, as will be discussed later in this review.

Generally, one of the major debates around self-regulation has been "the extent to which mechanisms such as Press Councils should have statutory recognition, and further, powers that are backed by force of the state" (Berger, 2009b, p. 6). But, according to Berger (2009b) the argument for non-statutory regulations has been on the grounds that introducing the compulsive power of the state to back up self-regulation compromises the very character of self-regulation, and also that it opens the door to government intrusion. As Edwin Linington, former South Africa Press Ombudsman puts it: "the argument against statutory regulation is still the same that press self-regulation works, it is consistent with the constitution. Regulation by a government appointed body is undemocratic and simply unconstitutional. It cannot exist alongside the right to freedom of expression".

In democratic societies, self-regulatory institutions operate within the framework of the law but there are no basic legal pre-conditions that must be met before a Press Council can be established (Pinker, 2002). However, it should also be mentioned that even in democracies, there remain legal restrictions on media freedom. Cases of defamation and invasion of privacy by the press, for example, can be adjudicated upon in a court of law. Although social responsibility theory emphasises press self-regulation, it left the door open for considerable government intrusion. Berry et al (1995, p. 95) argue that in the Hutchins Commission's view, government may assist in "making distribution [of information] more universal and equable, removing hindrances to the free flow of ideas, reducing confusion and promoting the

reality of public debate and providing new legal remedies for the more patent abuses of the press".

In South Africa, Section 16 (2) of the Constitution says freedom of the expression does not extend to propaganda for war, incitement of imminent violence or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm. The country has also passed two laws regulating hate speech (Film and Publications Act 65 of 1996; Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000). The press is not immune to such laws as it has the social responsibility to promote democratic values. Hence the press, although free from government control, is expected to abide by such laws.

2.5. Press Councils in South Africa

According to Berger (2009b), South African press history has been one in which there has been much contestation around the practice of self-regulation. Press self-regulation in South Africa dates way back before the country attained its democratic status, although it has existed in various permutations.

Narrating the history of the Press Councils in South Africa Ntuli (2008) writes that the first move towards self-regulation of the press occurred when two Press Commissions were established in 1950 and 1962 to investigate the monopolistic tendencies in the press. According to former Press Ombudsman Edwin Linington the commissions were also set up to look into the accuracy of news reporting and the adequacy of existing means of self-control and discipline by the press. Following indications that the government was considering tightening legal restrictions, the Newspapers Press Union (NPU) proposed a voluntary Press Council in 1962 and came together under the banner of the Press Board of Reference, to avoid government's interference to control the press (Oosthuizen, 2002). According to Linington, there is no doubt that the Press Council was a defensive response to the National Party government threats to control and discipline the English language press that it regarded as South Africa's greatest enemy, as it provided outspoken opposition.

Nevertheless, not all journalists supported the move as "many feared that even a voluntary disciplinary body would be the first step toward even more restrictive measures" (Hachten & Giffard,1984, p. 50). The newspaper owner's initiative was looked upon by journalists as a government creation, and it was not accepted. 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). The council, it has been argued, came close to being a tool of self-censorship (Berger, 2009b).

However, the government was determined to impose some form of discipline on the press (Hachten & Giffard, 1984). And a press commission report, tabled by the Van Zijl Commission in 1964, advised that a statutory Press Council be set up to "tighten control over the press" (Oosthuizen, 2002, p. 71). However, things only heated up in 1973/74 when the then Prime Minister, John Vorster, gave an ultimatum to the press to clean up its house or face statutory laws (Oosthuizen, 2002).

Later in 1977 a committee was established to revise the constitution of the Press Council, after the government had threatened to introduce a Newspaper Press Bill that would have made provisions for a statutory Press Council. And 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). The council had 14 public members, 14 press members and 2 retired judges as chairpersons. But the South African Broadcast 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).

In 1992, the Press Council was reformed and was run by a committee that included owners, editors and journalists. According to Linington, the constitution was also amended to reduce its size and costs and streamlined rules of procedures. The head office also moved from Cape Town to Johannesburg and in 1996, it was suggested that the Press Council change to the Press Ombudsman system to deal with complaints, as it was not working properly. 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 Linington was appointed.

The press ombudsman system was initially administered by a body called the Founding Bodies Committee, consisting of representatives of the newspaper industry in the sense of South African National Editors Forum (SANEF), Media Workers Association of South

Africa (MWASA), Newspaper Association of Southern Africa (NASA), Magazine Publishers Association of South Africa (MPA), and Forum for Community Journalists (FCJ). There was also an opportunity for South African Union of Journalists (SAUJ) to be members of the Founding Bodies but the union eventually collapsed, so they faded away.

However, in 2007 the structure again changed to a Press Council, replacing the Founding Bodies Committee, while retaining the position of Press Ombudsman. This was, among other reasons, in response to criticisms that there be public representation in the council to make the public feel part of the whole set-up. Criticisms 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). According to former Press Ombudsman Linington, the set-up of the office was also changed to offer more support to the ideal of press self-regulation.

> The Press Ombudsman was handling day to day complaints but there was nobody who was picking up things which would affect the press generally like legislation. We felt there was need to be a Press Council to do bigger things that the press ombudsman could not really do by himself (Former press ombudsman Edwin Linington, 2009).

According to the Press Council of South Africa constitution there are two parts to the system: the Press Council, which has six representatives of the press and six public representatives; and the adjudicating mechanisms consisting of the Press Ombudsman and the Press Appeals Panel. The council major functions include: promoting and preserving the right to freedom of expression; promoting and developing excellence in journalistic practice and ethics; promoting the concept of press self-regulation and setting up the office of the Press Ombudsman and the Press Appeals Panel and accepting a Press Code enforced by an independent non-statutory, mediating and adjudicating structure.

The adjudicating mechanism is the Press Ombudsman and the Press Appeals Panel, which also has six press representatives and six public representatives. The appeals panel is chaired by a retired judge. The council does not get involved in the adjudication. 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, a formal hearing is held where the Press Ombudsman sits with two members of the Press Appeals Panel: a press representative and a public representative. Either party can appeal against the Press Ombudsman 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 foundation of the system is the South African Press Code, which according to Thloloe (2008), has been adopted by almost 700 publications in the country. With regard to funding, all members of the council are affiliated to the proprietor umbrella body, Print Media South Africa, through which they pay membership fees to the Press Council. The funds are used to run the affairs of the council as no other external source of funding is available (Ntuli, 2008).

2.6. A Critique of Press Councils

According to Bertrand (2005), critics argue that mostly the public is not aware of the existence of Press Councils as most existing councils keep a very low profile. Bertrand (2005, p. 7) writes: "if even the public know it (Press Council) exists, they do not know what it's for and, if they do know, they don't believe it can improve the media, largely because the council has 'no teeth', lacks the power to punish. So it seems useless". 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).

In South Africa, there has been debate on the requirement that a complainant sign a legal waiver by which one forfeits his or her rights to take the grievance further by launching a civil case against the relevant publication, after the press ombudsman has handled the matter (Berger, 2007; Milo, 2008). The waiver has been put in place to, among other reasons, avoid abuse of the system where complainants just use the institution to obtain information about what defences the publication would be likely to mount in defending a subsequent civil action. The argument might have merit in it but it is not without fault as Berger (2007, p. 6) contends "[the arguments] are not compelling-enough arguments to outweigh the concern that a compulsory waiver inevitably infringes on rights to private action. Significantly, the Broadcasting Complaints Commission of South African does not require such a waiver system". Some Press Councils in other countries do not have such a waiver. In Sweden for example, dissatisfied complainants occasionally file lawsuits and at times the courts support their judgement with arguments drawn from the council's opinion and ethical principles (Ronning 2002, p. 65). But generally, the press is unhappy when the results of a voluntary process are used against them in court.

Another contested matter in the current set up of the Press Council in South Africa is the inability of the system to be proactive. The Press Council has been urged to go further than just reactively receiving and considering complaints (Berger, 2007). As Bertrand (2005, p. 7)

contends: “a Press Council should be monitoring the press because what the press does worst is what it does not do. That is indispensable for taking initiatives on issues which the ordinary citizen most often cannot spot”. The South African Press Council has also been criticised for not imposing fines on those members who violate the code, as is the case with the BCCSA. Berger (2007) argues that financial sanctions add a bite to the moral gravitas of a self-regulatory finding.

Due to such critics, some governments have been sceptical about establishment of voluntary media councils. In the case of South Africa, there was a recommendation by the African National Congress (ANC) at the 2007 Polokwane Conference that the establishment of a Media Appeals Tribunal (MAT) should be investigated for the print media. The conference endorsed that such investigation be directed at examining the principle of a MAT and the associated modalities for implementation and noted that the creation of a MAT would strengthen, complement and support the current self-regulatory institutions (Press Ombudsman/Press Council) in the public interest. The conference further recommended that the investigation should consider the desirability that such a MAT be a statutory institution, established through a transparent process, and be accountable to Parliament (ANC, 2007).

However media practitioners objected to the idea saying the tribunal will unlikely stand the constitutional test which guarantees freedom of expression. Berger (2002, p. 38) contends “it would be wrong to go as far as agreeing to government-imposed or government-dominated media councils to regulate the standards of journalists”. Milo (2008) argues that the important question is whether the current system should be supplemented or replaced by statutory regulation. He says the formidable constitutional hurdle that statutory regulation faces is that a government body would then, whether directly or indirectly, have the power to interfere with the content of publications. This would create a chilling effect that would undermine press freedom and the public’s right to receive information of matters of public interest (Milo, 2008). However, as of this writing, the ANC was yet to make a move of the recommendation to have a media tribunal.

Conclusion

This review has mainly highlighted theories on the role of the press in the democracy and the calls for the press to be accountable and serve the public interest. Press self-regulation has been regarded as an option. The literature has discussed the concept of self-regulation and the controversy surrounding Press Councils in South Africa.

However, no full assessment on the functioning of the Press Council in its various forms has been done. Much is known about the history, structure, composition and duties of Press Council. But more needs to be investigated on the aspects of the functioning of press self-regulation. This research examines the functioning and transformation of the press ombudsman system in the new democratic media landscape. How has the system responded to the changing South African media landscape and criticisms levelled against it? Who uses the system? How has the system dealt with complaints and how does it reflect on the normative role of the press in a democratic society? This study aims for that understanding.

3. Methodology

This section outlines the methods used in conducting the study.

3.1. Research Design

The research made use of qualitative and quantitative research methods. Quantitative research is defined as the numerical representation and manipulation of observations for the purpose of describing and explaining the phenomena that observation reflect, while qualitative research is described as the non-numerical examinations and interpretation of observations, for the purpose of discovering underlying meanings and patterns of relationships (Babbie, 1992). In other ways, quantitative approaches enumerate and qualitative research methods explain. According to Krippendorff (1986), qualitative data arise from distinctions drawn within a sample of observation. The observation maybe messages, events, things, processes and any motivation to find differences between them.

The methods were chosen because the study involved looking at volumes (i.e. how many complaints are lodged in a year, where most complaints fall under), and examination of content (i.e. changes in press code and procedures and ruling patterns). The qualitative approach was used because it produces rich quality data which will be essential in creating a coherent account to address the research questions (Strauss & Corbin, 1990). However, in some categories approaches, such as sampling, were utilised as a stepping-stone to the qualitative methodology, where the observation made was explained.

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). 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 question.

Document Analysis

Altheide (1996) defined a document as any symbolic representation that can be recorded or retrieved for analysis. And document analysis has been referred to as an integrated and conceptually informed method, procedure and technique for locating, identifying, retrieving, and analyzing documents for their relevance, significance and meaning (Altheide, 1996).

According to Bertrand & Hughes (2005, p. 133), the advantage of using documents produced within an institution is that they 'document' a particular moment, thus allowing a researcher to follow changes in policy and practice. The other advantage is that documents are relatively permanent, hence can be consulted repeatedly. A researcher may also choose to use documents written from outside the institution of study, for instance, by journalists, commentators or critics of the institution. Bertrand & Hughes (2005) argue that documents from outside the institution of study opens up for debate the context within which the institution operates.

As this study aims to look at changes to the press code and procedure, and look at the trend in the way the press ombudsman system has functioned, document analysis was seen as ideal for the purpose of tracking the changes in the institution, as well as criticism of the system. However, as Bertrand & Hughes (2005) point out, the down-side to document analysis is that documentation maybe difficult to track down, if the recordkeeping processes within the institution of study have been flawed.

In Depth Interviews

On the other hand, 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 is it highly focused. On the other hand, 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).

This study makes use of interviews to probe the reasoning behind the changes in the way the press ombudsman system has operated over the period of study. The interview subjects were selected purposively, on the basis of their experience and knowledge of the functioning of the system. Bertrand & Hughes (2005, p. 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".

And since the interview subjects were selected purposively based on their knowledge of the system, the research did not utilise a set interview pattern. Different open-ended questions were asked depending on one's experience and knowledge, in order to gather the necessary data.

