

**THE FILM AND PUBLICATION BOARD DRAFT POLICY
IN RESPECT OF THE REGULATION OF ONLINE CONTENT**

SUBMISSIONS ON BEHALF OF:

**INTERACTIVE ADVERTISING BUREAU SOUTH AFRICA
THE SOUTH AFRICAN NATIONAL EDITORS' FORUM
THE PRESS COUNCIL OF SOUTH AFRICA**

1. Introduction

- 1.1 The Film and Publication Board ("**the Board**"), established in terms of section 3 of the Films and Publications Act 65 of 1996 ("**the Act**"), has published a Draft Online Regulation Policy ("**the Policy**") for public comment which aims to regulate the distribution of online content in South Africa.¹
- 1.2 These are the written submissions on behalf of the Interactive Advertising Bureau South Africa ("**the IAB**"), the Press Council of South Africa and the South African National Editors' Forum in respect of the Policy.
- 1.3 The IAB is an independent, voluntary, non-profit association focused on growing and sustaining a vibrant and profitable digital industry within South Africa. The IAB presently represents approximately 180 members including online publishers, brands and educational institutions, as well as creative, media and digital agencies.

¹ General Notice 182 of 2015, *Government Gazette* No. 38531, 4 March 2015

- 1.4 We attach hereto marked “**A**” a list of members of the IAB, which includes key role-players in the South African media industry such as: eNCA, the SABC, Independent Online (IOL), 24.com (which is centred around News24.com), Media 24 Magazines, Primedia Online, Times Media Live, DStv Online, TechCentral, The Daily Maverick, Moneyweb, Caxton Magazines, Creamer Media Pty Ltd, BizCommunity.com, the Ananzi Search Engine as well as affiliate members such as the BBC, Yahoo! and Google.
- 1.5 The South African National Editors’ Forum (“**SANEF**”) is a non-profit organisation whose members are editors, senior journalists and journalism trainers from all areas of the South African media. The membership is spread over print, broadcasting and digital media as well as higher institutions of learning that provide journalism training. The main objectives of SANEF are the promotion of access to and dissemination of information in the media and a free, independent and pluralistic press as well as the promotion or advocacy of human rights and democracy.
- 1.6 The Press Council of South Africa (consisting of the Press Ombudsman and the Appeals Panel) is an independent co-regulatory mechanism set up by the print media to provide impartial, expeditious and cost-effective adjudication to settle disputes between newspapers and magazines, on the one hand, and members of the public, on the other, over the editorial content of publications.
- 1.7 The mechanism is based on two pillars: a commitment to freedom of expression, including freedom of the press, and to excellence in journalistic practice and ethics. The Council has adopted the South African Press Code to guide journalists in their daily practice of gathering and distributing news and opinion and to guide the Ombudsman and the Appeals Panel to reach

decisions on complaints from the public. More than 640 publications, mainly members of Print Media South Africa, subscribe to the Code. By way of example we attach hereto marked "**B**" a representative list of some of the members who have subscribed to the Press Code.

1.8 For ease of reference, we refer to the IAB, SANEF and the Press Council collectively as "**our clients**".

1.9 The purpose of these submissions is twofold.

1.9.1 First, we submit that the Policy in its present form is both unlawful and inconsistent with the Constitution for several reasons (which we set out in detail below).

1.9.2 Secondly, and in any event, we aim to show that insofar as the media is concerned, the formation of a new self-regulatory mechanism is already in progress to regulate online content. In this regard we note that the IAB, the Press Council of South Africa as well as SANEF have amended the Press Code to be a cross-platform media code building on the already-established mechanisms for the adjudication of complaints - we anticipate the amendments will come into operation before the end of 2015 ("**the Updated Press Code**"). The expansion of the Press Council's jurisdiction thus covers online as well as print publications. The Policy should recognise this and make clear that it does not apply to those who are subject to the Updated Press Code.

1.10 At the outset our clients wish to note that they are encouraged by the level of positive engagement with the FPB regarding the Policy. In particular, we note that the CEO of the FPB, Mr Themba Wakashe, was invited to attend

SANEF's annual general meeting during which the Updated Press Code was discussed between members. When Mr Wakashe was asked where the development of the Updated Press Code would leave the media in relation to the FPB's draft online regulation Policy, Mr Wakashe stated that the exemptions under the Act (that are already in place in relation to the media) have been working. He noted, however, that the Press Code (as it previously stood) had specific challenges in relation to the lack of regulation of online content. He confirmed that the FPB's position is still that the exemption framework is the best framework for the country, and that the FPB endorsed the content of the Updated Press Code and its regulation of online and digital content. Our clients welcome this development.

1.11 The structure of these submissions is as follows.

1.12 In **Part A** of the submissions we explain numerous legal difficulties with the Policy, which in our submission render the Policy unlawful and unconstitutional:

1.12.1 First, we give a brief overview of the Policy as well as setting out the purposes the Policy seeks to achieve;

1.12.2 Thereafter, we demonstrate that portions of the Policy are *ultra vires* - that is to say, the Board and the Minister are not empowered by law to pass these portions of the Policy;

1.12.3 We then set out briefly the constitutional backdrop to regulating online media;

- 1.12.4 We proceed to show that the Policy amounts to a prior administrative restraint of the kind which the Constitutional Court has already explained is unconstitutional;
- 1.12.5 We demonstrate that the Policy limits freedom of expression and does not satisfy the limitations clause under section 36 of the Constitution; and
- 1.12.6 Thereafter we explain that the Policy is impermissibly vague.
- 1.12.7 In **Part B** of the submissions:
- 1.12.7.1 We make some brief submissions on why self-regulation or independent co-regulation should be the preferred form of regulation in South Africa for online media;
- 1.12.7.2 Thereafter we explain the updated cross-platform Press Code and describe its key features;
- 1.12.7.3 Next we make submissions on why the FPB's present position, that members of the Updated Press Code ought not to be subject to the Policy, is correct.

PART A

2. Overview of the Policy

- 2.1 The Policy provides for a system of co-regulation of online content whereby a distributor of online content must either submit individual publications to the Board for classification or, alternatively, could conclude an online distribution

agreement in terms of which the distributor may become accredited to classify its online content on behalf of the Board.²

2.2 Thus "*co-regulation*" in this context refers to regulation by both government and the media industry. This is patently different to the model of independent co-regulation under the Press Code. As set out in detail below, our clients support independent co-regulation involving representatives of the press and representatives of the public exclusively. We submit that, in the context of the media, any other form of regulation would threaten the independence of the press and the right to freedom of expression.

2.3 The crux of the Policy is that classification must occur before publication. Thus the distributor must either pay a fee per title (that is, per publication) or the Distributor must undergo training in terms of clause 5.6 of the Policy which may last for up to 5 days and pay the annual fee to register as an online distributor.³

2.4 It is unclear precisely what the fee will be per title classified by the Board. On this score, clause 7.4 provides that "*[w]ith regard to any other content distributed online, the Board shall have the power to order an administrator of any online platform to take down any content that the Board may deem to be potentially harmful and disturbing to children of all ages*". The Policy provides that the fee payable for classification of content by the Board in terms of sub-clause 7.4 shall be the sum equivalent to what the Board

² See clauses 5.5.1 to 5.5.4.

³ Clause 5.6.5.

charges per title in respect of boxed films or games submitted to it for classification.⁴ This fee is presently approximately R1000.

2.5 But clause 10.3 provides that the Board shall have the power to charge a classification fee per title submitted for the classification of digital content distributed in the Republic. And that this classification fee shall "*vary from case to case, but shall be based on the fee tariff prescribed by the Minister from time to time*".

2.6 There is no clear time limit set for classification by the Board. Clause 7.7 provides that "*[u]pon classification, the Board shall dispatch a copy of the classification decision and an invoice payable by the online distributor within 30 days, in respect of the classification of the content in question.*"

2.7 After content is classified the distributor must, on the first occasion it wishes to publish, then submit an application to the Board for permission to use the Board's logo.⁵ The Board's logo must thereafter be added to the relevant content and displayed when the content itself is streamed.⁶

2.8 The consequences of being required to submit a publication for classification are severe, and will impose financial and practical burdens on those publishing the publications. Smaller publications may not be able to afford the associated fees. And the timing associated with classification may render the benefits of online publication moot. The result is that the Policy will certainly have a chilling effect on the media and on the publication of public interest speech.

⁴ Clause 7.8.

⁵ Clause 5.3.1.

⁶ Clause 5.3.3.

- 2.9 Because of the way that these provisions have been drafted, they appear to require that numerous mainstream online publications be submitted to the Board for classification before they are able to be made available to the public. This is so even though the issues dealt with by the publications may well be manifestly in the public interest and newsworthy and may pose no risk of harm to children.
- 2.10 In our submission there can be no debate that the Policy limits the right to freedom of expression under section 16 of the Constitution. The only enquiry is whether the Policy meets the requirements of the limitations clause under section 36 of the Constitution.⁷ As we demonstrate in what follows, the Policy does not meet these requirements and would therefore be unconstitutional and invalid if enacted.
- 2.11 Before dealing with the constitutional aspects, however, we deal with the fact that considerable parts of the Policy are unlawful in that they are *ultra vires* the Act.

3. ***The Policy is ultra vires the Act***

- 3.1 It is not clear where the Board or its Council derives its power to enact the Policy at all. The Policy itself states that it is to be enacted in terms of section 4A of the Act, but that section does not permit the enactment of a Policy at all.
- 3.2 This is important, because it is now trite that no organ of state may exercise any power or function beyond that conferred on them by law:

⁷ That is to say, whether it is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including those specifically mentioned in section 36 of the Constitution.

*It seems central to the conception of our constitutional order that the Legislature and Executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law.*⁸

3.3 But even assuming that the Board or Council had the power to enact a Policy (which is not conceded), such policy would plainly have to be consistent with the scheme of the Act. This is made clear by the decision of the Constitutional Court in *Engelbrecht*.⁹ There, the Court endorsed the following statement from Bennion on Statutory Interpretation:

Underlying the concept of delegated legislation is the basic principle that the Legislature delegates because it cannot directly exert its will in every detail. All it can in practice do is lay down the outline. This means that the intention of the Legislature, as indicated in the outline (that is the enabling Act), must be the prime guide to the meaning of delegated legislation and the extent of the power to make it.

The true extent of the power governs the legal meaning of the delegated legislation. The delegate is not intended to travel wider than the object of the Legislature. The delegate's function is to serve and promote that object, while at all times remaining true to it.

3.4 In the present case, considerable elements of the Policy are not consistent with the Act. The Policy purports to give effect to sections 18(1) and 18(2) of the Act and clause 1.1 of the Policy provides that section 18(1) of the Act requires "*any person who intends to distribute **any film or game and certain publications** in the Republic of South Africa to first register with the Board and submit to the Board for examination and classification such film, game or publication*".

3.5 Similarly, clause 5.1.1 of the Policy provides: "*[a]ny person who intends to distribute **any film, game, or certain publications** in the Republic of South*

⁸ *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC) at paragraph 58

⁹ *Engelbrecht v Road Accident Fund* 2007 (6) SA 96 (CC) at para 26

Africa shall first comply with section 18(1) of the Act by applying, in the prescribed manner, for registration as film or game and publications distributor." (Emphasis added.)

3.6 But this overlooks the sharp distinction that the Act draws between films and games, on the one hand, and publications on the other.

3.7 Sections 18(1) and (2) do require the submission of films and games in advance of distribution.¹⁰

3.8 But the position in respect of publications is quite different.

3.8.1 Under section 16(1) of the Act a distributor does not have to submit anything to the Board (or self-classify) in advance of publication. Rather all that section 16(1) requires is that if someone else deems that a publication needs to be classified it can submit it to the Board and then the distributor/publisher is bound by the classification.

3.8.2 It is only section 16(2) which requires prior classification. And following the *Print Media SA* decision, section 16(2)(a) relating to certain kinds of sexual conduct has been completely excised from the Act. Section 16(2) now provides as follows:

16(2) Any person, except the publisher of a newspaper or magazine contemplated in subsection (1), who, for distribution or exhibition in the Republic creates, produces, publishes or advertises any publication that—

...

(b) advocates propaganda for war;

¹⁰ The constitutionality of this provision is doubtful in light of the Constitutional Court decision in *Print Media South Africa and Another v Minister of Home Affairs and Another* [2012] ZACC 22; 2012 (6) SA 443 (CC) ("**the Print Media SA decision**" or "**Print Media SA**".)

(c) *incites violence; or*

(d) *advocates hatred based on any identifiable group characteristic and that constitutes incitement to cause harm,*

shall submit, in the prescribed manner, such publication for examination and classification to the Board before such publication is distributed, exhibited, offered or advertised for distribution or exhibition.

3.8.3 It follows that the Act only requires prior classification if the publication advocates hate speech, or propaganda for war or if it incites violence. If a publication does not meet these requirements, and is not a film or a game, then prior classification is not required.

3.9 Indeed, to require prior classification of other publications, as the Policy appears to do, is *ultra vires* the Act.

4. ***The constitutional backdrop to regulating online media***

4.1 Freedom of expression is given constitutional protection by section 16 of the Constitution, which states:

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 . . .

4.2 The importance of freedom of expression to an open and democratic society is manifest. As stated by the Constitutional Court in *Citizen v McBride*:¹¹

The importance of the right to freedom of expression cannot be gainsaid. Freedom of expression is an important instrument to a democratic government. It is especially important to our constitutional democracy, which is both representative and participatory.¹² As the Preamble of the Constitution makes plain, ours is —a democratic and open society in which government is based on the will of the people. Free expression of opinion, including critical opinion, is essential to the proper functioning of our constitutional democracy.

¹¹ [2011] JOL 27088 (CC) at para 141.

¹² *Doctors for Life International v Speaker of the National Assembly and Others* [2006] ZACC 11; 2006 (6) SA 416 (CC) at para 135; 2006 (12) BCLR 1399 (CC) at 1447F-G.

4.3 Any regulatory system for the online media must take into account the importance of freedom of expression in our democracy and must create an appropriate balance between the right to freedom of expression and other countervailing interests such as the right to privacy and dignity, as well as the need for meaningful access to justice.