The study dealt with the two aspects of the research in the following manner:

a. The functioning of the Press Ombudsman system

This section dealt with the functioning of the press ombudsman system with regard to the number of complaints the office receives, who utilises the system and how the office has adjudicated upon the complaints.

i. How many complaints are received in a year?

In this area, the research utilised the quantitative method to establish how many people lodged complaints with the press ombudsman office each year. This was done to establish a trend in the volumes of people utilising the system as the year's progress. The register of complaints was be used as a main source of this data, as it contains the number of complaints lodged each year.

Basically when a complaint is lodged, it is immediately recorded in the register pending the Press Ombudsman's action. The recorded details include: the name of the complainant, the name of the publication against which the complaint is made, the date of receipt of the complaint and the outcome the case, for instance, whether it was dismissed or settled.

ii. Who utilises the Press Ombudsman system?

Using the register, I used the following categories to establish which group of people utilise the system more:

i. Politicians/Prominent people
ii. NGO/Companies/Interest groups
iii. Government institutions
iv. Ordinary citizens (Those with no position of power in society whether in public or private sector).

These categories were chosen against the argument that it is mostly the elite who engages with the media. The categories would help in establishing whether the argument holds in the functioning of the Press Ombudsman system. Is it the elites who use the system more than those without positions of power? Or is the system mostly favoured by ordinary citizens?

A sample of 319 case files (from 1997 to 2008) was selected and studied to determine categories of people utilising the system. Sampling in qualitative research is purposive in that

the aim is to describe the processes involved in a trend (Liamputtong & Ezzy, 2005). To get the sample, I utilised the random sampling method, which is a systematic process of selecting units for examination and analysis that does not take contextual features into account. That is, for the purpose of this research, all the case files available at the press ombudsman's office were equal and had equal chances of being in the selected sample. The findings from the selected sample were analysed to help explain the general trend in the people lodging complaints.

iii. How are the complaints dealt with?

This area investigated how the complaints are handled by the Press Ombudsman office. Again the register of complaints was the main source of this data as the outcome of each case is recorded in the register. The following categories, which are as used at the office of the Press Ombudsman, were considered:

i. Rejected/Dismissed
ii. Lapsed
iii. Withdrawn
iv. Settled
v. Go for appeal
vi. Pending

The complaints under 'rejected/dismissed' were those that the Press Ombudsman found they had no basis or there was no breach of the Press Code. This includes those that go through both the informal and formal hearing (and the Ombudsman finds in favour of the publication) and those rejected before the any hearing.

'Lapsed' were the complaints where no action of any sorts had been taken since the complaint was lodged. Complaints mainly lapse due to the inability of complainants to furnish more details about the complaint when requested to do so for the Press Ombudsman act on the matter. Mostly the Ombudsman is unable to act on a complaint with sketchy details.

Those 'withdrawn' were the complainant feels no need to pursue the matter further for various reasons and withdraws the complaint. 'Settled' means complaints where the publication was found in breach of the Press Code after both the informal and formal hearing.

Those which 'go for appeal' are those where either party was not satisfied with the ruling of the Press Ombudsman and lodges an appeal with the Press Appeals Panel. The appeals panel dismisses the appeal or allows the appeal to go through were the ombudsman's decision is upheld or dismissed and the outcome goes under 'dismissed' or 'settled'. Since a complainant signs a waiver not to take the matter further to any other tribunal the decision by the appeals panel is final. The 'pending' complaints were yet to be dealt with at the time I was conducting the investigation.

b. Content examination

This category looked at changes in the Press Code and procedures for handling complaints, ethical issues raised in the complaints filed with the Press Ombudsman and the pattern on how the Press Ombudsman deals with certain ethical issues.

i. How has the South African Press Code and procedures for handling complaints been amended to reflect changes in the media landscape in a democratic society?

To investigate this area, document analysis of primary literature on the Press Codes and procedures which have been in use over the years between 1997 (when the Press Ombudsman office was established) to present, was done. The purpose of this document analysis was to establish what changes, if any, had been made in relation to the way the office handles the complaints and the guidelines upon which the complaints are adjudicated upon. The changes were a basis for establishing how the system has transformed in response to the changing media landscape. On this aspect, I further made use of in-depth interviews with the following people:

- The former Press Ombudsman Edwin Linington,
- The incumbent Press Ombudsman Joe Thloloe and;
- Press Council chairperson Raymond Louw.

The interviews were done to provide a great deal of data on the functioning of the press ombudsman system, for example, the debates surrounding press-self regulation system, amendments done to the Press Code and procedures for handling complaints, and how the press ombudsman office's adjudicates upon the complaints it receives in relation to the role of the press in a democracy.

A summary of how the system handled complaints before the establishment of the Press Ombudsman office was also sought during the investigations. This gives a clear understanding of where the system has come from and a background to the changes which had occurred within the system, in line with changes in the media landscape.

ii. What ethical issues are subjects of the complaints lodged?

This was done to establish an understanding as to which ethical principles are subjects of most of the complaints lodged with the Press Ombudsman's office. This section dealt with ethical issues stipulated in the clauses of the South African Press Code.

The research used these categories because cases at the Press Ombudsman office are adjudicated upon on the basis on the code and the public is expected to lodge complaints which are deemed to be inconsistent with the South African Press Code. It was, therefore, imperative to use the code when looking at the categories of complaints lodged. The categories considered were:

- Accuracy

This included issues of truthful, accurate and fair reporting of stories regarding the content of the story, headlines, posters, pictures and captions.

- Discrimination and hate speech

This included issues of discriminatory or denigratory references to people's race, colour, ethnicity, religion, gender, sexual orientation or preference, physical or mental disability or illness and age.

- Privacy

This dealt with complaints relating to violation of one's privacy by the press, as well as complaints relating to the undermining of human dignity.

- Indecency or Obscenity

This dealt with complaints on matters involving indecency, obscenity and child pornography.

- Payment of articles

This looked at complaints relating to payment for a story.

- Other

This category dealt with complaints not covered by the South African press code used by the press ombudsman's office but the readers still raised the issues as being inconsistence with the journalistic profession.

The headings were selecting basing on what is stipulated in the Press Code and each heading captures a section of the code. Here, the study utilised the same 319 selected sample files to determine what ethical issues are subjects of most complaints.

iii. What patterns are there in the rulings made, if any?

In this section, the research looked at themes emerging from the rulings made in order to establish the Press Ombudsman's attitude towards certain ethical issues. To achieve this, the research again utilised the document analysis method.

I conducted a brief look at the rulings and a more detailed discussion of a selected few rulings has been done, using purposive sampling. According to Liamputtong & Ezzy (2005), purposive sampling aims to select information-rich cases for in-depth study to examine meanings, interpretations, processes, and theory.

3.3. Interpretation of Findings

The findings were analysed and discussed (in chapter 5) to establish how the press self-regulation system in the new South Africa has functioned and how its operations reflect on the role of press in a democratic society where the notions of press accountability and servicing the public interest has been paramount.

I utilised thematic content analysis to piece together themes that emerged during the investigation and were pertinent to address the research question. I also used background reading as part of my discussion, especially where the literature helps to explain an emerging theme.

4. Findings

This section outlines the findings of the research with regard to how the office of the press ombudsman has functioned and transformed in response to the changing media landscape since its establishment in 1997.

4.1. The Functioning of the Press Ombudsman System

This category outlines the findings on the functioning of the press ombudsman system with regard to the number of complaints the office receives, who utilises the system and how the office has handled the complaints.

4.1.1. Volume of Recorded Complaints[2]

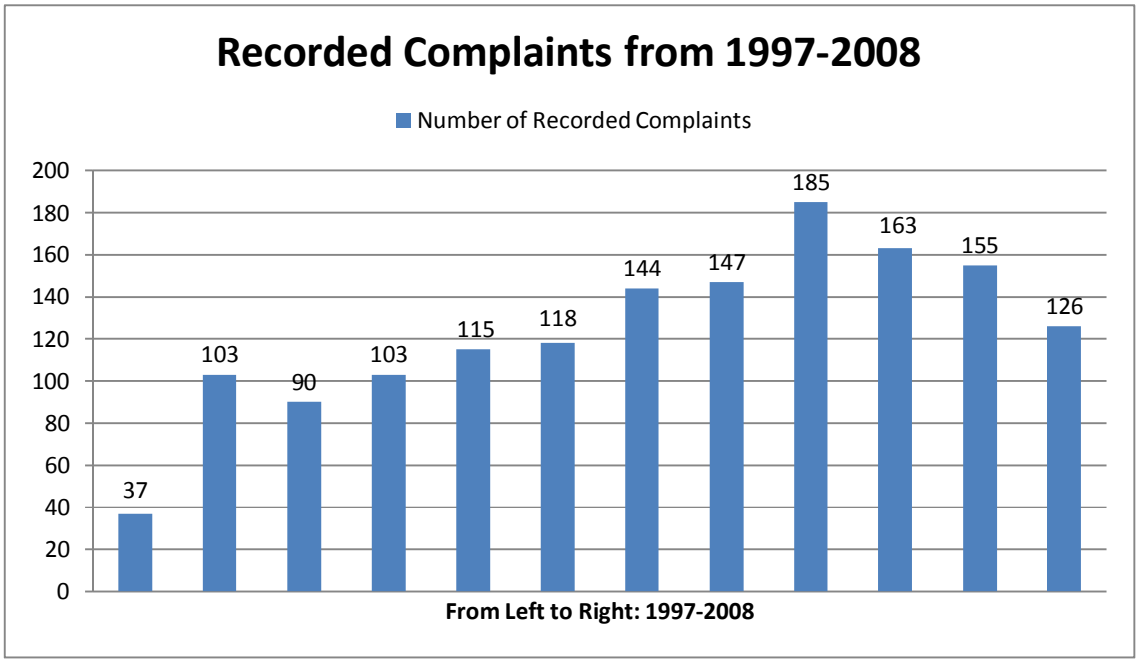
Since its establishment in 1997, the office of the Press Ombudsman has seen a rise in the number of complaints received. According to the register of complaints, which was the main source of this data, the office received 37 complaints in 1997, and the number shot to 103 in 1998. The office then recorded 90 complaints in 1991, 103 complaints in 2000, 115 complaints in 2001, 118 complaints in 2002, 144 complaints in 2003, 147 complaints in 2004, 185 complaints in 2005, 163 complaints in 2006, 155 complaints in 2007 and 126 complaints in 2008. This makes a total of 1486 recorded complaints between 1997 and 2008.

An observation made from this data is that since 1997 there had been a stable increase in the number of complaints with 2005 recording the highest figure. However, the numbers started to decline after 2005 and the down-ward trend continued up to 2008. Lack of publicity and the public's perceptions that the system is biased towards the media have been linked to this down-ward trend. These factors were also considered in 2007 when the structure was changed to be under the Press Council, which was handed the responsibility of promoting public awareness on the existence of the Press Ombudsman and Press Appeals Panel, among other functions.

The following figure illustrates the trend:

[2] For the purposes of this research, the term recorded complaints is in reference to those complaints which had been recorded in the register at the press ombudsman office as the number of complaints received in a particular year. The complaints counted for in this research do not include those which might have been dealt with informally and were not put on record, hence no file was opened.

Figure 1: Recorded Complaints at the Office of the Press Ombudsman



4.1.2. How the Complaints Were Dealt With

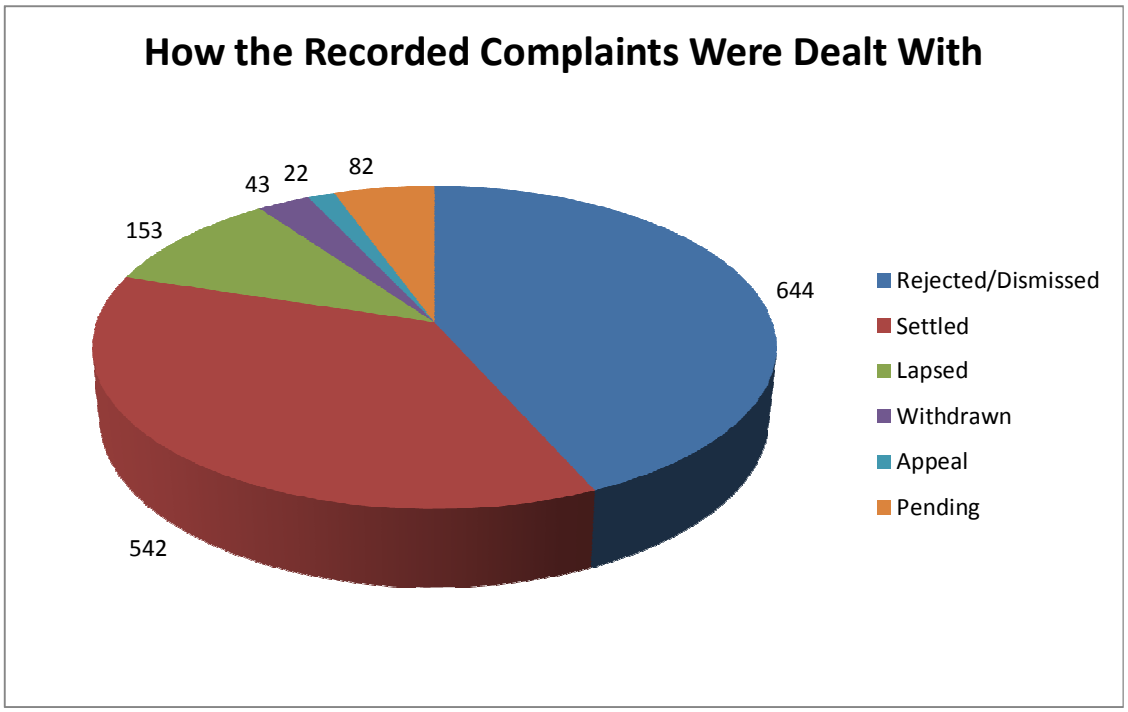
The table below indicates how the recorded complaints had been dealt with, as indicated in the register of complaints at the Press Ombudsman's office.

Table 1: How the Press Ombudsman Had Dealt with the Complaints

	Rejected/ Dismissed	Settled	Lapsed	Withdrawn	Appeal	Pending	Total
1997	15	20	2	0	0	0	37
1998	42	47	7	4	3	0	103
1999	39	35	14	2	0	0	90
2000	46	34	18	4	1	0	103
2001	38	57	14	4	2	0	115
2002	49	54	8	4	3	0	118
2003	78	56	6	2	2	0	144
2004	78	47	15	7	0	0	147
2005	100	62	11	8	4	0	185
2006	68	69	20	4	2	0	163
2007	49	45	24	4	1	32	155
2008	42	16	14	1	3	50	126

In term of segments, from the period 1997 to 2008, a total of 644 complaints had been rejected/dismissed, 542 complaints had been settled, 153 complaints lapsed, 43 complaints had been withdrawn, 22 had an appeal hearing and 82 complaints were still pending as I did the investigation

Figure 2: Graphical Presentation of How the Complaints Were Adjudicated



As discussed in the methodology, the category 'rejected/dismissed' are complaints that the Press Ombudsman held that they had no basis or there was no breach of the Press Code both before any hearing, and after an informal or formal hearing. In the 'settled' category complaints the publication had been found in breach of the code after both the informal and formal hearings.

No action had been taken on 'lapsed' complaints, while some were 'withdrawn' on the basis that the complainant felt no need to pursue the matter further for various reasons. Occasionally, some of the complaints 'went for appeal' after either party was not satisfied with the ruling of the Ombudsman and the appeal outcome fell under 'dismissed' or 'settled'. 'Pending' complaints were yet to be dealt with by the Press Ombudsman office at the time of data collection.

From the data, it can be observed that the number of complaints that go in favour of a publication (dismissed or rejection) and those that go against the press (settled) are roughly

even, dismissing the accusation that the system favours the press. This will be further discussed in the discussion section.

Reasons for Rejection/Dismissal:

The reasons for rejection or dismissal of a complaint before any hearing and after an informal or formal hearing as recorded in the register of complaints, included:

- No violation or breach of the press code.
- No basis or ground for complaint.
- Complainant refused to sign the waiver agreement.
- No jurisdiction, for example, complaints dealing with adverts or a publication which has not volunteered to be under the jurisdiction of the Press Ombudsman.
- An outdated complaint, that is, it was made later than fourteen days after the publication of an article giving rise to the complaint.

Ways of Settlement:

This is when a publication is found to have breached the Press Code after an informal and formal hearing. The ways of settlement included:

- Settled by publication of a retraction, apology or correction as ordered by the Press Ombudsman or the Press Appeals Panel.
- Settled between parties in case where the publication acknowledges to have breached a provision of the press code before the ombudsman gives his verdict. And usually, a retraction, apology or correction would be published as well.

Reasons for Withdrawal:

The reasons for withdrawal included:

- The complainant did not agree to the signing of the waiver and withdrew the complaint. In this case, the complainant withdraws voluntarily, unlike the scenario where the Ombudsman dismisses the complaint.
- The complaint had been settled between parties without the involvement of the Press Ombudsman, and hence withdrawn.

Reasons for Lapses:

- This happens mainly due of failure of the complainant to furnish more details about a complaint when requested by the Press Ombudsman to do so. Some complaints did not contain enough details about the alleged breach of the Press Code making it difficult or impossible for the Press Ombudsman to decide on the matter.

4.1.3. Who Utilises the Press Ombudsman System

The research also sought to find out which group of people utilises the Press Ombudsman system. Groups of; politicians/prominent people, NGO/companies/interest groups, government institutions, ordinary citizens — that is those with no position of power in society whether in public or private sector — where considered.

In general, I found out that the office deals with people from across the range, from the ordinary individuals to those in positions of power, but not to the same extent.

> Since 1997, we have been able to make known generally that anybody has a right to dignity, privacy and other human rights and if the newspapers infringe those rights, they can be held accountable by the Press Ombudsman. I think this has quite suited the public as we get complaints from all parts of the country, the rich, the poor, even prisoners in jail (Former Press Ombudsman Edwin Linington, 2009).
>
> We deal with a huge number of cases and it is very interesting that we are getting complaints from people across the range from the president, cabinet ministers, provincial premiers, political parties to the ordinary men (Press Ombudsman Joe Thloloe, 2009).

During the investigation, I looked through a sample of 319 case files from the period 1997 to 2008, to determine who utilises the system most, with reference to the above mentioned groups.

The following table shows the findings.

Table 2: A Random Sample Showing Which Category of People Utilises the Press Ombudsman System Most

Category	Number of Complaints
Politicians/Prominent People	109
NGO/Companies/Interest Groups	108
Government Institutions	54
Ordinary Citizens	48

The findings entail that despite the observation that people from across the board in society engage with the Press Ombudsman, the degree of engagement varies from those in position of power, to the ordinary citizens, with the powerful utilising the system more. As Press Council Chairman Raymond Louw argues, it is mostly those in positions of power who are expected to be accountable to the public, and hence they feature most in the press.

> [For instance], we don't get that many complaints from the other political parties, it's mainly the [ruling party] the African National Congress (ANC). That's understandable because they are in government and if you are in government you are open to criticism. They are in the firing line of newspapers. So obviously, they will be the people to say that they have been badly treated by the press (Press Council Chairman Raymond Louw, 2009).

I also found out that in most cases, ordinary individuals utilise the system to complain about something they see as offensive in the press. As such, often when it comes to complaints from ordinary citizens, the complainant was in most cases not the subject of the story but feels what was published was offensive.

For instance, various members of the public lodged complaints with the Press Ombudsman following a publication of a picture of a man being burnt to death during the xenophobia violence in 2008, arguing that it was brutal and explicit. This was unlike complaints from politicians, businessmen, government institutions, where most of the complainants were the subjects of the story.

4.2. Content Examination

This section deals with findings on the changes in the Press Code and procedures for handling complaints, ethical issues raised in the complaints and the themes emerging from the rulings.

4.2.1. The South African Press Code

As discussed earlier, the press ombudsman office was set up in 1997 and operated under the Founding Bodies Committee, which was replaced with a Press Council in 2007. However, between 1992 and 1994, which is prior to the setting up of the press ombudsman office, the Press Council had a conciliator who would receive the complaints. According to Linington, who was then the conciliator before being appointed the first Press Ombudsman, the job of the conciliator was to look at complaints and decide if they were worthwhile to go for adjudication. After assessing the complaint, the conciliator would then pass the case on to the Council for adjudication. However as stated earlier, the history of the press self-regulation dates back to 1962 and this is when the first Press Code of Conduct came into effect.

Pre-history: The Apartheid Government, Press Councils and the Press Code of Conduct

According to Louw, the first voluntary Press Code of Conduct was drawn in 1962 after newspaper owners agreed to set up a Press Council 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 summarisation. The code also stipulated that headlines and posters should fairly reflect content of reports and it enjoined the use of obscene or 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, p. 61-62).

The code also required the press to take into account 'the complex racial problems of South Africa' and the 'general good and safety of the country and its peoples' (Hachten & Giffard, 1984). According to Oosthuizen (2002) the stipulation referring to racial issues reflected the government's expectations on reporting about 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). However, according to Louw, the code was first sent to government for approval before it came into effect. Linington elaborates government's involvement in drawing up the Press Code of Conduct:

> The apartheid government not only passed a lot of laws about what could and could not be published, but they also kept on threatening the press with new laws and news controls. It was rather like feeding a crocodile, you give them one figure and they demand another finger. They influenced the press a lot and there was continuous negotiations between editors, proprietors and the government. So there were some compromises which were then put in the Press Code but those were pushed aside after democracy (Former Press Ombudsman Edwin Linington, 2009).

When government again threatened statutory press regulation in 1974, the Press Council constitution was amended to give it "teeth" by enabling it to impose fines of up to R10, 000. The pressure from government also led to the introduction of a new code of conduct, and two clauses of the new code reflected this pressure. One demanded 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 peoples". The other required newspapers "due compliance with agreements entered into between the Newspaper Press Union and any department of the Government of South Africa with a view to public safety or security or the general good" (Hachten & Giffard, 1984, p. 69). According to Oosthuizen (2002, p. 72), the codes instituted by the Press Council then "obviously were the result of political pressure and had little to do with the codification of ethics".

As discussed earlier the Media Council replaced the Press Council in 1983. But it [the Media Council] later reverted to Press Council after separating from the broadcasting component. The Media Councils' code of conduct was taken over in total by the new Press Council when the broadcasters established their own self-regulatory body (Oosthuizen, 2002). In 1997, the Press Ombudsman and Appeal Panel replaced the Press Council, and adopted a revised code of conduct.

The Democratic Media Landscape: Changes to the Press Code and Procedure

From the above pre-history, it follows that when the office of press ombudsman was set up, the Press Code was revamped to be in line with democratic principles. According to

Linington, the code was revamped after looking at press codes from countries like Britain, Canada, Australia and New Zealand, in order to match international standards. Louw said one of the prime things done when the Press Code of Conduct was re-written was the removal of the provision to fine newspapers.

> Our thinking for the removal of the fine was that while a fine of R10, 000 or even R100, 000 would be of little consequence to a (big) paper like the Star or the Sunday Times, it would destroy small struggling newspapers. Some people say you can tailor the fine; you give small papers small fines. We say the argument is this: the offence was committed in writing, the retribution should also be in writing (Press Council Chairperson Raymond Louw, 2009).

Further, the Founding Bodies Committee accepted a Press Code of Professional Practice (*Constitution, Rules of Procedure, Code of Conduct, 1996*:1998) which stated in its preamble that "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". For the first time, the press code made a commitment to promoting media freedom in South Africa.

The 'democratic' Press Code of Conduct had seven clauses dealing with a range of issue, such as fairness in news reporting, advocacy, comment or criticism, dealing with confidential sources, paying for articles and reporting violence (*refer to Appendix B for full text on the clauses*). 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 one hand, as well as the spirit of accuracy, balance, fairness, and decency, upon which the press would be judged on the other hand.

The Press Code and Procedures Amendments: 1997-2008

The Press Code and Procedures for handling complaints have gone through several amendments since 1997, in response to democratic principles as well as public pressure. Below are the amendments done and the reasoning behind the changes.

1. **The Press Code Preamble**

When the press ombudsman office was set up, the Founding Bodies Committee approved a Press Code that put emphasis on media freedom enjoyed in the new democratic South Africa.

The recognition of press freedom was mainly drawn to attention in the code's preamble, which primarily pointed out that press freedom mainly rests on the public's right to information. The preamble read:

> 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.

However, when the Founding Bodies Committee amended the Press Code in 2001, the preamble was also changed to add more details to the previous one. The additional details basically expounded the assertion that press freedom rests on the public's rights to know, to make it more meaningful. Thus, in addition to the early statement, the preamble was further extended to state:

> 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.
>
> The freedom of the press to bring an independent scrutiny to bear on the forces that shape society is a freedom exercised on behalf of the public.
>
> The public interest is the only test that justifies departure from the highest standards of journalism and includes:
>
> a. Detecting or exposing crime or serious misdemeanour;
> b. Detecting or exposing serious anti-social conduct;
> c. Protecting public health and safety;
> d. Preventing the public from being misled by some statement of action of an individual or organisation;
> e. Detecting or exposing hypocrisy, falsehoods or double standards of behaviour on the part of public figures or institutions and in public institutions.
>
> The code is not intended to be comprehensive or all embracing. No code can cover every contingency. The press will be judged by the code's spirit—accuracy, balance, fairness and decency—rather than its narrow letter, in the belief that vigilant self-regulation is the hallmark of a free and independent press.