5. ***The Policy amounts to an unconstitutional prior administrative restraint***

5.1 There can be no doubt that the Policy involves limitations on the right to freedom of expression in section 16(1) of the Constitution. Indeed, this is self-evident in light of the decision in *Print Media SA*.

5.2 But what is striking is the extent of those limitations. In particular, and critically, the Policy provides that it is impermissible to distribute digital content in the Republic of South Africa unless such content is *first classified* and the classification is displayed on the content.¹³ We submit that this squarely amounts to an administrative prior restraint: that is to say, where control is exercised before publication by an administrative body.

5.3 Moreover, even where a person self-classifies material it still amounts to an impermissible prior restraint since one requires permission of the Board to self-classify and can be discredited as well as being required to pay a fee to register as a distributor.

5.4 In *Print Media SA*¹⁴ the Constitutional Court held that requiring publishers to submit publications containing degrading sexual conduct for classification before publishing was unconstitutional. The system proposed by the Policy

¹³ See clause 5.1.9 of the Policy.

¹⁴ *Print Media South Africa and Another v Minister of Home Affairs and Another* [2012] ZACC 22; 2012 (6) SA 443 (CC).

is no different - it also amounts to a prior restraint on publication and would equally be unconstitutional. Thus the Policy runs wholly against what the highest court in the land has already told us.

5.5 The Constitutional Court held that the regime of prior classification limited the right to freedom of expression and that this limitation was not justifiable as it did not achieve its purpose in a proportionate manner.

5.6 The Court quoted with approval the following passage of Lord Scarman:

[T]he prior restraint of publication, though occasionally necessary in serious cases, is a drastic interference with freedom of speech and should only be ordered where there is a substantial risk of grave injustice.¹⁵

5.7 The Constitutional Court also made plain that this presumption of unconstitutionality in relation to prior restraints on publication was widely recognised in foreign jurisdictions, including:

5.7.1 the United Kingdom;¹⁶

5.7.2 the United States;¹⁷

5.7.3 Canada;¹⁸ as well as

5.7.4 the European Court of Human Rights;¹⁹

¹⁵ Quoting with approval the Court of Appeal of England and Wales in *Attorney-General v British Broadcasting Corporation* [1981] AC 303 (CA) at 362. See also the judgments of Lord Reid and Lord Morris in *Attorney-General v Times Newspapers Ltd* [1974] AC 273 (HL), in the context of judicial prior restraint.

¹⁶ *Attorney-General v British Broadcasting Corporation* [1981] AC 303 (CA) and *Attorney-General v Times Newspapers Ltd* [1974] AC 273 (HL). Cf *Attorney-General v Guardian Newspapers Ltd* [1987] UKHL 13; [1987] 3 All ER 316 (Spycatcher); as well as section 12(3) of the Human Rights Act 1998. See also *Greene v Associated Newspapers Ltd* 2005] QB 972 (CA).

¹⁷ *New York Times Co. v United States* [1971] USSC 145; 403 US 713 (1971); *Freedman v Maryland* 380 US 51 (1965); and *Near v Minnesota* [1931] USSC 154; 283 US 697 (1931).

¹⁸ *Little Sisters Book and Art Emporium v Canada (Minister of Justice)* 2000 SCC 69; [2000] 2 SCR 1120.

¹⁹ *Mosley v United Kingdom* (2011) 53 EHRR 30, applying Article 10 of the European Convention on Human Rights, 1950 (ECHR), and *The Observer and The Guardian v United Kingdom* [1991] ECHR 49; (1991) 14 EHRR 153, holding that the injunction confirmed by the House of Lords in *Spycatcher* infringed Article 10 of the ECHR.

5.8 Skweyiya J, in the Court's main judgment, explained that:

[T]he mainstay of the law is to encourage lawful conduct rather than to seek to guarantee lawfulness by restricting conduct altogether. As Blackstone suggested, should a publisher choose not to pursue the avenues available to gain certainty about the lawfulness of intended publication, then he must bear the risks, attendant upon the decision to publish. Such is the cost of free expression. (Emphasis added.)

5.9 Thus, according to the Constitutional Court, the free flow of constitutionally protected expression must be the rule and administrative prior classification should be the exception.²⁰ As Van Der Westhuizen J eloquently put it in his separate concurring judgment in *Print Media SA* (in which Yacoob ADCJ and Froneman J concurred):

The main problem with prior restraint is that it is 'prior'. It can amount to the banning of a publication before it is seen, heard, or judged by its audience; it is killed before it is born.

5.10 The arguments relied on by the Constitutional Court apply with even greater force to the prior classification scheme required by the Policy. That is so for at least two reasons.

5.10.1 First, the Policy actually makes administrative prior classification the rule and requires online publications to be classified before they may be distributed regardless of how innocuous the content might be. This is even in cases where it is manifest that there is not even the slightest possibility of the content falling foul of any of the objectives of the Policy and regardless of whether the issues dealt with by the publications are plainly in the public interest. As noted above, in *Print Media SA* the Court struck down provisions requiring prior classification even where the material applied to a far narrower and more explicit category of

²⁰ *Print Media SA* at para 52.

sexual conduct. There can be no doubt, therefore, that the Policy is also manifestly unconstitutional, on the authority of our highest court.

5.10.2 Secondly, the rulings of the Constitutional Court are even more apposite in the context of online publications, precisely because of the distinct character of the Internet. Moreover, in our submission, the constitutional difficulties arise even where a distributor self-classifies its own content. That is so because of the added expenses associated with becoming accredited by the Board as well as because of the significant time delays that prior classification is likely to add.

6. ***The internet and why it is different***

6.1 The Internet is a unique medium that cannot merely be equated with traditional print media. For present purposes the most important characteristics of distributed networks, including the Internet, are the following:

6.1.1 The Internet has radically transformed the media landscape so that it is no longer the sole preserve of large media corporations and publishing houses with deep pockets disseminating information and other content to the public. Rather, the public have become the creators of content and, unlike the large media corporations and publishing houses, they are generally not motivated by commercial profit. In addition, the flow of communication is no longer unidirectional with the distinction between receivers and content providers becoming totally blurred.

6.1.2 These sentiments were also echoed by the US District Court in *Reno et al v American Civil Liberties Union*²¹:

*First, the Internet presents very low barriers to entry. Second, these barriers to entry are identical for both speakers and listeners. Third, as a result of these low barriers, astoundingly diverse content is available on the Internet. Fourth, the Internet provides significant access to all who wish to speak in the medium, and even creates a relative parity among speakers.*²²

6.1.3 And this is also reflected in a submission to the Australian Law Reform Commission in its Report on Censorship and Classification ("**the ALRC Report**") in which the well-known Internet search engine, Google was quoted. Google stated, inter alia that:

*Today's media is very different. The 'audience' of passive recipients of content has been replaced by citizen creators and citizen journalists engaging interactively with media platforms/services such as YouTube, Facebook, Yahoo and ninemsn, to create and distribute content. Vertical media silos have been replaced by a horizontal, converged landscape of platforms, content providers and users, facilitated by communications networks ... In this changed environment, how we determine the appropriate policy approach to regulation of content needs to be fundamentally reconsidered.*²³

6.1.4 The Organisation for Economic Co-operation and Development has also noted:

*The Internet as a new creative outlook has altered the economics of information production, increased the democratization of media production and led to changes in the nature of communication and social relationships ... Changes in the way users produce, distribute, access and re-use information, knowledge and entertainment potentially give rise to new user autonomy, increased participation and increased diversity.*²⁴

6.1.5 The ALRC Report also quoted the following submission advanced by Google:

²¹ *Reno et al v American Civil Liberties Union et al* 1521 U.S. 844, 117 S.Ct 2329 (1997) ("**Reno**").

²² *Reno* FN30 at 863.

²³ ALRC Report 118, Classification –Content Regulation and Convergent Media, February 2012 accessible on www.alrc.gov.au p 60.

²⁴ ALRC Report 118 p71.

At a time when technology has delivered the potential for users to access, create and distribute content anywhere and at any time, and when innovation is resulting in ever new ways for that engagement to occur, it is imperative that ... content regulations not operate as a roadblock to innovation, nor a fetter on the free flow of legal content.²⁵

6.2 The sheer volume of content that comprises the Internet, much of which is dynamic or mutable, defies the realistic possibility of effectively classifying messages and communications expressed on this platform.

6.3 The ALRC Report recognised that content classification is neither practical nor cost-effective. It said, inter alia:

6.6 There are over one trillion websites, hundreds of thousands of 'apps' are available to download to mobile phones and other devices, and every minute over 60 hours of video content are uploaded to YouTube (one hour of content per second). Submissions to this Inquiry consistently pointed to the sheer volume of content that is now available, particularly online, and the impossibility of having Australian classifiers watch and formally classify all of it. Civil Liberties Australia, for example, submitted that the 'sheer volume of content available today simply makes mandatory classification impractical'. Likewise, the Arts Law Centre submitted that it is:

clearly impractical and too costly for Government to classify all content being delivered via the internet. This inevitably must lead to the conclusion that there should be less formal regulation of content in Australia.

6.7 The volume of content is one of the key reasons the ALRC recommends ... a greater role for industry classifiers in the new scheme... However, if classification is to remain a rigorous process – meaning that content is watched and accessed by trained classifiers applying formal criteria – it is still not possible to have all media content classified. To do so would impose a significant regulatory burden on content providers and create laws that would be difficult to enforce. As Telstra submitted:

'Ineffective or inconsistently enforced classification obligations aid nobody. End users are disadvantaged as ineffective classification obligations risk giving a false sense of security reducing self vigilance or creating confusion about remedies.'²⁶

6.4 The ineffectiveness of classifying on-line content was a strong motivator in the ALRC's recommendation that, while access to adult-only material should be restricted, it was not necessary for such content to be classified by the

²⁵ ALRC Report 118 p80 par 4.16, p81 par 4.21.

²⁶ ALRC Report 118 pp126-27.

Classification Board or an authorised industry classifier applying statutory classification criteria:

10.41...the need for classification may appear more pressing when dealing with content that may harm or distress children. In the ALRC view, requiring all adult content to be formally classified by Australian classifiers is not the solution to this problem.

10.46 Requiring Australian classifiers to watch and classify all R18+ and X18+ content is not an effective or viable means of regulating adult content. Existing laws in the ACT and the NT [territories in Australia] that provide that pornography may be sold if classified by the Classification Board cannot be practically applied online. It is not feasible to require all pornography available in Australia to be watched and evaluated by Australian classifiers. There is a vast quantity of this content, and much of it is dynamic, widely dispersed, and user-generated. The pre-classification model of content regulation is not suited to the regulation of pornography, particularly online pornography – and as argued throughout this Report, regulating content sold on some platforms, but not others, is fast becoming unworkable.

10.4.7 In the ALRC's view, if reasonable steps are taken to restrict access to adult content, there is no need to impose an obligation that the content also be classified. Imposing a classification requirement that will be widely ignored, and would in any event have a very limited effect on content hosted outside Australia, may lower respect for the law, and waste limited regulatory resources. This Report emphasizes the importance of an effective and pragmatic regulatory response to adult content that accounts for the realities of the existing media environment.²⁷

- 6.5 We submit that the approach followed by the ALRC correctly found that classifying online content before publication would simply not be feasible as well as operating as a roadblock to innovation and a fetter on the free flow of legal content.

7. **Limitations Analysis**

- 7.1 An infringement of the right to freedom of expression must meet the requirements of section 36(1) of the Constitution ("**the limitations clause**").
- 7.2 The limitations clause provides that rights may be limited only "*in terms of law of general application*". In the present case, this requirement is not met as

²⁷ ALRC Report 118 pp238-39.

the Policy cannot be regarded as a “law”. On this basis alone, it cannot survive the limitations analysis.²⁸

7.3 Even if this requirement were met, this merely raises the substantive elements of the limitations clause. It permits a limitation of rights only to the extent that the limitation is *"reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:*

(a) the nature of the right;

(b) the importance of the purpose of the limitation;

(c) the nature and extent of the limitation;

(d) the relation between the limitation and its purpose; and

(e) less restrictive means to achieve the purpose."

7.4 This ultimately involves a proportionality enquiry. It must be asked whether the infringement of the right to freedom of expression is proportionate to the objective sought to be achieved by the infringement.

7.5 As regards the nature of the right, it is trite that the right to freedom of expression, and in particular the role of the media in facilitating that right is crucial in a democracy.²⁹ In relation to the nature and extent of the limitation, above we have demonstrated that the Policy drastically limits the right to freedom of expression.

7.6 We accept that the intended purpose of the Policy may well be laudable. However, we submit that what section 36 requires is balancing the intended

²⁸ See, for example: *Pretoria City Council v Walker* 1998 (2) SA 363 (CC) at para 82; *Hoffmann v South African Airways* 2001 (1) SA 1 (CC) at paras 24 and 41; *Zealand v Minister of Justice and Constitutional Development and Another* 2008 (4) SA 458 (CC) at para 46.

²⁹ See paragraphs 4.1 to 4.3 above.

objectives of the Policy against the impact of the classification regime on the right to freedom of expression. On this score there are two significant difficulties. First there is no evidence that the classification scheme would achieve the purpose of protecting children from harmful content. Secondly, we submit that the same objectives can be achieved with less-intrusive means. In what follows, we highlight a series of flaws in the Policy which demonstrate that it cannot meet the threshold for permissible limitations.

7.7 ***No proper relation between the limitation and its purpose***

7.7.1 The Constitutional Court has made it very clear that where a right is being limited, the limitation must be rationally related to the purpose it seeks to achieve. As noted above, one of the primary mooted purposes for the limitation of the right to freedom of expression in the present matter is to protect children from harmful content.

7.7.2 In *Reno*, the United States Supreme Court dismissed the Government's claims that an age-verification mechanism by which users needed to verify that they were adults was adequate to save the unconstitutionality of the particular provision. The Court held that the Government had failed to adduce any evidence that the verification techniques actually preclude minors from posing as adults.

7.7.3 As the Constitutional Court similarly held in *Teddy Bear Clinic*³⁰:

As a starting point, it is important to note that where a justification analysis rests on factual or policy considerations, the party seeking to justify the impugned law – usually the organ of state responsible for its administration – must put material regarding such considerations before

³⁰ *Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another* [2013] ZACC 35; 2014 (2) SA 168 (CC) at para 84.

the court.³¹ Furthermore, '[w]here the state fails to produce data and there are cogent objective factors pointing in the opposite direction the state will have failed to establish that the limitation is reasonable and justifiable'.³²

7.7.4 We submit that the same argument holds true for classification. The Board would need to demonstrate that there is a rational link between the means used and the purpose sought to be achieved.

7.7.5 Thus while the mooted purpose of the Policy - protecting children - is indeed laudable, the Board would need to show that the Policy achieves this purpose. It follows that it would need to prove that when browsing on the Internet, children would see a classification (e.g. 16) and if the child was under 16 then the child would not watch the content. The Board has not produced any evidence that this will occur and logically it appears to be unlikely in the extreme.

7.7.6 Put differently the Board is required to demonstrate that the existence and enforcement of the Policy can reasonably be expected to control children's access to content on the Internet. The Board has not tendered any evidence in the explanatory memorandum to the Policy ("**the Explanatory Memorandum**"), expert or otherwise, to corroborate these claims. Thus, presently there is no evidence at all to demonstrate that children may be deterred by a classification scheme from browsing content which is deemed inappropriate.

7.7.7 A failure to produce such evidence renders the limitations of the right to freedom of expression unconstitutional.

³¹ *Moise v Greater Germiston Transitional Local Council* [2001] ZACC 21; 2001 (4) SA 491 (CC); 2001 (8) BCLR 765 (CC) at para 19.

³² *S v Steyn* [2000] ZACC 24; 2001 (1) SA 1146 (CC); 2001 (1) BCLR 52 (CC) at paras 31-7.

7.7.8 Moreover, as regards the purported aim of assisting the Board in combatting child pornography, we submit that there is no rational link whatsoever between the prior classification system dictated by the Policy and curbing child pornography. That is so since persons distributing child pornography are unlikely to register as content distributors in the first place and equally unlikely to submit content depicting child pornography for classification.

7.7.9 In addition, there are already extensive provisions in the Act criminalising child pornography under section 24B of the Act, which provides that:

- (1) *Any person who-*
 - (a) *unlawfully possesses;*
 - (b) *creates, produces or in any way contributes to, or assists in the creation or production of;*
 - (c) *imports or in any way takes steps to procure, obtain or access or in any way knowingly assists in, or facilitates the importation, procurement, obtaining or accessing of; or*
 - (d) *knowingly makes available, exports, broadcasts or in any way distributes or causes to be made available, exported, broadcast or distributed or assists in making available, exporting, broadcasting or distributing, any film, game or publication which contains depictions, descriptions or scenes of child pornography or which advocates, advertises, encourages or promotes child pornography or the sexual exploitation of children.*

shall be guilty of an offence.

- (2) *Any person who, having knowledge of the commission of any offence under subsection (1) or having reason to suspect that such an offence has been or is being committed and fails to-*
 - (a) *report such knowledge or suspicion as soon as possible to a police official of the South African Police Service; and*
 - (b) *furnish, at the request of the South African Police Service, all particulars of such knowledge or suspicion,*

shall be guilty of an offence.

(3) Any person who processes, facilitates or attempts to process or facilitate a financial transaction, knowing that such transaction will facilitate access to, or the distribution or possession of, child pornography, shall be guilty of an offence.

7.7.10 There is thus no need to classify content that amounts to child pornography - rather, the material must be reported to the South African Police Services in terms of section 24C.

(2) Any person who provides child-oriented services, including chat-rooms, on or through mobile cellular telephones or the internet, shall-

(a) moderate such services and take such reasonable steps as are necessary to ensure that such services are not being used by any person for the purpose of the commission of any offence against children;

(b) prominently display reasonable safety messages in a language that will be clearly understood by children, on all advertisements for a child-oriented service, as well as in the medium used to access such child-oriented service including, where appropriate, chat-room safety messages for chat-rooms or similar contact services;

(c) provide a mechanism to enable children to report suspicious behaviour by any person in a chat-room to the service or access provider;

(d) report details of any information regarding behaviour which is indicative of the commission of any offence by any person against any child to a police official of the South African Police Service; and

(e) where technically feasible, provide children and their parents or primary care-givers with information concerning software or other tools which can be used to filter or block access to content services and contact services, where allowing a child to access such content service or contact service would constitute an offence under this Act or which may be considered unsuitable for children, as well as information concerning the use of such software or other tools.

(3) Any person who fails to comply with subsection (2) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

7.7.11 Therefore if any publisher failed to comply with their reporting obligations under section 24C(2) they are guilty of an offence under section 24C(3). The classification system created by the Policy does

not in any way assist publishers to comply with their obligations under section 24C(2).

7.8 ***Vagueness and overbreadth***

7.8.1 We submit that the Policy is unconstitutionally vague for at least two reasons. This is important both because vagueness is a self-standing ground for the striking down of laws and policies and because vague laws or policies can seldom (if ever) satisfy the limitations analysis.

7.8.2 First, the Policy purports to apply to films, games and "*certain publications*". However, it is patently unclear what the term "*certain publications*" means. In this regard we note that the definition of "*publication*" under section 1 of the Act is extremely broad.³³ And it is unclear whether it is intended that the Policy applies to some of the items falling under the term "*publication*" and, if so, which of these publications. In our view, the Policy in its present state is open to a challenge on the basis that it is unconstitutionally vague.³⁴

³³ "**Publication**" means:

"(a) any newspaper, book, periodical, pamphlet, poster or other printed matter;

(b) any writing or typescript which has in any manner been duplicated;

(c) any drawing, picture, illustration or painting;

(d) any print, photograph, engraving or lithograph;

(e) any record, magnetic tape, soundtrack or any other object in or on which sound has been recorded for reproduction;

(f) computer software which is not a film;

(g) the cover or packaging of a film;

(h) any figure, carving, statue or model; and

(i) any message or communication, including a visual presentation, placed on any distributed network including, but not confined to, the Internet."

³⁴ See, for example, *National Credit Regulator v Opperman and Others* 2013 (2) SA 1 (CC) at para 46 where the Court stated that: "[l]aws must of course be written in a clear and accessible manner. Impermissibly vague provisions violate the rule of law, a founding value of our Constitution. For the "law" to "rule", it must be reasonably clear and certain."

- 7.8.3 In *National Credit Regulator v Opperman and Others*³⁵ the Constitutional Court stated that: "[l]aws must of course be written in a clear and accessible manner. Impermissibly vague provisions violate the rule of law, a founding value of our Constitution. For the "law" to "rule", it must be reasonably clear and certain."
- 7.8.4 It is a basic principle of our law that law must be sufficiently clear so that people can adjust their conduct in accordance with the law. We submit that the Policy is so vague that this is simply not possible, indeed it is not even clear to which publications it is intended to apply. Therefore we submit that it is unconstitutionally vague.
- 7.8.5 The second basis upon which we submit that the Policy is unconstitutionally vague is that the Policy purports to give the Board the power to take any content down which is not classified and which the Board deems to be "*potentially harmful and disturbing to children of certain ages*". This is also exceedingly vague and goes far beyond pornography or violent content.
- 7.8.6 As noted by the separate judgment of Justice Van Der Westhuizen in the *Print Media SA* decision quite apart from prior restraint, censorship based on vague criteria fails to meet the dictates of our constitutional system:
- Would censorship based on vague and overly broad criteria be any more constitutionally acceptable if it does not appear in the context of prior restraint, or specifically administrative prior restraint? I do not think so.³⁶
- 7.8.7 Yet reportage which might arguably be potentially disturbing to children

³⁵ 2013 (2) SA 1 (CC) at para 46.

³⁶ At para 109.

of particular ages can plainly be in the public interest. For example, the publication of images of the Marikana massacre, which was featured on the front cover of numerous newspapers and news broadcasts. And graphic reportage on the brutal rape of Annene Booysen.

7.8.8 In addition to being unconstitutionally vague - the Policy is overbroad. As noted above the term "*publication*" under the Film and Publication Act is defined to include drawings, paintings, soundtracks (that is, music) as well as "*any message or communication*" placed on the Internet. On its face the Policy appears to apply to:

7.8.8.1 a family website which posts pictures of children's drawings or videos from a family vacation;

7.8.8.2 a podcast on the internet about anything (even if it were about something that could not possibly fall into what the Board is concerned about - for example a scientific podcast about trees); and

7.8.8.3 as the term publication includes any message placed on the Internet, it also plausibly applies to tweets on Twitter and comments posted on Facebook. Thus, every person would need to submit each Tweet or Facebook comment to the Board or be certified to self-classify before publishing it.

7.8.9 While the purpose of protecting children is a laudable one we submit that there is no need to classify content that certainly will not harm children. This is using a sledgehammer to crack a nut.

7.8.10 In this regard, the Constitutional Court has repeatedly relied on over

breadth as part of its analysis holding that provisions do not meet the requirement of section 36 of the Constitution.³⁷

7.8.11 The US Supreme Court took the same approach in *Reno*:

*The [relevant statute] thus presents a greater threat of censoring speech that, in fact, falls outside the statute's scope. Given the vague contours of the coverage of the statute, it unquestionably silences some speakers whose messages would be entitled to constitutional protection. That danger provides further reason for insisting that the statute not be overly broad. The [relevant statute's burden] on protected speech cannot be justified if it could be avoided by a more carefully drafted statute.*³⁸

7.8.12 Rather, the Supreme Court made clear that limitations on freedom of speech must be precise. It held:

*In order to deny minors access to potentially harmful speech, the CDA effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another. That burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve.*³⁹

7.8.13 Moreover the Court emphasised:

*It is true that we have repeatedly recognized the governmental interest in protecting children from harmful materials. But that interest does not justify an unnecessarily broad suppression of speech addressed to adults. As we have explained, the Government may not 'reduce the adult population ...to ... only what is fit for children. (Footnotes omitted.)'*⁴⁰

7.8.14 As regards the Policy being overbroad, we suggest that the attempt to ensure that the content of ordinary persons must be classified before it is uploaded to the Internet plainly exceeds the expressly stated purpose of the Board.

7.8.15 There has been some debate in the media whether the Policy requires

³⁷ See, for example: *Savoi and Others v National Director of Public Prosecutions and Another* 2014 (5) SA 317 (CC) at para 31; *Gaertner v Minister of Finance* 2014 (1) SA 442 (CC) at para 66; *Magajane v Chairperson, North West Gambling Board* 2006 (5) SA 250 (CC) at para 71.

³⁸ *Reno* at 874.

³⁹ *Reno* at 874.

⁴⁰ *Reno* at 875.

individual users of Twitter and Facebook to classify content, the Explanatory Memorandum provides that "*the obligation to classify content will not generally apply to persons uploading content on a non-commercial basis.*"⁴¹ While this might well have been the intention of the Board when it drafted the Policy, there is no textual support in the Policy to support this claim.

- 7.8.16 Clause 2 of the Policy provides that it applies "*to any person who distributes or exhibits online any film, game, or certain publication in the Republic of South Africa. This shall include online distributors of digital films, games and certain publications, whether locally or internationally.*" And the meaning of the term "*exhibit*" is patently unclear.
- 7.8.17 Clause 5.1.1 states that "*any person*" who intends to distribute, amongst others, certain publications in the Republic of South Africa shall first comply with section 18(1) of the Act by applying, in the prescribed manner, for registration as a publications distributor.
- 7.8.18 Whatever the intention of the Board in respect of limiting the Policy's operation only to commercial operations, this is simply not borne out clearly by the language used in the Policy.

⁴¹ The Explanatory Memorandum at pg 7.

7.9 The Policy is at odds with the eight guiding principles it posits

7.9.1 The Policy begins by stating eight guiding principles, which are drawn verbatim from the ALRC's Report.⁴² The eight guiding principles are that:

Australians should be able to read, hear, see and participate in media of their choice;

communications and media services available to Australians should broadly reflect community standards, while recognising a diversity of views, cultures and ideas in the community;

children should be protected from material likely to harm or disturb them;

consumers should be provided with information about media content in a timely and clear manner, and with a responsive and effective means of addressing their concerns, including through complaints;

the classification regulatory framework needs to be responsive to technological change and adaptive to new technologies, platforms and services;

the classification regulatory framework should not impede competition and innovation, and not disadvantage Australian media content and service providers in international markets;

classification regulation should be kept to the minimum needed to achieve a clear public purpose; and

classification regulation should be focused upon content rather than platform or means of delivery.

7.9.2 Critically while the Policy draws the same 8 guiding principles from the Australian Report, it fundamentally ignores the system which these principles led the ALRC to adopt.

7.9.3 Significantly the principles led the ACLR to an approach that promoted less classification rather than more. In this regard, the ACLR Report clearly states:

⁴² Australian Law Reform Commission, *Classification - Content Regulation and Convergent Media* (ALRC Report 118), February 2012 (available at <http://www.alrc.gov.au/publications/classification-content-regulation-and-convergent-media-alrc-report-118>).

As it is impractical to expect all media content to be classified in Australia, the scope of what must be classified should be confined to feature films, television programs and higher-level computer games.

A classification obligation that applies to content must be focused on material for which Australians most need and demand classification information. Therefore, importantly, feature films, television programs and computer games should only be required to be classified if they are both made and distributed on a commercial basis and likely to have a significant Australian audience.

Obligations to classify content would not generally apply to persons uploading online content on a non-commercial basis. Internet intermediaries, including application service providers, host providers and internet access providers, would also generally be excluded from classification-related obligations other than those concerning Prohibited content.

7.9.4 We submit that the ALRC Report highlights the overbroad nature of the Policy. This overbroad nature not only captures content that is harmless but also renders the Policy completely unworkable.

7.9.5 The Explanatory Memorandum repeats the findings in the ALRC Report: that every minute over 60 hours of video content is uploaded to YouTube.