In a continuous transformation process, the preamble of the Press Code was again amended in 2007 when the Press Council replaced the Founding Bodies Committee. Notable changes were the removal of the statement on basic principles of public interest and the inclusion of Section 16 of the Constitution, which sets out limitations to freedom of expression.

Linington justifies the removal of the basic principles of public interest in the preamble saying it was done on the reasoning that instead of setting out the principles in the preamble, it should be left to the Ombudsman to apply the rules where public interest might be an issue in a given case. Linington said that as it appeared in the preamble, it was interpreted as a limitation on the Ombudsman's discretion in applying the principles of public interest.

Thus, the preamble of the 2007 Press Code was amended to read:

> *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 include:
>
> 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 a decision 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.

2. Giving Prominence to Discrimination and Hate Speech

The 1996 version of the Press Code, which was adopted by the Founding Bodies Committee, had a section on discrimination in the first clause of Reporting News (section 1.12) stating that:

> A newspaper should not place gratuitous emphasis on the race, nationality, religion, colour, country of origin, gender, sexual preferences, marital status, political views or intellectual or physical disability of either individuals or groups, unless the fact is relevant.

However, the 2001 amended version saw discrimination being given prominence, as it was added as a Clause on its own. The new Clause stipulated that:

- The press should avoid discriminatory or denigratory references to people's race, colour, ethnicity, religion, sexual orientation or preference, physical or mental disability or illness, or age.
- The press should not refer to a person's race, colour, ethnicity, religion, 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 reader's understanding of that matter.
- The press has the right and indeed the duty to report and comment on all matters of public interest. This right and duty must, however, be balanced against the obligations not to promote racial hatred or discord in such a way as to create the likelihood of imminent violence.

The last part was, however, amended in 2007 to include "hate speech" and stated that "the right and duty must, however, be balanced against the obligations not to publish material which amounts to hate speech". The Clause heading was hence changed to read "Discrimination and Hate Speech".

Explaining the reasoning behind the amendment, Linington said that the clause was added because "it was felt right to include the provisions of Section 16 of the Bill of Rights in the SA Constitution, so that the Press Code would then be in line with the Constitution".

3. The Child Pornography Provision

In 2007, the Press Code was also amended to include a provision on child pornography, against the background of criticism on the press and the questioning of the meaning of freedom of expression with regard to the publication of explicit material. The provision on child pornography was added to incorporate the basics of the (then) new amendments to the Film and Publication Act. Previously, the Act did not apply to members of the print media who submitted themselves to the jurisdiction of the Press Council. But the Bill, among other things, proposed to do away with the exemption from the Act that the mainstream newspapers enjoyed.

The print industry objected strongly to the Act amendment for fear that it would mean pre-publication censorship of a wide range of news by the Film and Publication Board (FPB), including news which would have nothing to do with child pornography. In a move seen as a proactive reaction to the then proposed amendment to the exemption provision, the Press Code was amended "to reflect the law of the land on pornography", as Linington puts it.

The Press Code defines child pornography as "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".

Sub-section 1.7 of the first Clause on Reporting news was hence amended and states:

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

- A visual presentations of sexual conduct may not be published, unless a legitimate public interest dictates otherwise.
- Child pornography shall not be published.

However, the controversy surrounding the publication of pornographic material continues. The Film and Publications Amendment Act 3 of 2009 again made a provision to exempt publications under the jurisdiction of the Press Ombudsman. The current Amendment Act, forces a publisher who is not a "*bona fide* newspapers" that is recognised by the Press Ombudsman or a person who wishes to distribute, broadcast or exhibit any film or game, to submit such a publication, film or game to the FPB for approval prior publication of such material which: contains sexual conduct which violates or shows disrespect for the right to human dignity of any person; degrades a person; constitutes incitement to cause harm; advocates propaganda for war; incites violence or advocates hatred based on any identifiable group characteristic and that constitutes incitement to cause harm.

The Freedom of Expression Institute (FXI, 2009) argues that the requirement amounts to pre-publication censorship and that the Act promotes unequal treatment before the law as it grants one group of publishers [those under the jurisdiction of the Press Ombudsman] an absolute exemption from the requirement to submit material for classification. FXI states that all publishers in the market should be similarly exempt from this requirement because to grant a group of publishers such an exemption would also grant that group an unfair market advantage over the disadvantaged group in terms of time, cost and effort.

4. Expanding the Bench: Public and Press Representation at Hearings

One of the prime changes in the adjudication procedures had been with regard to public representation. Following the revamp of the system in 2007 to accommodate public representation, the procedures for handling complaints were also changed to reflect the same.

While previously the Ombudsman decided on the complaints alone, the procedure was amended to include a public member and a press member on the panel. The procedure now states, "where the Ombudsman decides to hold a hearing, the Ombudsman shall appoint a public and press member of the Appeals Panel to adjudicate the matter with him or her at the hearing. Decisions shall be a majority vote".

The purpose of the changes was to give the public a greater role, not only in the council but also in the resolution of complaints. The arrangement, said Linington, has the added benefit

of speeding up the process by making it less likely that either the publication or the complainant will lodge an appeal against a three-person decision, as opposed to a decision by the Ombudsman alone.

But Louw said that while accepting public representation, it was decided that there should not be public chairman or public control of the Press Council to ensure that it remains a self-regulatory body.

5. Legal Representation at Hearings

The procedure for handling complaints has also been amended with regard to legal representation. In the old procedures (before 2007) legal representation wasn't allowed at the hearings. Section 2.5 of the Rules of Procedure in the 1996 code read:

> The Ombudsman may make his or her decision on the written statements and evidence submitted by the parties but if his or her opinion is necessary, the Ombudsman may request the parties to meet before him or her. Such a meeting will take the form of a round-table discussion. The parties shall not be entitled to legal or any other presentation at such proceedings, but may be accompanied by advisers.

However, when the code was revised in 2007 the provision was changed, allowing legal representation. Section 2.4.3. of complaints procedure now reads; "legal representation shall be permitted at hearings".

> When we revised the code and the procedures in 2007 we realise that some people can challenge the system on the grounds that we denied them their right to legal representation. So, in fact, it was to accommodate the complainant's choices (Press Ombudsman Joe Thloloe, 2009).

The provision has, however, brought two pressures on the system, according to Thloloe. The first one is a push to turn the system into a legalistic process and the other is that lawyers at times delay the process with their submissions.

> But before any hearing I make it very clear that this is a journalistic process rather than a legalistic process. The only question I ask myself is: is this good journalism or it is bad journalism and my yardstick is the Press Code (Press Ombudsman Joe Thloloe, 2009).

6. The Waiver Requirement Amendment

Another amendment, has been with regard to the waiver requirement. The provision had earlier stated that a person should give a waiver saying he or she will not take the matter to court after it has been handled by the Press Ombudsman, but was later amended to say he or she will not take the matter to the courts or any other tribunal.

This occurred in 2008 after the Ombudsman had made a decision on Jon Qwelane and the *Sunday Sun*, after the Lesbian, Gay, Bisexual and Transgender Community complained about contents of Qwelane's column, arguing it was denigrating to gay and lesbian people. After the ruling the Community then went to the Human Rights Commission for the commission to take the matter to the equality court. Thloloe argued that the feeling is that "once someone has answered accusations in front of us, it is unfair to get the person to answer the same charges in another tribunal, whether it is the court, or the Human Rights Commission or the equality court. So we amended the code along those lines". According to Thloloe, the press code and procedure is amended depending on what is happening in society in a given time.

4.2.2. Ethical Issues Raised in Complaints

The research established that most complaints lodged at the press ombudsman office against newspapers are in relation to inaccuracy, arising from failure to check facts.

> Accuracy is the major complaint but it has several legs to it. It might be somebody saying they were not quoted properly or that the newspaper quoted an anonymous source and that anonymous source gave them wrong information. But essentially it all relates to accuracy. So almost all the cases deal with somebody saying this information is incorrect, inaccurate, unfair and not balanced (Press Ombudsman Joe Thloloe, 2009).

However, this does not necessarily mean that other provisions of the press code are not subject of complaints. They are but to a lesser extent than those to do with accuracy. For instance, in the 319 samples I looked through to determine who lodges complaints with the press ombudsman office, I also looked at issues the complaints relate to.

Most of the complaints would dwell on a particular Clause of the Press Code. However, where a complaint touches on more than one issue, I would look at how the Ombudsman summarised the complaint with regard to its primary concern, and use that are the main subject of the complaint.

The following are the findings.

Table 3: A Random Sample Showing Which Ethical Issues Are Subjects of Most Complaints

Subject	Number of Complaints
Accuracy	248
Discrimination/Hate Speech	24
Indecency/Obscenity	29
Privacy	11
Payment of Articles	1
Other	6

The issues in the 'other' category included complaints to do with adverts, plagiarism, and perjury which are outside the jurisdiction of the Press Ombudsman. Some issues, like plagiarism, had more to do with editorial discipline and were, where necessary, referred to the concerned publication's editors for appropriate action.

4.2.3. Ruling Patterns

This section looks at themes emerging from the rulings made by the Press Ombudsman in order to understand the attitude of the Ombudsman towards various ethical issues. While some of the complaints are a simple black and white scenario, some cases presented ethical dilemmas with some shades of grey in them.

Anonymous Sources and Accuracy

As alluded to earlier, most of the complaints have been in relation to inaccurate reporting hence most of the rulings have been on such. In general, the reliability of information from confidential sources has taken centre stage in most complaints dealing with inaccurate reporting.

Recently, the Ombudsman has begun taking a very hard line on the use of anonymous sources, as shown in the case of ANC against *City Press* (2008). In this case, the party lodged a complaint against a story in the newspaper headlined 'Cracks in Zuma's NEC, arguing it was a "fabrication" and that the 'confidential sources' of the story were not truthful. *City Press* argued that the Press Code of Conduct entitled it to publish if it reasonably believed its version to be true (*see appendix B*) and maintained it had taken the greatest care to check the

veracity of its report before it was published. However, in his ruling the Ombudsman found against the newspaper. The Ombudsman panel rejected *City Press's* assertion that if in terms of Clause 1.3 of the Code *(see appendix B)* the newspapers reasonably believes their version to be true they may publish that version as fact. The panel ruled that it takes much more than "reasonable" belief that a story is true to elevate it to being true, and asked if *City Press* was reasonable in assuming that the version from its confidential sources was true, given the context in which the story was written.

However, when *City Press* took the Ombudsman's decision on appeal, the ruling was overturned. The Appeals Panel argued that the Ombudsman erred in holding that the newspaper had to prove the truth of its "corroborated confidential information".

Thloloe explained that when adjudicating upon complaints dealing with inaccuracy, he would look at how far the newspaper went to verify the facts, especially from confidential sources. This means that although the Press Code allows a publication to present as fact "only what may reasonably be true, having regard to the sources of the news" and to protect confidential sources, the stance taken by the Ombudsman ensures the provisions are not open to abuse. In essence, a publication cannot just publish information without proper verification on the pretext that it believed the information was "reasonably true" and it's protected by the Press Code. Essentially, not all the information from a news source, especially an anonymous source, would be true and a publication is obliged to corroborate the information with other sources to ascertain its probable truth.

> The public understand that journalists use confidential sources and that they are obliged not to disclose their sources. But what they will be fighting for is that the source gave wrong information, so it's about the information and not the use of confidential sources. The use of confidential sources becomes crucial to me because I should be satisfied when I adjudicate the matter that the newspapers corroborated it's information in other ways besides that one confidential source (Press Ombudsman Joe Thloloe, 2009).

However, even if a publication verifies the information with other sources and finds it as "reasonably true", it would be difficult for the publication to verify the truth of the corroborated confidential information as was debated in the ANC versus *City Press* case. Without written documentation, it would be even more difficult for a publication to prove the undoubted truth of the information. This is where presentation comes in, and the Press Code states that facts believed to be reasonably true should be published "fairly with due regard to

the context and importance and where a report is not based on facts or is founded on opinions, allegation, rumour or supposition, it shall be presented is such a manner as to indicate this clearly".

Balancing Constitutional Rights: Public Interest as Justification

Findings by the Press Ombudsman on several cases demonstrate that public interest tips the scales when assessing the balance between competing rights such as human dignity or privacy on one hand, and freedom of expression on the other.

The Press Code states that the press has the right, and indeed the duty to report and comment on all matters of legitimate public interest. However, the term 'serving the public interest' has in most cases been debatable, especially in circumstances where a story infringes on somebody's rights, such as human dignity and privacy as observed in a case where members of the public (Various Public Members versus *The Times*, *Cape Times* and *Beeld*, 2008) lodged complaints with regard to the publication of a picture of a man being burnt to death during the 2008 xenophobia violence. One complainant wrote:

> I would like to complain to you about a photograph which was published today, on the front cover of the *Sunday Times* daily edition. The photograph is brutal and explicit and highly shocking. My complaint is that the imagine is such of a violent and disturbing nature that it either should not be published at all, but certainly should not be published on the front page. Clause 8 of the South African Press Code states that the press should show care and responsibility with regard to the presentation of brutality, violence and atrocities. I do not think such care and responsibility has been exercised today.