7.9.6 Moreover, a sample from just three of the larger member publications which will be signatories of the Updated Press Code reveals the following monthly totals—

7.9.6.1 Article uploads to websites/apps: **19 400**

7.9.6.2 Video uploads to websites/app: **2840**

7.9.6.3 User-generated content posts on our websites/apps: **17 056**

7.9.6.4 Posts we generate to our own social media channels: **22 400**

7.9.6.5 Average number of user-generated posts to our social media channels: **50 000**

- 7.9.7 We submit that the above figures make two things plain.
- 7.9.8 First, publishers would need to employ a new workforce merely to deal with online classification. Secondly, it is inconceivable that the Board could hope to monitor that all such content is correctly classified. This will result, at best, in inordinate delays that in most instances may render the proposed expression meaningless where, for instance, it is no longer current or relevant due to the delay.
- 7.9.9 The Constitutional Court also emphasised that the very delay imposed by forcing classification before publishing infringed the right to freedom of speech.⁴³ This is amplified in the context of posting material on the Internet - the very purpose of which is that it permits people to upload content instantly.
- 7.9.10 In our submission pre-classification of such a large volume of content is impractical. We submit that, as set out in the Updated Press Code, a code with mechanisms to receive complaints, and provide redress to successful complainants, inhibits the right to freedom of expression less as well as being a more feasible solution.
- 7.10 ***There are less restrictive means to achieve the purpose***
- 7.10.1 If there are less-restrictive means available by which the same end could be achieved these less-restrictive means must be preferred. As

⁴³ *Print Media SA* at para 60.

the Constitutional Court famously stated, a sledgehammer must not be used to crack a nut.⁴⁴

7.10.2 The District Court in *Reno* found that “[d]espite its limitations, currently available user-based software suggests that a reasonably effective method by which parents can prevent their children from accessing sexually explicit and other material which parents may believe is inappropriate for their children will soon be widely available.”⁴⁵

7.10.3 We submit that such measures are available, and they are less-restrictive mechanisms by which to achieve the Policy's stated purpose of protecting children from harmful content. We discuss several alternative and less-restrictive mechanisms below.

7.10.4 The first alternative measure is safe search options which are set by the Internet user.⁴⁶

7.10.4.1 One example is Google SafeSearch (<http://www.google-safesearch.com>) which contains a setting that will block a substantial amount of content that Google considers to be offensive. By default, Moderate SafeSearch is turned on, which helps keep explicit images out of one's search results. But if one alters the setting to "Strict filtering" it will also help to filter out explicit text as well as images.

⁴⁴ *S v Manamela and Another (Director-General of Justice Intervening)* 2000 (3) SA 1 (CC) at para 34.

⁴⁵ *Reno* at 877.

⁴⁶ As noted by Nel: "It seems that the most effective way to regulate the content to which a user is exposed over the Internet is to implement technology-based tools to filter or block particular material. The majority of filters block access to content on particular web sites. Filters can also block access on the basis of keywords, while others can block more broadly to deny access to, for example, interactive services (email and chat rooms), Usenet newsgroups, file downloading, peer-to-peer connections or even e-commerce with credit card usage."

7.10.4.2 Parents can use the Strict SafeSearch setting to avoid children turning off the SafeSearch feature without their knowledge. Thus the settings can be protected with a password using Google's SafeSearch Lock feature.⁴⁷

7.10.4.3 Another example is netnanny (www.netnanny.com) which is a type of third-party software that serves to restrict the internet experience of a minor to non-offending content by prohibiting the minor from accessing certain content.

7.10.5 In *Ashcroft v ACLU*⁴⁸ the US Supreme Court declared the Child Online Protection Act unconstitutional on the basis that it was an unjustifiable limitation on the right to freedom of expression. In the course of its judgment the Court noted that Congress had passed two less-restrictive alternatives to the Child Online Protection Act. The first was an act which prohibited misleading domain names and, secondly, the minor safe "dot-kids" domain name.

7.11 **The role of parents in protecting children from harmful content**

7.11.1 We submit that when examining less restrictive means by which to achieve the undoubtedly laudable purpose of protecting children, the role and duty of parents in protecting children from harmful content on the Internet must be acknowledged.

7.11.2 In *Teddy Bear Clinic* the Constitutional Court underscored that rather than criminalising sexual conduct between adolescents there were less

⁴⁷ <http://www.google.com/goodtoknow/familysafety/tools/>

⁴⁸ 535 U.S. 564; 2002 U.S. Lexis 3421.

restrictive means available to encourage them to lead healthy and responsible sexual lives. The Court referred to an expert report⁴⁹ which found that —

*adolescents who discuss sex and sexual health with their parents openly are less likely to engage in [risky sexual] behaviour. Parent-child sexual communication that is open and includes specific information and discussion about risk and risk reduction strategies has been shown to have a positive influence on adolescent sexual behaviour. (Endnotes omitted.)*⁵⁰

7.11.3 Thus, the Court followed the experts' findings that efforts were needed “to make adolescents feel more comfortable in confronting sexuality issues in safe environments with guidance from more mature individuals.”⁵¹ Furthermore—

*Comprehensive sex education has been found to be more effective than abstinence-only or no sex education in reducing [risky sexual behaviour by young people,] including delays in sexual debut, reductions in [the] number of sexual partners, and reductions in pregnancy and diagnosed STIs among youth. Abstinence-only education programmes have been found to have no significant impact on adolescents' values or attitudes toward sexual activity. (Endnotes omitted.)*⁵²

7.11.4 We submit that the same should be so in relation to the activity of children on the Internet. This is particularly so since the Explanatory Memorandum details that one of the significant goals of the Policy is to attempt to curb children who voluntarily engage in sexual activities online. The Explanatory Memorandum states:

This was further confirmed during the FPB public awareness and education campaigns wherein parents, learners and society at large raised concerns about the rise of self generated content, most of which involved school learners engaging in sexual activities and uploading images or video footages thereof on Facebook, Twitter, You-Tube or

⁴⁹The expert report was compiled by a child psychiatrist at the University of Cape Town, and a clinical psychologist specialising in child mental health at the same university.

⁵⁰ *Teddy Bear Clinic* at para 98.

⁵¹ *Teddy Bear Clinic* at para 99.

⁵² *Teddy Bear Clinic* at para 99.

distributing same amongst their peers using mobile phones and similar devices.⁵³ (Emphasis added.)

7.11.5 As already noted above, there is no evidence whatsoever that the Policy and prior classification is going to curb children who voluntarily wish to engage in such conduct (unless evidence could be produced which supports the proposition that children would not participate in content which they were not permitted to see or exchange).

7.11.6 Moreover, in relation to the notion that children may inadvertently stumble upon content that is age inappropriate, we emphasise that the US Supreme Court has held that the Internet is a far less invasive media than radio or television. In *Reno*, for instance, the Court referred with approval to the District Court's finding that unlike radio or television, "[c]ommunications over the Internet do not 'invade' an individual's home or appear on one's computer screen unbidden. Users seldom encounter content 'by accident'".⁵⁴

7.12 Based on all of the above we submit that the Policy fails to satisfy the limitations clause because there is no evidence to demonstrate that there is a rational relationship between the purpose of protecting children and the means used to do so. Moreover, we submit that there are plainly less-restrictive means of achieving protecting children.

7.13 In Part B of this submission we discuss a final less-restrictive means of achieving the purposes of the Policy as regards the media are concerned. That is to say, an Updated Press Code which will govern online publications of members of the Press Council.

⁵³ Explanatory Memorandum at pg 2.

⁵⁴ *Reno* at 869.

PART B

8. ***Why self-regulation or independent co-regulation should be the preferred form of regulation in South Africa for online media***

8.1 Above we have demonstrated why the Policy is unconstitutional and consequently should be withdrawn in its entirety. However, regardless of the manner in which the Policy is to deal with online content generally, it should not apply to those members of the media which are subject to the SA Press Code.

8.2 We submit that as regards the media this exemption amounts to a less-restrictive means of adequately achieving the Board's desired purpose of protecting children from harmful content.

8.3 Freedom of the press implies limited or no State involvement;⁵⁵ two common models of press regulation are self-regulation and independent co-regulation.

8.4 The Press Freedom Commission, chaired by former-Chief Justice Pius Langa ("**the Langa Commission**") defined self-regulation as follows:

[A] peer review system operating within a set of self-imposed rules by the media. It consists of representatives from the media profession passing judgement on complicated matters of journalistic reporting using a Journalistic Code of Ethics which is applied in determining the final ruling, and benchmarking the generally accepted norms and standards.⁵⁶

8.5 And the Langa Commission defined independent co-regulation, by contrast, as:

⁵⁵ Press Freedom Commission, Report on Press Regulation in South Africa (2012) ("**the Langa Report**") at page 21.

⁵⁶ The Langa Report at page 107.

[A] system of press regulation that involves public and press participation with a predominant public membership but without State or government participation. It is accountable to the public.⁵⁷

- 8.6 Our clients submit that self-regulation or independent co-regulation should be the preferred form of regulation for online publications by the media in South Africa. Self-regulation and independent co-regulation have received overwhelming support regionally and internationally as being a cornerstone for a free press. We submit that building on the system already established by the Press Council what is required is not a new form of regulation, but merely an adaptation of the existing Press Council structures to ensure that the structures effectively cater for online as well as print media publications.
- 8.7 While there is no universally accepted recipe for successful self-regulation – due to regimes needing to be adjusted to the needs of each sector and differing circumstances (technological changes, changes in policy in response, a country's legal system, etc.) – the positive aspects of self-regulation set out below are a common trend in countries with such a regulatory scheme for the print media.
- 8.8 The five reasons identified by the Organisation for Security and Co-operation in Europe ("**OSCE**") in favour of the development of self-regulation, which our clients endorse, are that it preserves editorial freedom; helps to minimise state interference; promotes media quality; is evidence of media accountability; and helps readers access the media.⁵⁸ The OSCE further states that:⁵⁹

⁵⁷ The Lange Report at page 7.

⁵⁸ Organisation for Security and Co-operation in Europe, *The media self-regulation guidebook* (2006) at p 12 (accessible at <http://www.osce.org/fom/31497>).

⁵⁹ Organisation for Security and Co-operation in Europe at p 34.

Self-regulatory bodies determine the boundaries between the legitimate rights of a free press and the legitimate rights of people who attract media attention. They generally do this by examining complaints against an agreed code of ethics and judging whether its rules have been broken. Thus they provide guidance for journalists and the public on what practices are acceptable and the standards expected of news outlets. By dealing with complaints professional standards can be raised.

While courts must have a role in upholding the law, in a democracy the press should be free from excessive political and judicial interference. It is better that the press agrees to regulate itself or delegates regulation to an independent body. Readers have more trust in newspapers that are willing to take responsibility for their actions.

8.9 Unesco similarly identifies the advantages of self-regulation as being that it:⁶⁰

[P]reserves independence of the media and protects it from partisan government interference. It could be more efficient as a system of regulation as the media understand their own environment better than government ... As the media environment becomes global (through the development of the internet and digital platforms) and questions of jurisdiction become more complex then self-regulation can fill the resulting gap. It is less costly to government because industry bears the cost and can be more flexible than government regulation. Self-regulation may also encourage greater compliance because of peer pressure ... Self-regulation can also drive up professional standards by requiring organisations to think about and even develop their own standards of behaviour.

8.10 Likewise, the UK Office of Communications ("**Ofcom**") identifies the flexibility and the more targeted approach of self-regulation as advantages in the regulatory system, noting that self-regulation generally allows more organisations to take part as it has the potential to provide low entry points for regulation that build over time, and that it is more conducive to innovation and competition. Further - of significant importance, in our view - it makes participants answerable for their own actions.⁶¹

8.11 A commonly identified advantage of self-regulation is the prevention of excessive government intervention, and the ensuing independence from

⁶⁰ Unesco, *The importance of self-regulation of the media in upholding freedom of expression* (February 2011) at p 12 (accessible at <http://unesdoc.unesco.org/images/0019/001916/191624e.pdf>).

⁶¹ Ofcom, *Identifying appropriate regulatory solutions: Principles for analysing self- and co-regulation* (10 December 2008) at p 8 (accessible at <http://stakeholders.ofcom.org.uk/binaries/consultations/coregulation/statement/statement.pdf>).

state interference. In this regard, factors that are essential when determining independence include independence in rule making; administrative independence; financial control and independence; security of tenure; and independence as to the power of appointment.⁶²

8.12 We submit that the Langa Commission maintained the benefits of self-regulation (an absence of State or government participation) while ensuring that the mechanism is independent of media control - as the system involves participation by both the public and the press with a predominant public membership.

8.13 Our clients submit that the system of independent co-regulation utilised by the Press Code provides the necessary level of autonomy and independence of the media while accommodating the need to ensure accountability. We submit that the Updated Press Code will maintain these benefits as well as achieving the primary purpose of the Board's Policy of helping to ensure that children are less likely to be exposed to harmful content published by members of the media on the Internet.

9. The new cross-platform Press Code

9.1 In 2014, the IAB entered into discussions with the Press Council and SANEF regarding the establishment of a cross-platform news media code of ethics

⁶² See, for instance, OECD Working Party on Regulatory Management and Reform, *Designing independent and accountable regulatory authorities for high quality regulation* (January 2005) at p 61; Barker & Evans, *Review of the New Zealand Press Council* (November 2007) (accessible at http://www.presscouncil.org.nz/articles/press_council_review.pdf). See also Sifontes, *Independent regulatory agencies in Latin America telecommunications sector: A comparative study* at p 20 (accessible at <http://regulation.upf.edu/ecpr-05-papers/dsifontes.pdf>) in which Sifontes sets out a scorecard to reflect the formal independence of regulatory agencies. The scorecard is divided into the broad categories of agency head status; management board member status; relationship with government and parliament; financial and organisational autonomy; relationship with regulated firms; and regulatory competences. A grading system is provided to determine the level of independence that a regulatory system possesses.

and voluntary editorial content regulatory system, which would be applicable to print and online publications.

9.2 It was considered necessary to establish a voluntary regulatory regime across media platforms covering newsrooms' editorial content, social media activities and user-generated content.

9.3 As noted above on the recommendation of the Press Freedom Commission chaired by the late Chief Justice Pius Langa, the Press Council in 2012 introduced a system of voluntary independent co-regulation, with a public advocate helping complainants to resolve their complaints with the print media. While the IAB had its own code, it did not have a formal complaints adjudication system.

9.4 With the advent of the Updated Press Code, the Press Council's scope is extended to apply to published material in newspapers, magazines and their websites, including audio and video streams, as well as to digital sites or smart-phone applications with news content or commentary. Indeed, the Press Ombudsman was integrally involved in drafting the new Code.

9.5 Significantly, the Code also governs complaints in relation to user-generated content on social media platforms such as Facebook and Twitter and websites controlled by the members. And online presentation of video or audio content which depicts violent crime or other violent or sexually explicit conduct should indicate prominently that such content is graphic. Publishers and media members are responsible for taking reasonable steps to comply with the provisions of this Code in their print, online and electronic publications.

9.6 We submit that the Updated Press Code deals effectively with the concerns of the Board and that accordingly it is not necessary for the members to be subject to the Policy. We attach a copy of an advanced draft of the Updated Press Code as "C" (which shall be finally agreed upon and implemented within a few months).

10. ***The Policy should not apply to members of the media which are subject to the Updated Press Code***

10.1 There is already a statutory exemption in the Film and Publications Act which applies to *bona fide* newspapers (including online newspapers)⁶³ and magazines.

10.2 The exemption afforded in sections 16(1) and 16(2) of the Act applies to:

a bona fide newspaper that is published by a member of a body, recognized by the Press Ombudsman, which subscribes, and adheres, to a code of conduct that must be enforced by that body.

10.3 Following the Constitutional Court's decision in *Print Media SA* the exemption also applies to *bona fide* magazines.

10.4 In this regard the Court held:

[79] Sections 16(1), 16(2)(b), (c) and (d) and 24A(2)(a) effectively exempt bona fide newspapers, which adhere to a code of conduct enforceable by the Press Ombudsman. The applicants and respondents are at one in submitting that Parliament considers this safeguard to be sufficient for the regulation of bona fide newspapers.

[80] The Act, however, excludes from this exemption magazines, which also adhere to a code of conduct enforceable by the Press Ombudsman. No evidence was submitted that there is any material, substantive difference between newspapers and magazines. In my view, the averments that magazines have a longer shelf-life, are less formal, more often contain offensive material than newspapers do and are not subject to short deadlines do not afford a substantive basis for differentiation.

⁶³ Section 1 defines "newspaper" as including an on-line publication of a newspaper.

[81] Not only is the differentiation unequal, but it is also irrational. It breaches, without justification, the principle of legality and the right to equality before the law. Consequently, the High Court's declaration of constitutional invalidity must be confirmed. (Emphasis added.)

- 10.5 Moreover, section 18(6) affords a similar exemption to broadcasters who are subject to regulation by the Independent Communications Authority of South Africa, which includes those broadcasters subject to the self-regulation mechanism of the Broadcasting Complaints Commission of South Africa.⁶⁴
- 10.6 The intent of Parliament is therefore plain. Where a member of the media is subject to a credible self-regulatory body, it will not also have to be subjected to regulation by the Board.
- 10.7 As outlined above, after the Updated Press Code is in force (which we expect to occur before the end of 2015) the online publications of members will adhere to a code of conduct which is enforceable by the Press Ombudsman. Accordingly, we submit that the differentiation between publications in print (newspapers or magazines) and on the Internet would, too, be irrational.
- 10.8 Critically, the regulation by the Updated Press Code is plainly a less-restrictive means of effectively regulating the online content of members of the media, and thereby of achieving the purposes of the Board's Policy in a constitutionally-compliant manner.
- 10.9 In *Print Media SA* the respondents (the Minister and the Board) acknowledged that self-regulation of the exempted publications adequately served the pressing and legitimate objectives of the Act. Moreover, the Court expressly accepted: that the standard imposed by the South African Press

⁶⁴ See section 54 of the Electronic Communications Act 36 of 2005

Code “*fully protect[s] the interests of children and [the interest of] educat[ing] adult choice*”.⁶⁵

10.10 Once it accepted that the Press Council system of *subsequent* complaint and investigation is adequate to achieve these objectives in relation to newspapers and magazines, we submit that it is equally so in relation to online publications (and accordingly the Updated Press Code).

11. ***The distinction between print media and the Internet is irrational***

11.1 We submit that many of the constitutional problems with the prior classification regime imposed on online media by the Policy are vividly illustrated by example. That is to say, according to the Policy, any online media article would need to be submitted for prior classification before it can be published online. But there would be no prior classification required to publish the same article in a newspaper or magazine.

11.2 Indeed, the Policy has the unwanted result of reversing the real technological innovations introduced by online media, such as real-time publication. It does so by introducing a time delay (in the form of the classification process) where there would otherwise be none.

11.3 The decision of the U.S. Supreme Court in *Reno* is apposite in this regard. In that case, the Court made it plain that the Internet is entitled to the same First

⁶⁵ Answering Affidavit para 18.2 p368. In paragraph 18.5 of their answering affidavit the respondents say further that: “It is indeed the attitude of the legislature that self-regulation is to be encouraged to the extent that it affords effective protection of children and sensitive adult readership.” (p369)

Amendment protections as the print media (analogous to our right to freedom of expression under section 16 of the Constitution).⁶⁶

- 11.4 Internet-based news services or websites such as *News24*, *Mail & Guardian online* and *The Daily Maverick* are indistinguishable in their quality and purpose from "traditional" print newspapers. Unlike print newspapers, which go to print once a day or once a week, online-news services are able to update their publications immediately, 24-hours a day, and accordingly are best placed to communicate breaking news as it happens. This is integral to their unique service offering.
- 11.5 The irrationality of excluding online-news services from the exemption granted to newspapers and magazines is illustrated by postulating a scenario in which a breaking news article is prevented from being published on, for example, *Mail & Guardian online* on the very day on which the story breaks and is most current, due to the requirement of prior classification. However the exact same story may be published without any prior classification in the *Mail & Guardian* newspaper or any other print newspaper.
- 11.6 Another illustration of the irrationality and arbitrariness of excluding online-news services from the exemption afforded to legitimate newspapers and magazines would be a scenario in which the editor of an online-news service is faced with the choice of delaying the publication of a ground-breaking story as it happens while she awaits classification by the Board only to see the same story appear in a print newspaper in the interim (albeit not contemporaneously with the story breaking).

⁶⁶ *Reno* at 870.

- 11.7 A good recent example of such breaking news would be the controversy regarding the Sudanese President Omar al-Bashir's arrival in South Africa for the recent African Union Summit notwithstanding that there is a warrant out for his arrest from the International Criminal Court (to which South Africa is a party). In this regard see annexures "D.1" to "D.4" which set out in detail the Court proceedings brought by the Southern African Litigation Centre seeking to oblige the South African government to arrest al-Bashir as well as the online media coverage of al-Bashir's departure in contravention of an interim Court order (which was issued pending the finalisation of the merits of whether South Africa was obliged to arrest al-Bashir). Two points warrant emphasis.
- 11.7.1 First, on 15 June 2015, the Court proceedings were streamed live online on, amongst others, eNCA. The Policy would not permit the live proceedings to be shown online immediately since it would constitute a "*film*" under the Act and accordingly would need to be classified before it could be streamed on the Internet.
- 11.7.2 Secondly, at the same moment that viewers were streaming the Court proceedings online, the precise whereabouts of al-Bashir were unclear. However, journalists used online news services as well as social media to publish breaking news instantaneously. This placed the public in a better position than even the Court determining the matter to follow precisely where al-Bashir was, because the public had instant access to information as al-Bashir's plane took off from Waterkloof airbase.
- 11.8 This reportage would not have been possible without the Internet. Indeed, it would not be possible after the introduction of the Policy. Significantly, this

would be so even though the Court feed and the stories regarding al-Bashir's departure did not and simply could not pose any harm to children. Similar events will inevitably materialise in future, and unless Internet news publications are exempt from the Policy, then vital instant reportage could be lost.

11.9 As the Minister and the Board in the *Print Media SA* case conceded "*the speed necessary to print and publish [online] newspapers would make it practically impossible to submit every publication for pre-publication classification.*"⁶⁷

11.10 Accordingly we submit that it is plain that the Policy ought not to apply to members of the media which are subject to the Updated Press Code.

12. Conclusion

12.1 For all of the reasons set out above, we submit that the Policy suffers from numerous constitutional difficulties which primarily stem from the system of prior administrative classification. As discussed in detail the Constitutional Court has made clear that this system is inappropriate even in relation to publications containing graphic sexual conduct. The Policy applies a system of prior classification to all online publications regardless of whether the content is graphic or mundane. We have demonstrated above that the Board would bear the onus to show that there is a rational relationship between the Policy and the purpose it seeks to achieve by protecting children from harmful content. Similarly, the Board would bear the onus to show that there are no less-restrictive means which could be used in order to achieve the

⁶⁷ Para 5.5 of the Respondent's Answering Affidavit in *Print Media SA*.

purpose of the Policy. Consequently, we submit that the Policy is plainly unconstitutional and ought to be withdrawn by the Board.

12.2 In any event, as regards the members of the Updated Press Code we submit that the Policy is not required in order to regulate the online media, because the members will soon be governed by the Updated Press Code which will adequately address the concerns raised by the Board and do so in a manner that invites less of a limitation on the right to freedom of expression.

12.3 In any event, even if the Policy were to be published over the next few months, the mooted deadline of **31 March 2016** (set out in clause 5.4.2 of the Policy) provides far too little time for online content distributors to ensure that they comply with the Policy. Presently, no date has been fixed for the final version of the Policy and it is thus uncertain how much time distributors will have to comply. We are of the view that the deadline should be revised to allow for adequate time for compliance.

12.4 Lastly, we note that our clients request an opportunity to make oral submissions before the Board in support of these written submissions, if the Board calls for oral submissions.

**STEVEN BUDLENDER
CHAMBERS, SANDTON**

**WEBBER WENTZEL
DARIO MILO & STUART SCOTT**

15 JULY 2015

IAB LIST OF MEMBERS JULY 2015

PUBLISHERS	AGENCY TYPE	BRANDS	EDUCATIONAL
24.Com	25AM.net	African Bank	Blue Magnet
ABN Digital	8Bit	ATKV	GetSmarter
Amnicomm	Ad Marula	Clicks	University of Pretoria
Associated Magazines	Adclick Africa	Estee lauder	Red & Yellow
Auto Trader	Admakers	First Rand Bank Lmted	
BBC	Adslive	Gumtree	
Beauty Bulletin	Adtoro Media	Nedbank Ltd	
Biz Community	Apurimac Media	safarinow	
Biznews	Aqua Online	Samsung	
Blue Sky Group (thesouthafrican)	Artifact Advertising		
Both Worlds Inv	Atmosphere Orange		
Business Owner & Co	Automated Pub Serv		
Careerjunction	BrandsEye		
Carpe Diem	BrandMapp		
Cars on the Internet	BWD		
Caxton & CTP Pub & Pri	C6 Consulting		
Creamer Media	Conversation Lab		
CT Media - Soccer Laduma	Conversion Science		
DSTV Digital Media	Creative Spark		
Entrepreneur Media SA	Cubic Ice		
eSat TV	Datacore Media		
Fleetwatch (newslink)	Digitlab		
Freightmagazine	E-intelligence		
Go Multi Magazine	Eliance (Brighthouse)		
Health Spas Guide	EnviroIQ Marketing		
Highbury Safika Media	Everlytic		
Homemakers	Exponential		
How we made it in Africa /Maritz Pub	Expresseloquence		
Hub Online Media	FGX Studios		
Incubeta Holdings - Click2Customers	Fogg Experiential Design		
Incubeta Holdings - Interface	Forge Media		
Independent Online	Gloo Design Agency		
Interactive Africa	Google		
IT Web	Grenade		
John Brown Media	Habari Media		
Kagiso New Media	Havas Digital		
London Livity ta Livity Africa	Hello Computer		
Mail & Guardian Online	HelloYes		
Maroela Media	Hitch Digital Media		
MIX Digital	Hot Salsa		
Moneysmart (limitless)	iLogic		
MWEB Connect	IMS Integrated Marketing solutions		
My ADSL Broadband News	Incubeta Holdings - Click2Customers		
Ndalo Media	Initiative Media South Afica		
New Media Publishing	iProspect		

Newscentral Media t/a Techcentral	Isobar
Newsclip Media Monitoring	J Walter Thompson Company South Africa
NewsLink t/a Fleet Watch	Joe Public
Noseweek	Lighthouse Digital
Now Media	Liquorice africa Advertising
Perform Group	M & C Saatchi
PNET	Mark 1 Media
Politics Web	Marketingfanatics
Portal Publishing - The Skills Portal	marketIQ
PriceCheck	Maverick Mind
Primedia Online	Maxaxion
Property24	MEC/Mediaedge CIA / Note Bene
Ramsay Media	Media 24 Limited t/a Ads24
Rogue t/a SA School Sports Magazine	Media Shop
Rugby15	MediaCom
SA Men	Meltwater
SABC Online	Metropolitan Republic
Sharenet	Millward Brown
Sports Eagle	Mindshare SA
Sprt Eng Ltd t/a SuperBru	Mortimer Harvey
Team Talk Media	Mustard Marketing
Techfinancials	National Positions SA
The Daily Maverick	NATIVE VML
The Economist	NXT
Times Media	Niche Digital
TNA Media	Nona Creative
TPPSA	Ogilvy Cape Town
Trudon	Ogilvy JHb
TVPC Media	Onyx Digital
Velocity Media	Opera (Advine)
Vodacom	Platinum Seed Dig
Wezwa	Project Isizwe
What's on	Public-Ideas
Wheelsfanatics	Publicis 'MACHINE
	Quirk
	ROI Media
	Saatchi & Saatchi Synergize
	SAOnline Marketing (PC whizz)
	Silverstone Solutions
	The Digital Media Cons.
	The Jupiter Drawing Room
	The Space Station (24.com)
	Trigger Comm Cons
	Troika Imagineering
	Twisted Toast Digital
	Vizeum
	Whysatisfy