Another wrote:

> I was utterly disgusted with the front page image of *The Times*. The horror of the situation is bad enough but to put an image like that on the front page with no warning is irresponsible to say the least. While the public has a right to know, people, especially young fragile minds, have a right to choice as to whether to view such images or not. By placing the image of the front page you take that choice away.

The case presented a debatable situation as to whether it was in the public interest for the picture to be published or the newspapers acted irresponsibly and in breach of the Press Code.

In his findings, the Ombudsman dismissed the complaints on the basis that the publication of the picture was in the public interest arguing:

> This was at a time when xenophobia violence erupted in a number of places in South Africa. The violence was directed at foreigners or people thought to be foreigners from other parts of Africa. Not only were their shops and homes destroyed, but they were subjected to serious assault including murder and rape. This example of necklacing was a shocking return to the anti-apartheid times and as such it was a matter of general importance, or as the press code defines it in Section 1:10, a legitimate public interest. This overrides objections to publication contained in Sections 1.7 and 1.8 of the code (Press Ombudsman Joe Thloloe, 2008).

In another case between Themba and Joyce Vilakazi and *Sunday Sun* (2008), the complainant, who was a pastor, argued that the *Sunday Sun* violated his right to privacy when it published a story that he had married in secret, leaving his wife of 24 years in the dark about his new wife. But the Press Ombudsman argued:

> The complaint amounts to unhappiness that their wedding was publicised, thus revealing the uncomfortable fact that the groom was already married and his wife knew nothing of his new 'wife'. Considering the groom's position as a pastor is his church, there is sufficient public interest served by publication of the wedding (Press Ombudsman Joe Thloloe, 2008).

The public interest debate is not an easy one but general principles show that a person who goes into public life or holds public office lose their right to privacy to a certain extent, especially where their private acts would affect their job whether it is in a public institution or private corporation. However, publishing private or insensitive information is not a matter of public curiosity but a publication should consider legitimate public interest, be it exposing wrong-doing or hypocrisy as observed in the above rulings by the Ombudsman. Only then would it be justifiable for a publication to infringe on someone's constitutional rights to privacy and human dignity and the approach of the Press Ombudsman states as much.

> The public has a right to know in the constitution. It has the right to know things which would affect them and that is where the public interest comes in. It's not that the public is curious about it but it is something that can affect their lives and decisions. When making a ruling, you can work out depended on a particular case on how far it goes. For

> instance, there is no right to take photographs over a garden wall of a prominent person's family, unless that prominent person is not running a family affair behind the wall but a cocaine party (Former Press Ombudsman Edwin Linington, 2009).

HIV/AIDS Reporting: Decision Making in Newsrooms

One of the issues the Press Ombudsman has had to address is whether he can order a publication to publish dissenting views on a particular topic. One such topic has been HIV/AIDS reporting.

One of the criticisms against the media in the last decade had been in relation to reporting on HIV/AIDS, and complaints on HIV/AIDS reporting have made their way to the Press Ombudsman. However, most complaints centre on failure on the part of newspapers to publishing dissenting views on HIV/AIDS. Such cases basically tests how far the Ombudsman would go in influencing good journalistic practices at the level of decision making in newsrooms.

One such complaint was filed in 2002 (Cara Jeppe versus *The Star* and *Mail & Guardian*) where the complainant argued that her article on HIV/AIDS, in response to another article which was published in the papers, was being rejected by the newspaper. In response the Ombudsman informed the complainant that newspapers cannot publish all the news they receive and must necessarily be allowed to choose what they do publish.

In reaction to this Jeppe argued:

> While I accept that contributors should not be able to dictate the contents of a newspaper, in the case of HIV/AIDS and anti-retroviral, editorial discretion has proven in this country to be biased in favour of multinational drug companies. Local editors are guilty of obfuscating the real problems associated with anti-retroviral treatment.

Another major complaint on the subject of HIV/AIDS was between Anthony Brink and the *Mail & Guardian* (2005). The complaint followed an article in the newspaper titled 'Brink's loony tilt at journos'. Objecting to the article, Brink---an outspoken AIDS dissident---denied that that he had criticised female AIDS reporters in a manner that demonstrated he was mentally unwell; and that the allegations that his employer had intimidated journalists working for Health-e carried the implication that he had done the intimidation. However, in his ruling Linington dismissed Brink's complainant arguing that a public figure who involves

himself in controversial matters must expect to receive criticism as sharp as that which he delivers and added:

> The HIV/AIDS debate continues to rage and it is in the public interest that the protagonists on either side should be allowed to express their opinions in accordance with the SA constitution. The Press Code says a publication is justified in strongly advocating its own views on controversial topics; therefore its taking sides in the HIV/AIDS controversy is not a breach of the press code (Former Press Ombudsman Ed Linington, 2005).

In essence, the rulings entail that even though the Press Ombudsman can adjudicate on matters of content of a particular story based on the provisions of the Press Code, he is not in a position to influence what the publications choose to publish and what they leave out. The attitude of the Ombudsman on the complaints is that it is not part of his duty to dictate whose views a publication should publish including on controversial topics like HIV/AIDS. The decision on what to publish lies in the hands of newspapers editors and where possible the Ombudsman would order for a right of reply in a situation where a complainant was a subject of a story and was not given a chance to tell his or her side. The Ombudsman also support those who complain of being identified as having HIV without their consent, as doing so is unethical, according to Linington.

Dealing with Discriminatory Words

The Press Ombudsman has occasionally received complaints claiming breach of the Press Code Clause on discrimination and hate speech. The Ombudsman mainly has taken to unmask the context in which a discriminatory word was used to understand it's meaning and purpose as seen in the case involving The Media Monitoring Project (MMP) and Consortium for Refugees and Migrants in South Africa (CorMSA) versus *Daily Sun* (2008) following the xenophobia violence.

The thrust of the complaint was that *Daily Sun* consistently presented foreign nationals in South Africa as "aliens" and as the primary source of all problems; presented government as the institution that has enabled the "aliens" to unfairly take advantage of South Africans and South African resources; and portrayed violence as an understandable and legitimate reaction to this state of affairs. The complainants argued that by constantly using the term alien and its negative connotations and associations, the *Daily Sun* was clearly perpetuating negative

stereotypes that were racially based and discriminatory. In response, the newspaper refuted and rejected the allegations against it "in the strongest possible terms as unfounded". The Ombudsman found in favour of the newspaper and dismissed the complaint arguing "there is no doubt about the meaning of aliens the MMP has advanced applies in the case of the *Daily Sun*. Alien means foreign". Following the ruling, MMP applied for appeal with the Appeal Panel arguing that there is no doubt as to what "alien" means.

> Unlike the word foreigner, refugee, asylum seeker, or non-national or non-South African, "alien" is an emotive and negatively charged word. MMP's concern is not about a single meaning of the word "alien" as it was used in the Daily Sun's coverage. It is about the connotations of the word, connotations that were partly constructed by Daily Sun's long term reporting (MMP, 2008).

The matter was, however, settled between the parties before the Appeals Panel could make a ruling. In the settlement, the *Daily Sun* regarded itself as bound by the Press Code and agreed to no longer use the word "aliens" to describe foreigners.

Another case involved Lesbian, Gay, Bisexual and Transgender Community against *Sunday Sun* (2008). Although the matter was treated as one case, according to the Ombudsman the office received nearly 1,000 complaints against the *Sunday Sun* for publishing a column by Jon Qwelane headlined 'Call me names, but gay is Not okay'. The thrust of the column was a call for a revision of the country's constitution to take away the rights that gays and lesbians had won in the new South Africa. The Press Ombudsman found the newspaper in breach of Section 2.1 of the Press Code (*see appendix B*) on three counts including: publishing denigratory references to people's sexual orientation in the column by Qwelane, implying that homosexuals are a lower breed than heterosexuals; and that the cartoon accompanying the column was also disparaging of homosexuals.

Similar to the above case, in 2004 columnist Alyn Adams writing for the *Sunday Tribune* also generated a complaint from a reader when, while commenting on the notorious Kamp Staaldraad, referred to Afrikaner culture as "here's a clue: it begins with 'Duh!' and ends with and 'Utchman'. In the case, the Press Ombudsman ruled that 'Dutchman' is a derogatory term and use of it contravenes the press code which bars denigratory reference to people's race, colour, ethnicity, sexual orientation, disabilities or age. The *Sunday Tribune* was ordered to apologise for the use of the term.

In general the Ombudsman would look at the meaning of the 'offensive' term or statement with regard to the context in which the word had been used, as well as the aim for that choice of word. However understanding the context in which a term had been used is debatable as seen in the "aliens" case.

On the other hand, while at times the use of a discriminatory word would not be justified and a publication would be found to have violated the Press Code as in the *Sunday Tribune* case, sometimes the word would serve a legitimate purpose. For instance, in 2007, the *Sunday Times* was pardoned of racism in a report on a racist sticker "koelie cruiser" on the side of a bakkie of a businessman on the ground that although the sticker was offensive and derogatory, readers would not have understood what the row [over the sticker] was about if the wording of the sticker were omitted or changed.

5. Discussion

Based on the findings, this section aims to discuss how press self-regulation in South Africa has functioned and responded to the new democratic media landscape. The discussion also looks at how press self-regulation reflects on the role of press in a democratic society where the notions of press accountability and serving the public interest, as articulated by social responsibility theory, have been paramount.

With reference to the background on media transformation in South Africa, the main thrust of this discussion is that press self-regulation has, to some extent, positively responded to criticism and pressure to conform to the new democratic media landscape. However, the system has been resistant to some concerns, hence it continues to face criticism on certain matters.

The discussion takes the form of themes which I regard as pertinent to address the research question, in relation to the theoretical framework and literature review. Background reading is also part of the discussion, especially where the literature helps to explain an emerging theme.

5.1. The Functioning of Press Self-Regulation in a Democracy

This research aimed, among the objectives, to examine how press self-regulation has functioned in the new democratic media landscape. This section looks into this aspect.

Generally, it could be said that the South African press has moved from an industry whose self-regulatory mechanism was more influenced by what government wanted in the apartheid regime, to one largely independent and accountable to the public it serves in the democratic era.

In essence, when the self-regulatory mechanism was set up in 1962 — mainly for fear of statutory regulation — the press could be said to have been largely accountable to the government. This, for example, was evident in government's involvement in the formation of the Press Code of Conduct, which needed government's approval before it could become effective. In addition, as indicated in the findings, there were continuance negotiations between editors, proprietors and the government and compromises on reporting were reached and included in the Press Code. It has also been argued that the system then mostly found against publications that were critical of the apartheid government and its policies due to the

political interference. From this, it is apparent that the public and to some extent the industry itself had no major say on the press regulatory mechanism during apartheid, as the government made the final call.

But all this seem to have changed with the coming of democracy. The democratic era has seen the public becoming more aware that anybody has a right to dignity, privacy and other human rights and that if newspapers infringe those rights they can be held accountable. More people are utilising the press ombudsman system, and the public — through the public representatives — is able to give input into the operation of the system. The system has been transformed into what Bertrand (2005) terms a tripartite press council with publishers, journalists and public representatives being part of the mechanism. A tripartite system is regarded as democratic, independent, flexible, and multifunctional, bringing together the people who own the power to inform, those who possess the talent to inform and those who have the right to be informed. In essence, individuals are aware that it is not only the government that has the powers to hold the press accountable, but even an ordinary citizen can do so.

So in essence, although there remains legal avenues where the public can lodge complaints against newspapers, the findings of this research demonstrate that press self- regulation has gained some ground in the new South Africa, with more independence and transparency, albeit amid continued political and public criticism on the system.

5.1.1. The Popularity of the Self-Regulatory Mechanism

In the first years of its the establishment, the press ombudsman office saw an increase in the number of complaints received, demonstrating that individuals became aware of the existence of the system and found it necessary to utilise it. However, as indicated in the findings, the down-ward trend in the volume of complaints after 2005 brings into question the system's ability to sustain its publicity drive to attract more people and gain the public's confidence over the years.

This study could not extensively established the reasons behind the drop in the volume of complaints after 2005. But as argued by Berger (2009b) the system faced criticism over its poor visibility and concerns on the prevalence of poor ethics in the press notwithstanding the existence of the system. This could help explain the unstable popularity of the system. And as earlier stated, lack of publicity and the public's perceptions that the system is biased towards

the media were among the factors considered when the structure was changed to that of Press Council, to promote public awareness of the existence of the Press Ombudsman and Press Appeals Panel, among other functions.

The down-ward trend in the volume of complaints continued until 2008. Thloloe admits that the office was not doing enough to sensitise people to the extent that, through the office, they can take the press to account. However, as of November 2009, the office had received 133 complaints, which is already higher than the 126 received in 2008. This could mean that the public is again giving a positive response to the system following the re-restructuring in 2007.

5.1.2. Who Does the System Favour?

One of the major criticism against press self-regulation has been that the system favours the press in its rulings. However, the findings of this study reveal that the number of rulings for and against the press are roughly even, rendering the argument that the system is biased towards the press unconvincing.

The findings demonstrate that the majority of the complaints fall under the categories of dismissed (which can be viewed as those in favour of a publication), followed by those which are settled (findings against a publication).

However, even though those dismissed present the highest number of 644, the figure includes complaints that were rejected before any hearing over technicalities such as the complainant's refusal to sign the waiver agreement form. This means that it is not conclusive that all the 644 complaints were found in favour of the media, as some were dismissed on technicality grounds and not necessarily with reference to the Press Code.

The figure in the category of settled, at 542, is also on a higher side. This demonstrates that the system does not always make rulings in favour of the media, as per public perceptions. As much as some rulings have been made in favour of newspapers, most time the publications have been also ordered to publish retractions, apologies or corrections after being found in breach of the Press Code.

5.1.3. Who Utilises the System: The Elite versus The Ordinary

Far from the popular belief that it is mostly the elite that mainly interact with the press, the findings of this study demonstrate that the self-regulation system has been utilised by people

from across the range in society. Politicians, businessmen, ordinary citizens all lodge complaints against newspapers with the press ombudsman office albeit to varying extents.

However, an interesting observation has been with regard to the difference in the nature of complaints filed by the ordinary people and complaints by those in positions of power, be it in private of public sector, in society. The research observed that most complaints lodged by ordinary individuals (those without positions of power in society) have been in relation to issues to do with the offensive or indecency nature of news stories, as opposed to whether the report is true or not. And in most cases, such complainants have not been the subjects of the story but rather, as the readers, they felt offended by what was published.

An example is when newspapers published a picture of a man being burnt to death during the 2008 xenophobia violence. The press ombudsman office received hundreds of complaints from ordinary individuals who felt the picture was brutal, shocking and explicit, arguing the press acted irresponsibility by publishing the picture. This brings about the argument that rarely do ordinary individuals make news, but rather are keen followers of what is published and are able to act when they feel the press has acted irresponsibly. The public is aware that as consumers, they can voice out their dissatisfaction with what is published and hold the press to account.

The complaints are also a possible basis of establishing the societal expectations on the role of the press in society, what would be regarded as the normative role of the press. In essence, the public expects the press to report their stories professionally and keep in mind established norms and values of the South African society. However, this also brings in the argument of how freedom of expression is understood by media consumers in South Africa. As Linington elaborates in his 2007 report:

> It has been my experience over 10 years as Ombudsman that as consequence of a restrictive past, freedom of expression is neither well understood nor well received by many South Africans. Many complainants object on the basis that something is shocking or offensive or overturns established notions of what is acceptable or politically correct (Former Press Ombudsman Edwin Linington, 2007).

An example is when in 2005, a reader filed a complaint against *Kaapse Son* (Jessica Samson vs. *Kaapse Son,* 2005) over page three photographs of semi-nude women arguing it is offensive and a commercial exploitation of women for financial gain. Basically, the

complaint was bordering on the notion that the semi-nude pictures overturns the established norms of society. But both the Press Ombudsman and the Appeals Panel dismissed the complaint on the basis that in the day and age in which we live, the publication of such pictures was not offensive.

On the other hand, politicians and other public figures mostly complain as 'victims' of a story, meaning that this group is mostly targeted as news makers. This could be because as public figures, they are accountable to the citizens and the press takes the public figures to task on behalf of the citizens. Hence, the public figures are more likely to feature in news items than the ordinary person.

5.2. The Response to Media Transformation and Criticism

Another objective of this research was to look at how press self-regulation has responded to the criticism and the changing media landscape in the new democratic South Africa. On the whole it could be said that press self-regulation, with its roots dating back to the apartheid era, has gone through various permutations.

While the first Press Code of 1962 also emphasised the need for the press to report accurately, fairly, responsibly and free from malice; a major change was when, in tandem with a major political shift with the emerging democracy that promoted human rights, dignity, privacy and freedom of expression among other rights, press self-regulation was also transformed.

Based on the findings of this study, the transformation of press self-regulation in the new democratic media landscape could be said to have been in response to the following factors:

a. Democratic constitutional and legal requirements.
b. Public and political pressure.

5.2.1. The Response to the Democratic Constitutional and Legal Requirements

As stated earlier, with the coming of democracy, institutions of society including the media were expected to undergo transformation to reflect the new political and social landscape. The change had an impact on press self-regulation. The new democratic South Africa called for a new thinking on the basic principles of press self-regulation.

The recognition of the democratic constitutional requirements in the South Africa Press Code could be seen as an initial response of the press self-regulation system to a new democratic South Africa. This, for example, could be observed in the 1996 Press Code's preamble which, for the first time, place emphasis on the spirit of freedom of the press, a democratic constitutional right resting on the public's fundamental right to be informed. The development was a move away from the system established under apartheid which was mainly a response to political threats to "get your house in order". Although press self-regulation existed prior 1994, the motive behind its establishment, its structure and government involvement in the formation of the Press Code of Conduct and the adjudication process, raises questions about whether the system was at all 'self-regulatory' and promoted press freedom.

In addition to the Press Code harnessing the spirit of the democratic constitution with regard to press freedom, the inclusion of the discrimination and hate speech, and child pornography clauses in the Press Code also demonstrates how self-regulation has transformed owing to democratic constitutional and legal requirements. In a democracy, everybody is equal before the law, including the media. This, in essence, prompted the Press Council to amend the Press Code to ensure that its provisions are in line with the democratic values enshrined in the constitution and the laws of the land. This was done notwithstanding some opposition from the industry, for example, with regard to the amendment on child pornography that was seen as a limit on the same press freedom the code promotes.

The amendment on the discrimination Clause also came at the time the SAHRC, which instituted an investigation on racism in the media, had recommended that the codes of conduct be reviewed to ensure that they are in line with the constitutional requirements. This also demonstrates that the pressure for the media to transform in the new democratic media landscape influenced the changes in the self-regulation system.

The amendment to allow legal representation at hearings is also another change done in response to constitutional requirements. Section 35 (3) (f) of the Constitution states that every accused person has a right to fair trial, which includes the right to choose, and be represented by a legal practitioner. It has been argued that denying a person legal representation during hearings would have been a cause for challenging the findings of the Press Ombudsman on the grounds of an unfair trial. On this basis, the Press Council decided to amend its procedures to allow legal representation.

However, there is a down-side to allowing lawyers to be part of the arbitration proceedings. The presence of lawyers defeats one objective of the self-regulatory system, which is to have cheap and speedy hearings. The Press Code clearly states in the preamble that the self-regulatory mechanism will provide impartial, expeditious and cost-effective arbitration to settle complaints. Having legal representation then brings into disarray the very nature of having an expeditious and cost-effective mechanism as mostly legal fees is costly and submissions by lawyers tend to drag the process, as also alluded to by Thloloe.

In addition, how fair would the arbitration process be if only one side manages to secure legal representation? Surely, the side with legal representation would have an intellectual advantage of the other, thereby defeating the very spirit of a fair hearing legal representation is supposed to serve.

5.2.2. Response to Public and Political Pressure

Public and political pressure have also had an impact on the transformation of the self-regulatory mechanism in South Africa. For example, the inclusion of public representation in the system was done owing to public pressure that there be public representation in the system. Even though the self-regulation system is designed as a self-disciplinary mechanism by the industry, its current structure is that is it not a media-dominated body.

As discussed in the literature review, both the Press Council and Press Appeals Panel have press and public representatives, although the industry has an upper hand in the process to ensure that it remains a self-regulatory body. Hence, the current system has evolved to represents a tripartite press council as argued by Bertrand (2005) with people who own the power to inform (publishers/owners), those who possess the talent to inform (editors/journalists) and those who have the right to be informed (the public), while remaining independent of any outside influence. As Louw argues:

> I think the major achievement of the Press Council in the new South Africa is in fact to have shown the public that there is a body which listens to public and other people's complaints, deals with them fairly, and achieves the satisfaction that the complainant is looking for. Even though it was set up by the industry, it operates independent of the industry. All the industry does is to provide money, it does not interfere with the adjudications process of the Ombudsman (Press Council Chairperson Raymond Louw, 2009).

In addition to the pressure to have public representation, the call by the ANC to investigate the establishment of a Media Appeals Tribunal in 2007 raised doubts on the competence of the current press self-regulation system. Questions were raised if the system is doing enough to deal with complaints against the press and if indeed the system needed strengthening. This seemed like a wake-up call for the system to increase its capacity and do more. For instance, in what would be viewed as a response to the political pressure to strengthen the self-regulatory mechanism, the Press Council;

- Met with ANC official to discuss the party's proposal to have a media tribunal;
- Decided to increase the human capacity at the press ombudsman's office to strengthen the system.

The Press Council has since recruited a deputy Press Ombudsman and a case officer to assist the Ombudsman in handling the complaints. The Press Council's proactive response to the criticism seems to have helped ease the political pressure to overhaul the system.

5.3. Serving the Public Interest

As discussed in the theoretical framework, debate on press freedom has mainly centred on the expectations on what the role of media ought to be in a democracy. It had been argued that in a free market of ideas, the press is expected to represent the public interest — a concept which has become popular for defending freedom of expression — rather than private and partisan interests. This research, therefore, also set out to look into how the press self-regulation system in South Africa reflects the role of the press in a democracy.

One of the normative functions of the media in a democracy, it is argued, is to keep those holding public positions accountable. The media is expected to unearth the truth in matters of public concern and where applicable uncover cases of crime, abuse, and hypocrisy by public figures or public institutions.

However, upholding the principle of public concern may come into conflict with other constitutional rights such as the privacy of an individual, and the line between what constitutes the private sphere and the public sphere is thin and constantly debated. Hence the public interest debate is not an easy one. It is important for journalists and editors to distinguish what is in the interest of the public to know, and what the public is merely interested in.

Since press ombudsman office was set up, the Press Code, a basis upon which the office adjudicates upon complaints, placed emphasis on the need for the press to serve the public interest. Consequently, as stated in the findings, in 2001 the Press Code preamble was amendment to explain the concept of public interest.

Many decisions by the Press Ombudsman have taken the principle of public interest into consideration. This ranged from privacy matters, xenophobia reporting and issues surrounding HIV and AIDS coverage. The press self-regulation system has acknowledged the argument that in a democratic society, while the press is able to comment freely on people and events, criticise public figures and institutions and serve as a platform for others to declare dissenting views, it should in the process be mindful of people's rights and remain accurate, fair and balanced in its reporting.

It should also be mentioned that in nations where the press is owned by a few elite---who according to McChesney & Scott (2004) could determine which persons, which facts, which versions of the facts, and which ideas shall reach the public---the need to ensure that the press serves the public interest rather than partisan interests in inevitable. This is also the case in South Africa where only four major media corporations include Media24, Independent Newspapers, Avusa, and Caxton and CTP Group own almost all the major newspapers and community newspapers, and most of the consumer magazine titles.

The press self-regulatory system has, therefore, made it a point in its adjudication process to ensure that the press in the new South Africa serves a 'legitimate public interest', reflecting a core normative role of the press in a democracy.

Louw argues that among the public criticism the system has to deal with is that the media defend press freedom not because they want to defend freedom of expression or freedom of the press, but that they want to defend freedom to make money.

> Now that's a nice thought but in fact we, the Press Council, Press Ombudsman and the Appeal Committee are not interested in the money making of the media. In making the rulings, the adjudicating bodies make them according to professional standards and the code of conduct, which does not have any monetary factors. The defence of press freedom of the Press Council is in fact to defend press freedom and the people's right to know and the freedom of expression which is an essential core element of a democratic

> society. If you don't have that, you don't have democracy (Press Council Chairperson Raymond Louw, 2009).

In essence, the argument supports social responsibility theory ideal that the free market of ideas and information is not just a business venture, but that the press has to exercise the freedom on behalf of the public and be accountable to the public it serves. In a democracy, the primary commodity that the media sells is credibility. The media should be accepted by their readers, viewers and listeners.

Basically, the self-regulatory system ensures that the press maintains this credibility. According to the Press Ombudsman, if a newspaper has not operated on a professional basis and with due regard to the ethics surrounding the situation, then the censor that is applied to the newspapers means the publication will decide to be careful in its reporting.

5.4. Rolling Controversies

Despite responding to the constitutional and legal requirements and some contentious matters, there still remains criticism on press self-regulation. The system has been resistant to some of the criticism it faces. The issues include the following:

5.4.1. Calls To Do Away With the Waiver Requirement

The waiver requirement, it has been argued, impinges on an individual's constitutional right to seek redress in a court of law. With the waiver requirement in place, a complainant cannot appeal the decision by the Press Ombudsman nor the Press Appeals Panel in any other court or tribunal. The decision by the Press Appeals Panel is final.