World Wide Creative
World Wide Worx

Press Council of South Africa

Publication Group	Media House
Beeld	Media 24
Burger, Die	Media 24
Business Day	Times Media Group
Cape Argus, The	Independent Newspapers (Pty) Ltd
Weekend Argus	Independent Newspapers (Pty) Ltd
Cape Times	Independent Newspapers (Pty) Ltd
Citizen, The	Caxton Publishers & Printers Ltd
City Press	Media 24
Daily Dispatch	Times Media Group
Saturday Dispatch	Times Media Group
Daily News, The	Independent Newspapers (Pty) Ltd
Daily Sun	Media 24
Diamond Fields Advertiser	Independent Newspapers (Pty) Ltd
Herald, The	Times Media Group
Independent on Saturday, The	Independent Newspapers (Pty) Ltd
Sunday Independent, The	Independent Newspapers (Pty) Ltd
Isolezwe	Independent Newspapers (Pty) Ltd
Isolezwe Langomgqibelo	Independent Newspapers (Pty) Ltd
Isolezwe NgeSonto	Independent Newspapers (Pty) Ltd
Mail & Guardian	M & G Media Limited
Mercury, The	Independent Newspapers (Pty) Ltd
Post, The	Independent Newspapers (Pty) Ltd
Pretoria News	Independent Newspapers (Pty) Ltd
Rapport	Media 24
Son, Die	Media 24
Sondag	Media 24
Sowetan	Times Media Group
Star, The	Independent Newspapers (Pty) Ltd
Sunday Sun	Media 24
Sunday Times	Times Media Group
Sunday Tribune	Independent Newspapers (Pty) Ltd
Sunday World	Times Media Group
Volksblad, Die	Media 24
Weekend Post on Saturday	Times Media Group
Witness, The	Media 24
Weekend Witness, The	Media 24
Times, The	Times Media Group

Local Newspapers	Publishers
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African Reporter	Caxton Publishers & Printers Ltd
Bosvelder	Media 24
Brits Pos	Caxton Publishers & Printers Ltd
Capricorn Voice	Media 24
Carletonville Herald	Media 24
Daller, Die	Caxton Publishers & Printers Ltd
Die Noordwester	Caxton Publishers & Printers Ltd
District Mail	Media 24
Eikestadnuus	Media 24
Estcourt and Midlands News	Caxton Publishers & Printers Ltd
Gemsbok Advertiser	Caxton Publishers & Printers Ltd
Graaff Reinet Advertiser	Caxton Publishers & Printers Ltd
George Herald (Thursday)	Caxton Publishers & Printers Ltd
Hermanus Times	Media 24
Klerksdorp Rekord	Caxton Publishers & Printers Ltd
Knysna Plett Herald	Caxton Publishers & Printers Ltd
Ladysmith Gazette	Caxton Publishers & Printers Ltd
Letaba Herald	Caxton Publishers & Printers Ltd
Lowvelder, The / Laevelder, Die (Tuesday)	Caxton Publishers & Printers Ltd
Lowvelder, The / Laevelder, Die (Friday)	Caxton Publishers & Printers Ltd
Mid South Coast Mail	Caxton Publishers & Printers Ltd
Middelburg Observer, Fri	Caxton Publishers & Printers Ltd
Middelburg Observer, Tues	Caxton Publishers & Printers Ltd
Mosselbay Advertiser	Caxton Publishers & Printers Ltd
Mpumalanga News	Caxton Publishers & Printers Ltd
Newcastle and District Advertiser	Caxton Publishers & Printers Ltd
Northern Natal Courier	Caxton Publishers & Printers Ltd
Oudtshoorn Courant	Caxton Publishers & Printers Ltd
Our Times	Times Media Group
Paarl Post	Media 24
Potchefstroom Herald	Media 24
Representative	Times Media Group
South Cape Forum/Suid Kaap Forum	Caxton Publishers & Printers Ltd
South Coast Herald	Caxton Publishers & Printers Ltd
Standerton Advertiser	Caxton Publishers & Printers Ltd
Stellalander	Caxton Publishers & Printers Ltd
Streeknuus	Caxton Publishers & Printers Ltd
Talk of the Town	Caxton Publishers & Printers Ltd
Tembisan	Caxton Publishers & Printers Ltd
The Courier	Caxton Publishers & Printers Ltd
The Mail	Caxton Publishers & Printers Ltd
Vaal Weekly	Media 24
Vaalweekblad	Media 24
Vryheid Herald	Caxton Publishers & Printers Ltd
Vrystaat	Media 24
Weslander, The	Media 24
Witbank News, Fri	Caxton Publishers & Printers Ltd
Worcester Standard & Advertiser	Media 24
Zululand Observer Friday	Caxton Publishers & Printers Ltd
Zululand Observer Monday	Caxton Publishers & Printers Ltd
Grocotts Mail	David Rabkin Project
Limpopo Informant	LeVain cc
Limpopo Mirror	Zoutnet CC
Northern Review Weekend	Caxton Publishers & Printers Ltd
Polokwane Observer	Polokwane Observer (Pty)Ltd
Umlozi	Caxton Publishers & Printers Ltd

Free Newspapers	Publisher
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Publication Group

Intshonalanga Eyethu	Amanzimtoti Printing & Publishing Co. Division
Edendale Eyethu	Capital Newspaper (Pty)Ltd
Alberton Record	Caxton Publishers & Printers Ltd
Alex News	Caxton Publishers & Printers Ltd
Barberton Times	Caxton Publishers & Printers Ltd
Bedfordview & Edenvale News	Caxton Publishers & Printers Ltd
Benoni City Times	Caxton Publishers & Printers Ltd
Berea Mail	Caxton Publishers & Printers Ltd
Boksburg Advertiser	Caxton Publishers & Printers Ltd
Brakpan Herald	Caxton Publishers & Printers Ltd
Chatsworth Rising Sun	Caxton Publishers & Printers Ltd
Chiawelo Urban News	Caxton Publishers & Printers Ltd
Comaro Chronicle	Caxton Publishers & Printers Ltd
Corridor Gazette	Caxton Publishers & Printers Ltd
Diepkloof Urban News	Caxton Publishers & Printers Ltd
Dobsonville Urban News	Caxton Publishers & Printers Ltd
Eldorado Urban News	Caxton Publishers & Printers Ltd
Fourways Review	Caxton Publishers & Printers Ltd
Germiston City News	Caxton Publishers & Printers Ltd
Highveld Herald (Highvelder, The)	Caxton Publishers & Printers Ltd
Highway Mail	Caxton Publishers & Printers Ltd
Hilltop	Caxton Publishers & Printers Ltd
Jabavu Urban News	Caxton Publishers & Printers Ltd
Johannesburg Eastern Express	Caxton Publishers & Printers Ltd
Kempton Express	Caxton Publishers & Printers Ltd
Krugersdorp News	Caxton Publishers & Printers Ltd
Maritzburg Sun	Caxton Publishers & Printers Ltd
Meadowlands Urban News	Caxton Publishers & Printers Ltd
Merebank Rising Sun	Caxton Publishers & Printers Ltd
Midrand Reporter	Caxton Publishers & Printers Ltd
North Eastern Tribune	Caxton Publishers & Printers Ltd
Northcliff & Melville Times	Caxton Publishers & Printers Ltd
Northglen News	Caxton Publishers & Printers Ltd
Orlando Urban News	Caxton Publishers & Printers Ltd
Overport Rising Sun	Caxton Publishers & Printers Ltd
Phoenix Sun	Caxton Publishers & Printers Ltd
Pimville Urban News	Caxton Publishers & Printers Ltd
Protea Urban News	Caxton Publishers & Printers Ltd
Queensburgh News	Caxton Publishers & Printers Ltd

Free Newspapers	Publisher
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Publication Group

Randburg Sun	Caxton Publishers & Printers Ltd
Randfontein Herald.	Caxton Publishers & Printers Ltd
Rekord Central/Sentraal	Caxton Publishers & Printers Ltd
Rekord Centurion	Caxton Publishers & Printers Ltd
Rekord East/Oos	Caxton Publishers & Printers Ltd
Rekord Mamelodi	Caxton Publishers & Printers Ltd
Rekord Moot	Caxton Publishers & Printers Ltd
Rekord North/Noord	Caxton Publishers & Printers Ltd
Rekord Noweto	Caxton Publishers & Printers Ltd
Rekord West News/Wes Nuus	Caxton Publishers & Printers Ltd
Ridge Times	Caxton Publishers & Printers Ltd
Roodepoort Record	Caxton Publishers & Printers Ltd
Rosebank Killarney Gazette	Caxton Publishers & Printers Ltd
Sandton Chronicle	Caxton Publishers & Printers Ltd
South Coast Sun	Caxton Publishers & Printers Ltd
Southern Courier	Caxton Publishers & Printers Ltd
Southlands Sun	Caxton Publishers & Printers Ltd
Springs Advertiser	Caxton Publishers & Printers Ltd
Steelburger	Caxton Publishers & Printers Ltd
Times of Ladysmith	Caxton Publishers & Printers Ltd
Zola Urban News	Caxton Publishers & Printers Ltd
City Buzz	Caxton Publishers & Printers Ltd
Cosmos Gazette	Caxton Publishers & Printers Ltd
Eyethu Bay Watch (Formerly Baywatch)	Caxton Publishers & Printers Ltd
George Mini Ads News	Caxton Publishers & Printers Ltd
Hazyview Herald	Caxton Publishers & Printers Ltd
Ilembe Eyethu	Caxton Publishers & Printers Ltd
Mid South Coast Rising Sun	Caxton Publishers & Printers Ltd
Nelspruit Post	Caxton Publishers & Printers Ltd
Newcastle Sun	Caxton Publishers & Printers Ltd
Public Eye	Caxton Publishers & Printers Ltd
Rising Sun Lenasia	Caxton Publishers & Printers Ltd
Roodepoort Northsider (Formerly Northside Chronicle)	Caxton Publishers & Printers Ltd
Standerton Ibis	Caxton Publishers & Printers Ltd
The Rising Sun - North Coast	Caxton Publishers & Printers Ltd
UGU Eyethu	Caxton Publishers & Printers Ltd
Ulundi Fever	Caxton Publishers & Printers Ltd
Umlazi Eyethu	Caxton Publishers & Printers Ltd
Umngeni Eyethu	Caxton Publishers & Printers Ltd

Free Newspapers	Publisher
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Publication Group

Uthukela Eyethu	Caxton Publishers & Printers Ltd
Veldbrand	Caxton Publishers & Printers Ltd
Vhembe Herald	Caxton Publishers & Printers Ltd
West Side Urban News	Caxton Publishers & Printers Ltd
White River Post	Caxton Publishers & Printers Ltd
Zululand Eyethu (formerly Eshowe Watch)	Caxton Publishers & Printers Ltd
Zululand Fever	Caxton Publishers & Printers Ltd
Zululand North Watch	Caxton Publishers & Printers Ltd
Coal City News	Community Newspapers Initiative (PTY)Ltd
Cosmos News	Cosmos News cc
Xpress Times	Dolphin Coast Times
Ballito Fever	Drendy Investments (Pty)Ltd
Coastal Weekly	Drendy Investments (Pty)Ltd
Durban North Fever	Drendy Investments (Pty)Ltd
Hillcrest Fever (formerly Forest Express)	Drendy Investments (Pty)Ltd
Stanger Weekly	Drendy Investments (Pty)Ltd
Dumelang News	Dumelang Travel Magazine (Pty) Ltd
Eastern Cape Today	Eastern Cape Publishing
Sport Elizabeth	Freesport CC T/A Sport Elizabeth
Herrie, Die	Herrie Drukkers bk
Athlone News	Independent Newspapers (Pty) Ltd
Atlantic Sun	Independent Newspapers (Pty) Ltd
Capetowner	Independent Newspapers (Pty) Ltd
Constantiaberg Bulletin	Independent Newspapers (Pty) Ltd
False Bay Echo	Independent Newspapers (Pty) Ltd
Plainsman	Independent Newspapers (Pty) Ltd
Sentinal News	Independent Newspapers (Pty) Ltd
Southern Mail	Independent Newspapers (Pty) Ltd
Southern Suburbs Tatler	Independent Newspapers (Pty) Ltd
Tabletalk	Independent Newspapers (Pty) Ltd
Tygartalk Bellville/Durbanville	Independent Newspapers (Pty) Ltd
Tygartalk Goodwood	Independent Newspapers (Pty) Ltd
Vukani	Independent Newspapers (Pty) Ltd
Bolander	Independent Newspapers (Pty) Ltd
Free State Sun	Jones Mojaki Publishers cc
Foreign Exchange	Kianja Project CC, The
The Weekly Free State	Letlaka Communications
The Weekly Northern Cape	Letlaka Communications
Bloemnuus	Media 24

Free Newspapers	Publisher
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Publication Group

Breederivier Gazette.	Media 24
City Vision (Khayalitsha)	Media 24
City Vision (Langa/Gugulethu)	Media 24
East Griqualand Fever	Media 24
Echo, The	Media 24
Express	Media 24
Helderpos Gazette	Media 24
Kouga Express	Media 24
Kroonnuus	Media 24
Maluti	Media 24
Meyerton Ster	Media 24
Maritzburg Fever (formaly Mirror The)	Media 24
Noordkaap	Media 24
Noordwes Gazette	Media 24
Ons Stad	Media 24
PE Express	Media 24
People s Post Athlone	Media 24
People s Post City Edition	Media 24
People s Post Claremont/Rondebosch	Media 24
People s Post Constantia/Wynberg	Media 24
People s Post False Bay	Media 24
People s Post Grassy Park	Media 24
People s Post Landsdowne	Media 24
People s Post Retreat	Media 24
Sasolburg Ster	Media 24
South Coast Fever	Media 24
Swartlander Monitor	Media 24
Theewaterkloof Gazette (formerly Caledon Kont	Media 24
Tygerburger Bellville	Media 24
Tygerburger Brackenfell	Media 24
Tygerburger Durbanville	Media 24
Tygerburger Eersterivier/Blue Downs	Media 24
Tygerburger Elsiesrivier	Media 24
Tygerburger Goodwood	Media 24
Tygerburger Kraaifontein	Media 24
Tygerburger Kuilsrivier	Media 24
Tygerburger Milnerton	Media 24
Tygerburger Parow	Media 24
Tygerburger Ravensmead/Belhar	Media 24

Free Newspapers	Publisher
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Publication Group

Tygerburger Table View	Media 24
UD News	Media 24
Vanderbijlpark Ster	Media 24
Vereeniging Ster	Media 24
Vista	Media 24
Weskus Nuus	Media 24
Drakenstein Gazette	Media 24
East London Express formerly (East London Fever)	Media 24
Eden Express	Media 24
Edendale Echo	Media 24
Express Eastern Free State (Former Express QwaZulu-Natal)	Media 24
Express Northern Cape	Media 24
Isolomzi Fever	Media 24
Kalahari Buletin (Formerly Kuruman Bulletin)	Media 24
Maritzburg Echo	Media 24
Mossel Bay Home Ads News	Media 24
Mthatha Fever	Media 24
North Western Bonus	Media 24
Parys Gazette	Media 24
PE Express Indaba	Media 24
People s Post Mitchells Plain	Media 24
People s Post Woodstock	Media 24
Sunshine Coast Express	Media 24
Uppercoast Fever	Media 24
Uvo Lwethu Fever	Media 24
My Line	Mikateko Media
Bloemfontein Courant (formerly Krant)	Mikro Ad cc
Msunduzi News	Msunduzi Municipality
Amajuba Eyethu	Newcastle Advertiser Div CTP Ltd
Issue Mangaung	News Alive CC
Issue, Eastern Free State	News Alive CC
North Coast Times	North Coast Times (Pty) Ltd
Polokwane Express	Northern Media Group
Cosmo City Chronicle	Nsabasi Publishing cc
Alex Pioneer	Pioneer Enterprise (Pty) Ltd
Pioneer Express	Pioneer Enterprise (Pty) Ltd
Pioneer Mirror	Pioneer Enterprise (Pty) Ltd
SA Jewish Report	SA Jewish Report (Pty) Ltd
Botswana Advertiser	Screen Print (Pty) Ltd

Free Newspapers	Publisher
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Publication Group

Northern Advertiser	Screen Print (Pty) Ltd
Soweto Express	Soweto Chronicle (PTY) Ltd
Chatsworth Tabloid	Tabloid Media
Ethekwini Times	Tabloid Media
Northern Star	Tabloid Media
Phoenix Tabloid	Tabloid Media
Southern Star	Tabloid Media
The Weekly Gazette	Tabloid Media
Umlazi Times	Tabloid Media
Tame Times	Tame Communications (PTY) LTD
Tame Times Katlehong, Thokoza, Vosloorus	Tame Communications (PTY) LTD
Taxi Indaba - Ethekwini	Taxi Indaba Media & Advertising
The Precinct Community News	The Precinct Community News (PTY) Ltd
Algoa Sun	Times Media Group
Go & Express	Times Media Group
Motherwell Sun	Times Media Group
The Northern Sun	Times Media Group
The Walmer Sun	Times Media Group
The Western Sun	Times Media Group
North Coast Courier	Wordsmiths (PTY) Ltd

Magazines

Publication Group

Assoc Media	"O" Oprah Magazine	
Water and Sanitation Africa	3S Media (Pty) Ltd	B2B
Meeting SA	3S Media (Pty) Ltd	B2B
Sa Conference Directory	3S Media (Pty) Ltd	B2B
IMIESA	3S Media (Pty) Ltd	B2B
Resource	3S Media (Pty) Ltd	B2B
Inside Mining	3S Media (Pty) Ltd	B2B
Transport World Africa	3S Media (Pty) Ltd	B2B
Africa Geographic	Africa Geographic (Pty) Ltd	Consumer
Panorama Publications (Pty) Ltd	Animaltalk	
Amakhosi Magazine	Back Page Publications	Consumer
Nubian Bride	Ballyhoo Media	Consumer
Bike Sa	Bike Promotions (pty) Ltd	Consumer
Business Brief	Business Brief Publishing(Pty)Ltd	B2B
Leadership	Cape Media Corporation	B2B
Explore South Africa	Cape Media Corporation	Consumer
Leaders in Wellness (formerly "Leadership in HIV/Aids")	Cape Media Corporation	B2B
Opportunity	Cape Media Corporation	B2B
Service (Leadership In Local Government)	Cape Media Corporation	B2B
Black Business Quarterly	Cape Media Corporation	B2B
The Project Manager	Cape Media Corporation	B2B
Road Ahead, The	Cape Media Corporation	B2B
Ramsay Media(Pty) Ltd	Car	
Finesse	Carpe Diem Media	Consumer
Soul	Carpe Diem Media	Consumer
Concrete Trends	Cement & Concrete Institute	B2B
Ramsay Media(Pty) Ltd	Complete Golfer	
Conde Naste House & Garden	Conde Naste Independent Magazines (Pty) Ltd	Consumer
Glamour	Conde Naste Independent Magazines (Pty) Ltd	Consumer
GQ	Conde Naste Independent Magazines (Pty) Ltd	Consumer
Afropolitan	Contact Media & Communications (pty) ltd	B2B
G Tribe	Contact Media & Communications (pty) ltd	Custom
Wits Business School Journal	Contact Media & Communications (pty) ltd	Custom
Good Taste	Converge (Pty) Ltd	Custom
RISKsa Magazine	COSA Communications	B2B
Assoc Media	Cosmopolitan	
Creamer Media (Pty) Ltd	Engineering News	
Entrepreneur	Entrepreneur Media (Pty) Ltd	Consumer
Ramsay Media(Pty) Ltd	Getaway	
Assoc Media	Good housekeeping	
Public Sectors Manager Magazine	Government Communication & Information Sys	B2B
SA Rugby	Highbury Safika Media (Pty) Ltd	Consumer
Foschini Clubx	Highbury Safika Media (Pty) Ltd	Custom
Foschini LivingSpaces	Highbury Safika Media (Pty) Ltd	Custom
Foschini Club-	Highbury Safika Media (Pty) Ltd	Custom
Foschini Kids Superclub	Highbury Safika Media (Pty) Ltd	Custom
SA Cricket	Highbury Safika Media (Pty) Ltd	Consumer
Sowetan Soccer Magazine	Highbury Safika Media (Pty) Ltd	Consumer
SA Wedding Album	Highbury Safika Media (Pty) Ltd	Consumer
African Decisions	Highbury Safika Media (Pty) Ltd	B2B
JSE _	Highbury Safika Media (Pty) Ltd	Custom

AA Traveler/AA Reisiger	Highbury Safika Media (Pty) Ltd	Custom
Equinox	Highbury Safika Media (Pty) Ltd	Custom
Signature	Highbury Safika Media (Pty) Ltd	Custom
Ramsay Media(Pty) Ltd	Hotel & Restaurant	
Assoc Media	House and Leisure	
Habitat	Index Publication CC T/ A Habitat	Consumer
Your Business Magazine	Infocus Buplisher CC	B2B
Sa Jewellery News	Isikhova Publishing & Communications	B2B
Elle	Isiko Media	Consumer
Brainstorm	iTWeb Ltd	B2B
I Week	iTWeb Ltd	B2B
Fresh Living Magazine	John Brown Publishing (Pty) Ltd	Custom
Edgars Club Magazine	John Brown Publishing (Pty) Ltd	Custom
Discovery	John Brown Publishing (Pty) Ltd	Custom
Mamas & Papas	Kwenta Medai (Pty) Ltd	Consumer
De Rebus	Law Society of SA	Custom
Ramsay Media(Pty) Ltd	Leisure Wheels	
Gardener, The	Lone hill Trading (Pty) Ltd	Consumer
Tuiner, Die	Lone hill Trading (Pty) Ltd	Consumer
Assoc Media	Marie Claire	
Finweek	Media 24	Consumer
Sarie Kos	Media 24	Consumer
Heat Celebrity News	Media 24	Consumer
Drum	Media 24	Consumer
Huisgenoot	Media 24	Consumer
You	Media 24	Consumer
Landbouweekblad	Media 24	Consumer
Tuis Home	Media 24	Consumer
FHM	Media 24	Consumer
Men'S Health	Media 24	Consumer
Baba & Kleuter	Media 24	Consumer
Golf Digest	Media 24	Consumer
Kick Off	Media 24	Consumer
Runners World	Media 24	Consumer
Sa Hunter/Jagter	Media 24	Consumer
Weg/Go	Media 24	Consumer
Fairlady	Media 24	Consumer
Grazia	Media 24	Consumer
Ideas/Idees	Media 24	Consumer
Leef met hart & siel	Media 24	Consumer
Move!	Media 24	Consumer
Real Magazine	Media 24	Consumer
Sarie	Media 24	Consumer
True Love	Media 24	Consumer
National Geographic Kids	Media 24	Consumer
Advantage	Media 24	B2B
Money Marketing	Media 24	B2B
DIY Trade News	Media 24	B2B
Front Shop	Media 24	B2B
Dish Premium / Skottel	Media 24	Custom
Huisgenoot Tempo	Media 24	Consumer
Eat Out	Media 24	Consumer
TV Plus / Afrikaans	Media 24	Consumer
TV Plus / English	Media 24	Consumer
Ridge, The	Media 24	Consumer
Sarie Gesond	Media 24	Consumer
Kuier	Media 24	Consumer
Sarie Woon	Media 24	Consumer
Visi	Media 24	Consumer
Weg/ Ry (Drive Out)	Media 24	Consumer
Top Car/Top Motor	Media 24	Consumer

Your Pregnancy	Media 24	Consumer
Bicycling	Media 24	Consumer
Zigzag	Media 24	Consumer
Weg Kuierkos	Media 24	Consumer
Weg Namibie/ Go Namibia	Media 24	Consumer
Weg/Sleep	Media 24	Consumer
Women'S Health	Media 24	Consumer
Fairlady Bride	Media 24	Consumer
Sarie Bruid	Media 24	Consumer
True Love Bride	Media 24	Consumer
Saltwater Girl	Media 24	Consumer
Seventeen	Media 24	Consumer
Environmental Management	Media 24	B2B
Leading Architect & Design	Media 24	B2B
LMS	Media 24	B2B
Medical Chronicle	Media 24	B2B
Pedmed	Media 24	B2B
Analytical Reporter	Media 24	B2B
Prive	Media 24	Custom
Mercedes	Media 24	Custom
Plascon Spaces(Name Change)	Media 24	Custom
Taste (woolworths)	Media 24	Custom
Hire SA	Media 24	B2B
Dish Compact	Media 24	Custom
Magic	Media 24	Custom
Siyasiza	Media 24	Custom
Mango Juice	Media 24	Custom
Medi Clinic / Family	Media 24	Custom
A-Plus	Media 24	Custom
Lewis Stores Club Magazine	Media 24	Custom
Intiem	Media in Africa	Consumer
LOOCHA	MIROGRAPH	Consumer
Destiny Magazine	Ndalo Media	Consumer
Destiny Man	Ndalo Media	Consumer
Panorama Publications (Pty) Ltd	PC Format	
Digest Of South African Architecture	Picasso Headline (Pty) Ltd	Custom
Khuluma	Picasso Headline (Pty) Ltd	Custom
Veeplaas	Plaas Publishing	B2B
Farmlink	Plaas Publishing	B2B
Ramsay Media(Pty) Ltd	Popular Mechanics	
Clicks Club Card	Publishing Partnership, The	Custom
Life Magazine	Publishing Partnership, The	Custom
Obrigado(Vida Obrigado)	Publishing Partnership, The	Custom
Sea Rescue	Publishing Partnership, The	Custom
Nedbank Golf Challenge	Publishing Partnership, The	Custom
Private Edition	Publishing Partnership, The	Custom
Bounce / Bankmed	Publishing Partnership, The	Custom
Jet Club	Publishing Partnership, The	Custom
JD Group Club Magazines (A)	Quantum Publishers	Custom
JD Group Club Magazines (B)	Quantum Publishers	Custom
Reader'S Digest	Readers Digest Australia	Consumer
Real Estate Investor	Reeal Estate Media	Consumer
Accountancy Sa	SAICA , South African Institute of Chartered Acc	Custom
Civil Engineering	SAICE/SAISA South African Institute of Civil Engi	B2B
Tax Talk	SAIT (S A Institute of Tax Practitioners)	Custom
Sales Guru	Sales Guru Publishing	B2B
Servamus	SARP Uitgerwers	Custom
Sensitive Midwifery	Sister Lillian Centre Cc	Consumer
Panorama Publications (Pty) Ltd	Skyways	
Succeed	Succeed Magazine	
The Big Issue	The Big Issue	Consumer

THE CODE OF ETHICS FOR SOUTH AFRICAN PRINT AND ONLINE MEDIA

The Press Council of South Africa and the Interactive Advertising Bureau South Africa adopt the following Code for print and online media (together referred to as “**the media**”).

PREAMBLE

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

Section 16 of the Bill of Rights provides that:

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

- (a) Freedom of the media and other media;*
- (b) Freedom to receive and impart information or ideas;*
- (c) Freedom of artistic creativity; and*
- (d) Academic freedom and freedom of scientific research.*

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

- (a) Propaganda for war;*
- (b) Incitement of imminent violence; or*
- (c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.*

The media strives to hold these rights in trust for the country's citizens; and it is subject to the same rights and duties as the individual. Everyone has the duty to defend and further

these rights, in recognition of the struggles that created them: the media, the public and government, who all make up the democratic state.

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

Member publications commit themselves to the highest standards of excellence, to maintain credibility and keep the trust of the public. This means always striving for truth, acting independently, avoiding unnecessary harm, reflecting a multiplicity of voices in our coverage of events, showing a special concern for children and other vulnerable groups, and exhibiting sensitivity to the cultural customs of their readers and the subjects of their reportage.

South Africans should be able to read, hear, see and participate in the media of their choice.

THE CODE

CHAPTER 1: MEDIA-GENERATED CONTENT AND ACTIVITIES

1. Gathering and reporting of news

- 1.1 The media shall take care to report news truthfully, accurately and fairly.
- 1.2 News shall be presented in context and in a balanced manner, without any intentional or negligent departure from the facts whether by distortion, exaggeration or misrepresentation, material omissions, or summarisation.
- 1.3 Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with reasonable regard to context and importance. Where a report is not based on facts or is founded on opinion, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.
- 1.4 News should be obtained legally, honestly and fairly, unless the public interest dictates otherwise.