One argument for the waiver requirement has been that it would be unfair for a publication to answer the same charge in different tribunals.

> We are very firm on the question of the waiver for a very simple reason that it would be unfair for a publication to have to answer to two forums on the same issue. If they came in and have to answer because somebody complained against them, it would be unfair to then expect them to go and respond to the Human Rights Commission or to the court, after they have already responded to me. Justice says they should face one tribunal for their alleged offence (Press Ombudsman Joe Thloloe, 2009).

The second point, said Thloloe, is that the waiver requirement is there to avoid abuse of the system by the public by using it as a 'fishing expedition' for information to use in other tribunals. Thloloe said the Press Council does not want people to seek their redress merely to solicit the newspaper or the magazine's defence and then use that information to tailor a another suit in the court.

Thirdly, said Thloloe, the whole system would unravel because newspapers would then say they are not prepared to answer before the Press Ombudsman and would wait until the matters goes to court. Thloloe said allowing people to go to other forums to argue out their matters would seriously undermine the system. The office has since made an agreement with the Human Rights Commission that they will not take up any matter that has been handled by the Press Ombudsman and the Press Appeals Panel.

However, the reasoning behind the waiver requirement seems unconvincing to some as there continues to be criticism on the requirement because it is regarded as a limit to an individual's constitutional right to seek remedy in a court of law.

5.4.2. The Proposal for Imposition of Fines

The other issue that has been so far dismissed by the Press Council is the call for the re-introduction of imposition of fines by the Press Ombudsman the same way the Broadcast Complaints Commission does. Critics argue that absence of fines renders the system 'toothless'. But according to Thloloe, the Press Council has not considered imposing fines because the system is an educative one rather than a punitive one.

> When a publication has made a mistake and we point out that they have made a mistake, we expect them to learn from that process. But there is also an element of punishment in it because very few editor relish the idea of having to publish apologies and having the Ombudsman make a decision against them (Press Ombudsman Joe Thloloe, 2009).

5.4.3. The Need for a Proactive Self-Regulatory Mechanism

There have also been calls for the self-regulation system to be 'proactive' in its approach for it to be more effective. However, the present structure of the system does not allow for it to be proactive.

As Louw explains, the principle of the current set up is that the Press Ombudsman is an adjudicator of complaints brought against the media, where he adjudicates between the basis of the complaint in relation to the response from the newspaper. In each case, the Press Ombudsman is expected to be fair to both the complainant and the newspapers.

The argument then follows that if the Ombudsman has to set about also being the prosecutor by going out and seeking misdemeanours in newspapers, he maybe over stepping the basic principle of justice that one can't be a prosecutor and judge of the same case. In essence, being proactive will require setting up a separate body to monitor the publications, a task which would be huge and costly, according to Louw.

5.4.4. The Hate Speech Provision Dilemma

The South African constitution states in the Bill of Rights that everyone is equal before the law and advocates against discrimination and advocacy of hatred. However, a provision was made that there should be a separate law that deals with equality and that law is the Promotion of Equality and Prevention of Unfair Discrimination Act (2000). The Act made a provision for the establishment of the Equality Court to adjudicate upon matters relating to the Act.

According to Thloloe, this has brought in a technical dilemma as to which law---between the constitution or the equality act--- the Press Ombudsman applies. He said the new equality law extends the prohibition on hate speech much more widely than what is in the constitution. While the constitutions prohibits advocacy for hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm, Section 10 the Equality Act goes further and states that no person may publish, propagate, advocate or communicate words based on one or more prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to:

a. Be hurtful;
b. Be harmful or incite harm;
c. Promote or propagate hatred.

At the time of this writing, the Press Council was still deliberating as to how to deal with this technicality in terms of which law to apply when resolving complaints.

5.4.5. The ANC and the Media Appeals Tribunal

Another pending controversy surrounding press self-regulation is the call by the ruling party the African National Congress (ANC) to investigate the set up of a Media Appeal Tribunal to strengthen the current system. Although as of this writing, the ANC seems to have rescinded from the idea of a statutory tribunal, it cannot be taken as a fact that the issue is completely off the party's agenda. This is mainly because the resolution was adopted at a policy conference and can only be rescinded through the same channel.

Basically, the ANC's call raised uncertainties on the acceptability of the current system, especially by the ruling party and its officials. According to Louw, the ANC justified its proposal for a media tribunal by saying that the Press Ombudsman paid no attention to their complaints. However, after meetings between the party and the Press Council, no evidence was provided to back the claim that the Press Ombudsman paid no attention to ANC complaints, rendering the argument worthless. In its defence the Press Ombudsman compiled a list of complaints by the ANC and its officials since the office was establish until the time of the ANC passed a resolution to investigate the establishment of an appeals tribunal owing inefficiency of the Ombudsman's office (*see Appendix A*).

> The ANC told us that there were many cases which had not been responded to by the Ombudsman. We asked for details and finally at a meeting they mentioned one case which they claimed the Ombudsman had ignored. That, of course, was untrue. The case was part of the list we compiled and was not only responded to and dealt with by the Ombudsman but he found in favour of the ANC (Press Council Chairperson Raymond Louw, 2009).

The list (*see Appendix A*) not only demonstrates that the Press Ombudsman dealt with the ANC complaints but that most of the rulings had been in favour of the party or its officials. Nevertheless, despite adopting the policy to investigate the setting up of a tribunal, the ANC has continued to lodge complaints against the press with the Ombudsman. According to Thloloe, some of the ANC complaints have been made public before they reach the office, and that even President Jacob Zuma and former president Kgalema Motlanthe have submitted complaints, thus giving the system a stamp of approval.

6. Conclusion

Through document analysis and in-depth interviews, this research has examined the functioning and transformation of the press self-regulatory system, in response to the changing media environment in the democratic South Africa. The research utilised the social responsibility theory of the press to give a theoretical understanding of the need for the press to be self-regulatory, as opposed to statutory regulation.

Press self-regulation has been part of the South African media for a long time, and the debate on press regulation has shown two different aspects on how the journalists and the government would like the press to be held accountable. While the journalists support self-regulation, the government argues that self-regulation is not doing enough to ensure the country has a responsible press that is accountable to the people it serves, and hence advocates for a statutory tribunal. However, this research, through the examination of the functioning of the press ombudsman system, has shown that a proper balance could be struck between press freedom, responsibility, and accountability without necessarily suppressing the freedom.

Already, the ANC led government has hinted on the establishment of a statutory media tribunal in South Africa, arguing the existing system is inadequate. But the print industry has challenged ANC's intentions, and has instead worked on improving the self-regulatory system to ensure that it is professional, independent, representative and serves the public.

In response to the constitutional requirement in the new democratic media landscape and the public criticism, the press self-regulatory system in South Africa has evolved into a new dimension, with much emphasis on serving the public interest, and being accountable to the public than was the case during apartheid. The research has established that the system has been fair in handling the complaints, countering the criticism that the system favours the press. The public in South Africa also seem to have acknowledged the existence of the press self-regulatory system. The research has shown that the system has been utilised by people from across the board from those with positions of power in society to those without power, though to varying degrees. This shows that the public is aware of the existence of the system, through which they could hold the press accountable.

However, there still remains opposition as the Press Council is yet to address some concerns for various reasons including the call to impose fines, scrap the waiver provision and the call

for the system to be proactive. This means the response to the pressure to transform press self-regulation has not been to the full extent.

According to Thloloe, the office hopes that through the decisions made and through the interaction with newsrooms, it is able to influence the quality of journalism in the country. However, the question whether the press regulation system has indeed managed to influence excellence in journalists practice and ethics in newsrooms is a possibility for another research area. It would be of interest, for instance, to find out from journalists and editors if they are familiar with the South African Press Code, and if they refer to the rulings by the press ombudsman and the panels for guidance if faced with an ethical dilemma.

Generally, the compliance rate of publications on the judgement made by the Press Ombudsman has been high as most newspapers abide by the rulings when found at fault. However, this is not enough to conclude that most journalists and editors are familiar with the system and that the system has influenced the quality of journalism. Further research on this aspect is, therefore, recommended.

Appendix A:

A selection of complaints by ANC and its officials against newspapers handled by the Press Ombudsman's office compiled after ANC's claim in 2007 that the office paid no attention to their complaints.

1. 19/04/1998: Minister of Health Dr Nkosazana Zuma vs. *Saturday Star*: Denied report that Minister attended a virginity testing ceremony in Umlazi. Correction published on order of the Ombudsman.

2. 11/05/1998: S A Secret Service vs. *Independent on Saturday* and *Saturday Argus*. Complaint against an article alleging Secret Service involvement in drug smuggling. After hearing before the Ombudsman newspapers agreed to publish correction.

3. 23/06/1998: Deputy President Mbeki vs. *Pretoria News*. Complaint against a report that police were searching for one of Mbeki's bodyguards after stolen vehicles were found at his house in Leondale. The Ombudsman issued judgment against *Pretoria News* and ordered it to issue a retraction, but qualified it by saying the *Pretoria News* was justified in investigating the circumstances.

4. 22/08/2000. Sbu Ndebele, ANC KZ-N chairman vs. *Sunday Times*: Requested right of reply to critical comment on President Mbeki's attitude to HIV/Aids. The newspaper's offer to publish letter but not an article was rejected by Ndebele but was held by the Ombudsman to have been a reasonable and sufficient offer of settlement. Acceptance of complaint withdrawn.

5. 13/6/2001: Billy Masethla, D-G Home Affairs vs. *Drum magazine*: Article alleging mistreatment of aliens by Home Affairs and at Lindela detention centre. Settled by publication of letter replying to the allegations.

6. 26/10/2001: Frene Ginwala, Speaker vs. *Business Day*: Editorial opinion article suggesting Ginwala had ulterior motives in classifying Immigration Bill as a Money Bill. Complaint of unfair comment was upheld and *Business Day* was ordered to publish adverse judgment.

7. 6/11/2001: Minister Buthelezi and Chief of Staff, Ministry of Home Affairs vs. *City Press*: Article alleging corruption, criminal activities and disruption of government activities by Home Affairs officials. This reflected the clashes between Buthelezi and Billy Masethla, the D-G of Home Affairs who made the allegations against Buthelezi's officials (who are distinct from the Department's officials). The complaint upheld and *City Press* was reprimanded and ordered to publish the adverse judgment.

8. 7/11/2001: KZ-N Ministry of Housing vs. *Sunday Tribune*: Article criticising Minister's allocation of funds for housing projects. Settled by publication of Minister's replying letter.

9. 10/01/2002: Nelson Mandela vs. *City Press*: Article alleged Mandela softened his stance on Osama bin Laden because of death threats his family received. City Press published Mandela's clarification in terms of agreement between parties.

10. 20/065/2002: North West Premier Popo Molefe vs. *City Press*: Report alleged he mistreated his wife, from whom he was in the process of getting a divorce. The complaint was dismissed.

11. 29/08/2002: Premier of Eastern Cape Makhenkesi Stofile vs. *Daily Dispatch*: Report on defamation action brought against Premier by former superintendent general Mannya. The newspaper admitted a litany of errors, mainly arising from re-writing by the subs. Corrections published by DD and EP Herald which carried the DD's report.

12. 18/02/2003: Frene Ginwala, Speaker, vs. *Business Day*: Editor's column criticised Ginwala over the attempts to relocate the press to a building outside parliament. Partially dismissed because some comments were adjudged fair; partially upheld because Ginwala had not made the relocation decision on her own (as alleged) and because it was unfair comment to say she was ignorant of the nature of parliament, implying she was incompetent at her job.

13. 25/04/2003: SA Democratic Teachers Union and Treatment Action Campaign vs. *Sowetan*: Article by ANC Youth League spokesman alleging TAC was, among other things, paid marketing agent for toxic Aids drugs from USA. *Sowetan* was found to have failed to get comment before publication of critical reportage. Published TAC reply.

14. 25/06/2003: State Attorney A H Nell vs. *Beeld*: Report on defamation action against a magistrate alleged to be inaccurate. Correction and explanation published by agreement.

15. 19/09/2003: Director-General of National Intelligence Agency vs. *City Press* and *Natal Witness*: *City Press* report alleged Bulelani Ngcuka was an apartheid spy, based on NIA documents. *City Press* admitted the documents were from the old National Intelligence Service that operated before 1994 and published apology, explaining it was a 'typographical error'. *Natal Witness* picked up on it and criticised NIA for being 'dangerously loose with its records'. Apology published.

16. 17/12/2003: Deputy President Jacob Zuma vs. *The Star* and *Sunday Tribune*: Editorial article alleged that Deputy President's office was implicated in leaking information relating to the Scorpion's investigation against the Deputy President. Correction and apology published.

17. 17. 16/01/2004: Baleka Mbete, Speaker, vs. *Sunday Times*: Article alleged Mbete used her travel vouchers to hire cars and to pay for her daughter's trip to China. After Mbete produced documents to refute the allegations, *Sunday Times* agreed to publish a long correction and apology, with a front page note drawing attention to it.

18. 6/12/2004. Minister of Intelligence Services Ronnie Kasrils vs. *Mail & Guardian*: Report alleged MIS was selling President Mbeki's secret hideaway at Hartbeespoort Dam. Explanation and apology published.

19. 10/01/2005. Billy Nair vs. *Daily News*: Report alleged he submitted false affidavit to Parliament officials in order to receive an extra month's salary after retiring from parliament. Complaint dismissed after extensive documentation showed he did sign a false affidavit, probably on a misunderstanding of the rules.

20. 22/06/2005. Minister of Housing Lindiwe Sisulu vs. *Rapport*: The report referred to Ms Sisulu's trip to the Netherlands in her previous post of Minister of Intelligence, saying it cost the taxpayer heavily. The Ombudsman mediated a settlement by which *Rapport* published a long letter from Ms Sisulu**.**

21. 24/08/2005: ANC Secretary-General Kgalema Motlanthe on behalf of President Mbeki vs. *Business Day*: Report alleged President Mbeki attended a meeting of the ANC national working committee in Johannesburg and had criticised supporters of former deputy president Jacob Zuma. *Business Day* retracted and apologised on the front page, as Mbeki was not at the meeting.

22. 27/10/2005: Office of the KZ-N premier Sbu Ndebele vs. *City Press:* Report said top ANC officials snubbed him by not attending a lunch after the second court appearance of Jacob Zuma. *City Press* said it based its report on what Ndebele's spokesman told its reporter. The Ombudsman ruled that *City Press* could not be blamed for publishing information given by Ndebele's spokesman. The complaint was dismissed.

23. 2/11/2005: SAA chief executive Khaya Ngqula vs. various newspapers and *Drum*: Reports alleged lavish expenditure on his two marriage ceremonies and lobola. Retractions and apologies published along with what Ngqukla said were the correct figures.

24. 14/12/2005: SA Communist Party secretary-general Blade Nzimande vs. *Mail & Guardian*: Report alleged former deputy president Jacob Zuma told senior members of COSATU and the SACP, including Nzimande, at his Nkandla residence that he had had 'consensual sex' with the complainant in the rape case against him. After first publishing a 'we stand by our story' article, the M&G published full explanation and apology, but nevertheless stood by the essence of the

report that Zuma had told unionists and SACP leadership he had had consensual sex as eventually the judge decided it was.

25. 20/04/2006: Sports Minister M A Stofile vs. *Sunday Sun*: Editorial comment said Stofile had threatened Limpopo it would lose a World Cup match in 2010 if it did not build a new soccer stadium from scratch. Settled by publication of a clarification.

26. 8/05/2006: Speaker Baleka Mbete vs. *Sunday Times*: Political commentary said Parliament was a blunt tool used for mundane exercise of majority power. Settled by publication of a letter from Luzuko Jacobs, head of public affairs at Parliament.

27. 26/05/2006: Judge Fikile Bam of the Land Claims Court vs. *Sunday Times*: Report alleged taxpayers' money was used to promote business ventures from his office. The Ombudsman ruled that Judge Bam had the right to reply. Judge Bam declined to do so and referred the allegations in the *Sunday Times* report to the Judicial Services Commission which later said it had decided no action against Judge Bam was called for.

This list had been reproduced with permission from Press Council Chairman Raymond Louw.

Appendix B:

THE SOUTH AFRICAN 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
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.

The South African Press Code as approved by the Press Council in 2007.

Bibliography

Allan, S. 1999, The Rise of 'Objective' Newspaper Reporting in *News Culture*, Buckingham: Open University Press.

Altheide, D. L. 1996, *Qualitative Media Analysis,* Thousand Oaks: Sage Publications.

ANC. 2007, "*Communication and the Battles of Ideas"*, ANC Resolution at the 2007 Polokwane Policy Conference. Retrieved on April 10, 2009 from www.presscouncil.org.za/pages/posts/anc-resolution-on-communications-and-the-battle-of-ideas9.php.

Article 19 & International Federation of Journalists. 2005, *Freedom and Accountability: Safeguarding Free Expression Through Self-Regulation*, London. Retrieved on November 14, 2009 from www.article19.org/pdfs/publications/self-regulation-south-east-europe.pdf.

Babbie, E. 1992, *The Practice of Social Research*, Belmont (CA): Wadsworth Publishing Company.

Berger, A. A. 1991, *Media Research Techniques*, Newbury Park: Sage Publications.

Berger, G. 2000, *Deracialisation, Democracy and Development: Transformation of the South African Media 1994-2000*, Paper prepared for the Political Economy of the Media in Southern African Seminar. Durban, 24-29 April, 2000.

Berger, G. 2002, *Theorising the Media-Democracy Relationship in Southern Africa*, The International Journal for Communication Studies, Vol 64 (1): 21-45, London: Sage Publications. Retrieved on October 22, 2008 from http://gaz.sagepub.com.

Berger, G. 2007, *Hard work ahead of the Press Council: Challenges of Credibility*, Paper presented at a conference by South Africa Press Council. Johannesburg, 2 November, 2007. Retrieved on April 10, 2009 from www.presscouncil.org.za/modules/download_gallery/dlc.php?file=6.

Berger, G. 2009a, *Press Self-Regulation Makes Strides*, Retrieved on September 3, 2009 from www.mg.co.za/article/2009-09-03-press-selfregulation-makes-strides.

Berger, G. 2009b, *The Struggle for Press Self-Regulation in Contemporary South Africa: Charting a Course Between an Industry Charade and a Government Doormat,* Paper presented to conference "Communication and Media: Past, Present and Future," 16-18 September, 2009.

Berry, WE. Braman, S. Christians, C. Guback, T. Helle, S. Liebovich, LW. Nerone, JC. & Rotzoll, KB. 1995, Social Responsibility Theory, in Nerone, JC. (ed), *Last Rights*, Urbana: University of Illinois Press.

Bertrand, C. 2005, *Media Accountability*, in Pacific Journalism Review 11 (2), 2005, p. 5-16. Retrieved on September 14, 2009 from www.pjreview.info/issues/docs/112 / pjr11205pp5-16.pdf.

Bertrand, C. 2003, *Self-Regulation Bodies in Sub-Saharan Africa.* Retrieved on November 14, 2009 from www.media-accountability.org/html/frameset.php?page=library3.

Bertrand, I. & Hughes, P. 2005, *Media Research Methods: Audiences, Institutions, Texts*, New York: Palgrave Macmillan.

Campbell, C. 2004, *Information Age Journalism: Journalism in the International Context*, London: Arnold.

Curran, J. 2003, *The Liberal Theory of Press Freedom,* in Curran, J. & Seaton, J. *Power Without Responsibility: The Press, Broadcasting and New Media in Britain,* London: Routledge.

Curran, J. 2000, *Rethinking Media and Democracy,* in Curran, J. & Gurevitch, M. (eds), *Mass Media and Society*, Arnold: London.

Da Silva, LM. & Paulino, FM. 2007, *Media Accountability Systems: Models, proposals and outlooks*. Retrieved on April 10, 2009 from www.unb.br/ojsdpp/include/getdoc.

FXI. 2009, *FXI Deeply Disappointed By The Signing Into Law Of The Films and Publications Amendment Act*. Retrieved on September 29, 2009 from www.fxi.org.za.

Hachten, W. 2005, *The Troubles of Journalism: A critical Look at What's Right and Wrong with the Press,* New Jersey: Lawrence Erlbaum Associates, Inc.

Hachten, W. & Giffard, C. A. 1984, *Total Onslaught,* Johannesburg: Macmillan South Africa.

Hadland, A. 2007, *State-Media Relations in Post-Apartheid South Africa: An Application of Comparative Media Systems Theory,* Communicare, Volume 26 (2).

Harber, A. 2004, *Reflections on Journalism in the Transition to Democracy*, in Ethics & International Affairs 18, no.3.

Harrison, J. 2006, *News,* London: Routledge.

Hong-won, P. 2008, *Rethinking Social Responsibility Theory Through The Concept of Media Accountability,* Korea Journalism Review (p. 128-158): Korea Press Foundation.

Jankowski, N.W. & Wester, F. 1991, The Qualitative Tradition In Social Science Inquiry: Contributions To Mass Communication Research, in Jensen, K. B. & Jankowski, N. W. (eds) *A Handbook of Qualitative Methodologies for Mass Communication Research,* London: Routledge.

Krippendorff, K. 1986, *Information Theory: Structural Models for Qualitative Data,* Beverly Hills: Sage Publications.

Kruger, F. 2004, *Black, White and Grey: Ethics in South African Journalism,* Cape Town: Double Storey.

Kruger, F. 2009, *Media Courts of Honour: Self-Regulatory Councils in Southern Africa and elsewhere,* Windhoek: Friedrich-Ebert-Stiftung.

Liamputtong P. & Ezzy, D. 2005, *Qualitative Research Methods,* New York: Oxford University Press.

McChesney, R. & Scott, B. 2004, The Hutchins Commission, "The Problem and the Principles" from A Free and Responsible Press (1947), in McChesney, R. & Scott, B. (eds), *Our Unfree Press: 100 Years of Radical Media Criticism,* New York: The New Press.

McChesney, R. 1998, The Political Economy of Global Communication, in McChesney, R. Wood, EM. & Foster, B. *Capitalism and the Information Age: The Political Economy of the Global Communication Revolution,* New York: Monthly Review.

McQuail, D. 2003, *Media Accountability and Freedom of Publications,* New York: Oxford University Press Inc.

McQuail, D. 1987, *Mass Communications Theory: An Introduction,* London: Sage.

Milo, D. 2008, *Press Regulation: Give Bite to Media's Own Watchdog*, Retrieved on November 14, 2009 from www.webberwentzel.com/wwb/view/wwb/en/page15188?oid=17465&sn=Detail.

Ntuli, B. 2008, *Self-regulation of the Media in SADC Region: Research on the South African Press Council*, unpublished research report, Johannesburg: University of the Witwatersrand.

Oosthuizen, L.M. 2002, *Media Ethics in the South African Context: An Introduction and Overview,* Lansdowne: Juta.

Pinker, R. 2002, *Press Freedom and Press Regulation-Current Trends in their European Context*. Speech given at the "Modern Media and the EU: The Cases of Cyprus and the UK" seminar in Nicosia, Cyrus on February 5, 2002. Retrieved on November 14, 2009 from www.pcc.org.uk/news/index.html?article=NDM1NA=.

Rabede, J.L. 2006, *The Role of the Media in Transition to Democracy: An Analysis of the Coverage of the Alleged Arms Deal Corruption by The Sowetan and the Mail & Guardian*, an MA Thesis submitted to the University of the Witwatersrand, unpublished.

Retief, J. 2002, *Media Ethics: An Introduction to Responsible Journalism,* Oxford: Oxford University Press.

Ronning, H. 2002, 'Ethics and Practical Journalistic Work', in Ronning, H. & Kasoma, F. *Media Ethics: An introduction and overview*, Maputo: Nordic SADC Journalism Centre, pp 95-144.

Rossouw, R. 2005, The media and transformation, in Hadland, A. (ed), *Changing the Fourth Estate: Essays on South African Journalism*, Cape Town: HSRC Press.

SAHRC. 2000, *Faultlines: Inquiry Into Racism in the Media*. Retrieved on June 13, 2009 from http://www.info.gov.za/view/DownloadFileAction?id=70341.

Siebert, F. Peterson, T. & Schramm, W. 1956, *Four Theories of the Press,* Urbana: University of Illinois Press.

Silverman, D. 1993, *Interpreting Qualitative Data: Methods for Analysis Talk, Text and Interaction,* London: Sage Publications.

Sparks, A. 2003, *Beyond the Miracle: Inside the New South Africa,* Johannesburg: Jonathan Ball.

Strauss, A. & Corbin, J. 1990. Basic considerations, *Basics of Qualitative Research: Grounded Theory Procedures and Techniques.* California: Sage Publications.

The Constitution of the Republic of South Africa, 1996.

Wasserman, H. 2008, *Telling stories: South African tabloids and post-apartheid politics*, Paper presented at Media@lse Fifth Anniversary Conference, 21-23 September 2008, LSE, London. Retrieved on March 13, 2009, from http://eprints.lse.ac.uk/21584/1/WassermanLSE30paper(LSEROversion).pdf

Interviews

Linington Edwin, former Press Ombudsman, interview conducted on September 11, 2009, Johannesburg.

Louw Raymond, Press Council chairperson, interview conducted on September 28, 2009, Johannesburg.

Thloloe Joe, incumbent Press Ombudsman, interview conducted on September 3, 2009, Johannesburg.