- 1.5 The gathering of personal information for the purposes of journalistic investigation and expression must only be used for these purposes.
- 1.6 Media representatives shall identify themselves as such, unless the public interest or their safety dictates otherwise.
- 1.7 Where there is reason to doubt the accuracy of a report or a source 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 stated in such report.
- 1.8 The media shall seek the views of the subject of critical reportage in advance of publication; provided that this need not be done where the institution has reasonable grounds for believing that by doing so it would be prevented from reporting; where evidence might be destroyed or sources intimidated; or because it would be impracticable to do so in the circumstances of the publication. Reasonable time should be afforded to the subject for a response. If the media are unable to obtain such comment, this shall be reported.
- 1.9 A news item should reflect any known weaknesses in the information available at the time of publication. Significant additional information which becomes available later on should be reported.
- 1.10 The media shall make amends for presenting information or comment that is found to be inaccurate by communicating, promptly and with appropriate prominence so as to readily attract attention, a retraction, correction or explanation.
- 1.11 An online article that has been amended for factual accuracy should indicate as such. In the event of an apology or retraction, the original article may remain, but the publisher must indicate in a prominent manner that it has led to an apology or retraction – and should link to both the apology/retraction and the original article.
- 1.12 Attempts to have digital media remove articles which are embarrassing to, but not unlawfully defamatory of, individuals should be refused – but there is room for discretion. A member publication may decide that an article may remain in the archives of the publication, but may not be indexed by search engines.

1.13 Member publications shall not plagiarise. However, fair dealing in terms of the Copyright Act 98 of 1978 does not amount to plagiarism.

2. Independence and Conflicts of Interest

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

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

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

2.4 Editorial material shall be kept clearly distinct from advertising and sponsored content.

3. Privacy, Dignity and Reputation

3.1 The media shall exercise care and consideration in matters involving the private lives and concerns of individuals. The right to privacy may be overridden by the public interest.

3.2 The media shall exercise care and consideration in matters involving dignity and reputation. The dignity or reputation of an individual should be overridden only if it is in the public interest and in the following circumstances:

3.2.1 The facts reported are true or substantially true; or

3.2.2 The reportage amounts to fair comment based on facts that are adequately referred to and that are true or substantially true; or

3.2.3 The reportage amounts to a fair and accurate report of court proceedings, Parliamentary proceedings or the proceedings of any quasi-judicial tribunal or forum; or

- 3.2.4 It was reasonable for the information to be communicated because it was prepared in accordance with acceptable principles of journalistic conduct and in the public interest.
- 3.2.5 The article was, or formed part of, an accurate and impartial account of a dispute to which the complainant was a party.
- 3.3 Rape victims and victims of sexual violence shall not be identified without the consent of the victim or in the case of children, without the consent of their legal guardians (or a similarly responsible adult) and the child (taking into consideration the evolving capacity of the child), and a public interest is evident, and it is in the best interest of the child.
- 3.4 The health status of people regarding HIV/AIDS, sexually transmitted infections, mental health and such other conditions carrying social stigma should not be disclosed without their consent, unless the public interest dictates otherwise. In the case of children, such health status should not be disclosed without the consent of the child (taking into consideration the evolving capacity of the child) together with the consent of their legal guardian or a similarly responsible adult, provided that such disclosure is in the public interest and it is in the best interests of the child.

4. Protection of Personal Information

- 4.1 For the purpose of this clause “personal information” is as defined in section 1 of the Protection of Personal Information Act 4 of 2013.
- 4.2 The media should take reasonable steps to ensure that the personal information under their control is protected from misuse or loss, and to prevent unauthorised access to such information.
- 4.3 The media should ensure that the personal information they gather is accurate, reasonably complete and up to date.
- 4.4 Where a person requests a correction to be made to his or her personal information under the control of a member publication, the media must take steps to verify the accuracy of the information and, if necessary, amend the information.

4.5 Some personal information, such as addresses, may enable others to intrude on the privacy and safety of individuals who are the subject of news coverage. To minimise these risks, the media should only disclose sufficient personal information to identify the persons being reported in the news.

4.6 Where it is reasonably suspected that an unauthorised person may have obtained access to personal information held by a member publication, the media must inform the affected person(s) and take reasonable steps to mitigate any prejudicial effects.

5. **Discrimination and Hate Speech**

5.1 Except where it is strictly relevant to the matter reported and it is in the public interest to do so, the media shall avoid discriminatory or denigratory references to people's race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth or other status, nor shall it refer to people's status in a prejudicial or pejorative context.

5.2 The media 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 that amounts 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.

6. **Advocacy**

6.1 Member publications are justified in strongly advocating their own views on controversial topics, provided that they treat their constituencies fairly by:

6.1.1 making fact and opinion clearly distinguishable;

6.1.2 not misrepresenting or suppressing relevant facts; and

6.1.3 not distorting the facts.

7. **Protected Comment**

- 7.1 The media shall be entitled to comment upon or criticise any actions or events of public interest.
- 7.2 Comment or criticism is protected even if extreme, unjust, unbalanced, exaggerated and prejudiced, as long as it:
- 7.2.1 expresses an honestly-held opinion,
 - 7.2.2 is without malice,
 - 7.2.3 is on a matter of public interest;
 - 7.2.4 has taken fair account of all material facts that are substantially true; and
 - 7.2.5 is presented in a manner that it appears clearly to be comment. .

8. **Children**

- 8.1 The Bill of Rights (Section 28(2)) in the South African Constitution states: “A child's best interests are of paramount importance in every matter concerning the child.” The media, applying the spirit of this section, shall therefore:
- 8.1.1 exercise exceptional care and consideration when reporting about children. If there is any chance that coverage might cause harm of any kind to a child, he or she shall not be identified in any way (including through photography or the disclosure of sufficient personal information to make identification possible) unless an overriding public interest is evident, and then only with the informed consent of both a legal guardian (or of a similarly responsible adult) and the child (taking into consideration the evolving capacity of the child). The duty to ensure that consent is informed shall rest entirely with the media;
 - 8.1.2 not publish child pornography;
- (Child Pornography is defined in the Film and Publications Act as: Any visual image or any description of a person, real or simulated, however created, who is or who is depicted or described as being, under the age of 18 years,

explicitly depicting such a person who is or who is being depicted as engaged or participating in sexual conduct; engaged in an explicit display of genitals; participating in or assisting another person to participate in sexual conduct which, judged within context, has as its predominant objective purpose, the stimulation of sexual arousal in its target audience or showing or describing the body or parts of the body of the person in a manner or circumstance which, in context, amounts to sexual exploitation); and

- 8.1.3 not identify children who have been victims of abuse, exploitation, or who have been charged with or convicted of a crime, without the consent of their legal guardians (or a similarly responsible adult) and the child (taking into consideration the evolving capacity of the child), a public interest is evident and it is in the best interests of the child.

9. Violence, Graphic Content

- 9.1 Due care and responsibility shall be exercised by the media with regard to the presentation of brutality, gratuitous violence, and suffering: material which, judged within context, should not sanction, promote or glamorise violence or unlawful conduct, or discrimination based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.
- 9.2 Content which depicts violent crime or other violence or sexually explicit sex should be avoided unless the public interest dictates otherwise, in which case a prominent warning must be displayed indicating that such content is graphic and inappropriate for certain audiences such as children.

10. Headlines, Posters, Pictures and Captions

- 10.1 Headlines and captions to pictures shall give a reasonable reflection of the contents of the report or picture in question;
- 10.2 Posters shall not mislead the public and shall give a reasonable reflection of the contents of the reports in question; and
- 10.3 Pictures and/or video or audio content shall not misrepresent or mislead nor be manipulated to do so.

11. Confidential and Anonymous Sources

The media shall:

- 11.1 protect confidential sources of information – the protection of sources is a basic principle in a democratic and free society;
- 11.2 avoid the use of anonymous sources unless there is no other way to deal with a story. Care should be taken to corroborate the information; and
- 11.3 not publish information that constitutes a breach of confidence, unless the public interest dictates otherwise.

12. Payment for Information

The media shall avoid shady journalism in which informants are paid to induce them to give the information, particularly when they are criminals - except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done and there was no other way to obtain such information.

CHAPTER 2: USER-GENERATED CONTENT

13. Guiding principles

- 13.1 This section applies where a complaint is brought against a member publication in respect of comments and content posted by users on all platforms it controls and on which it distributes its content.
- 13.2 The media is not obliged to moderate all user-generated content in advance.
- 13.3 All member publications should have a policy in place governing moderation and/or removal of user-generated content or user profiles posted on the platforms ("UGC Policy"). A member publication's UGC Policy must be consistent with the Constitution of the Republic of South Africa.
- 13.4 Member publications may remove any user-generated comment, content or user profile in accordance with their UGC Policy.

- 13.5 A member publication's UGC policy should be publicly available and:
- 13.5.1 Set out the authorisation process, if any, which users who wish to post comments must follow as well as clearly setting out any terms and conditions and any indemnity clauses during such registration process;
 - 13.5.2 Set out clearly the content which shall be prohibited;
 - 13.5.3 Explain the manner in which the public may inform the member publication of prohibited content.
- 13.6 Member publications should, where practicable, place a notice on the platforms with the aim to discourage the posting of prohibited content.
- 13.7 The public should be informed that UGC is posted directly by users and does not necessarily reflect the views of the member publication.
- 13.8 Users shall be encouraged to report content which they believe violates the provisions of the member publication's UGC Policy.
- 13.9 Online forums directed at children and the young should be monitored particularly carefully.

14. **Prohibited Content**

- 14.1 Material constitutes prohibited content if it is expressly prohibited in a member publication's UGC Policy.
- 14.2 In addition to, and notwithstanding anything to the contrary contained in a member publication's UGC Policy, content which contains the following:
- 14.2.1 Propaganda for war;
 - 14.2.2 Incitement to cause imminent violence;
 - 14.2.3 Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm

constitutes prohibited content for the purpose of this Code.

15. **Defence in relation to user-generated content**

15.1 It is a defence, in relation to any complaint brought to the Press Council regarding UGC, for the member publication to show that it did not itself author or edit the content complained of.

15.2 This defence will not apply in the following circumstances:

15.2.1 the complainant sent a written notice to the member publication in relation to the content concerned, and

15.2.2 the member publication failed to remove the content in accordance with clause 15.4 below.

15.3 The written notice in clause 15.2.1 must:

15.3.1 be sent via email or letter to the particular address stipulated by the member publication;

15.3.2 identify the content concerned and, in particular, specify where on the website the statement was posted; and

15.3.3 must explain why the content concerned is prohibited either in terms of a member publication's UGC Policy or clause 14.2 above.

15.4 Upon receipt of a written notice complaining about UGC the member publication must:

15.4.1 remove the relevant UGC from the platform as soon as operationally possible and notify the complainant that it has done so; or

15.4.2 decide not to remove the UGC and notify the complainant of this decision.

15.5 Where a member publication has decided not to remove the UGC:

15.5.1 the complainant may complain to the Ombudsman as set out in the complaints procedures;

15.5.2 it will be treated as if the UGC had been posted by the member publication itself, and the member publication will be liable for such content if it is shown to be prohibited in terms of clause 14 above.

END

Check your load-shedding schedule here



20 °C 8 °C
Johannesburg, South Africa

Change City

2 comments

Omar al-Bashir detention hearing

SOUTH AFRICA Monday 15 June 2015 - 3:35pm



Johannesburg, 15 June 2015 - Detention hearing for Sudan's Omar al-Bashir who was indicted by the International Criminal Court in 2009 and 2010 for alleged war crimes in Sudan's Darfur region dating as far back as 2003. Video: eNCA

Watch the recorded proceedings in the gallery above

PRETORIA - Judge Hans Fabricius will rule in the South Gauteng High Court on Monday on whether or not the South African authorities should be compelled to arrest Bashir.

The case was postponed from Sunday to allow the government to respond to an application by the SALC for the court order for the arrest.

Fabricius issued an interim order to border authorities in the Department of Home Affairs to prevent Bashir leaving South Africa until he had delivered his judgement on whether or not Bashir should be arrested.

Watch updates from court on the galleries below

Check your load-shedding schedule here



TRENDING

- 1 PICTURES: Prophet feeds snakes to congregation
- 2 Money and fame driving force behind 'miracle' pastors: Baptist reverend
- 3 SHOCKING PICS: Pastor makes congregation strip
- 4 Durban teen's death: health department investigates
- 5 WATCH: Brazen family business robbery in Delmas

From 08:30 - 22:00

Load Shedding Status **Stage 1**

Get Load Shedding Schedule Here >>

FULL COVERAGE

-  **Power Watch**
Power alert: Stage 1 load-shedding enforced
-  **The Omar al-Bashir conundrum**
Government applies for leave to appeal Bashir ruling
-  **FIFA Offside?**
Blatter to face media for first time since stepping down
-  **Vavi's fall from Cosatu**
WATCH: Can Cosatu congress resolve rifts?

[View All](#)

CARTOON

 **Nickolaus Bauer**
@NickolausBauer

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#OmarAlBashir Judge president Mlambo agrees to 1 hour postponement. Adds that government remains beholden to order

Bashir had appeared at the AU summit earlier on Sunday, was included in the group photograph of the African leaders, and was photographed in the hall at the start of the opening ceremony.

Lawyers are expected to begin arguments around 11:30am.

 **Nickolaus Bauer**
@NickolausBauer [Follow](#)

#OmarAlBashir In right corner - William Mokhari SC appearing for Govt. In left corner - Isabel Goodman boxing for SALC. Let's get it on!

11:37 AM - 15 Jun 2015

3 5



Currencies
US Dollar
GB Pound
Euro



However a Sudanese presidency spokesman told Reuters news agency that the president would be leaving South Africa later on Monday.

"President Bashir is still in Johannesburg but we are leaving South Africa today," Mohamed Hatem said.

Bashir, is in South Africa for the an African Union heads of state and government summit.

He is wanted by the International Criminal court, (ICC) for war crimes and crimes against humanity over atrocities committed in the Darfur conflict.

The Southern Africa Litigation Centre (SALC) filed the urgent application with the North Gauteng High Court in Pretoria yesterday.

It's arguing whether or not Bashir should be arrested while in the country.

The organisation wants President Jacob Zuma and the National Prosecuting Authority be ordered to arrest al-Bashir, in accordance with an order of the ICC.

South Africa's government has challenged the court's decision because it has given immunity to Bashir and all other delegates attending the AU summit.

Sudanese officials said on Sunday that the court order had "no value" because Bashir was invited by the South African government.

The SALC is also arguing that South Africa risks becoming an international pariah if it fails to arrest Sudanese President Omar al-Bashir and extradite him to the ICC.

As a signatory to the Rome Statute, and the ICC Act of 2002 SA is legally obliged to detain Bashir in the country and ensure his extradition to the Hague.

Arguments in the matter recommence later this morning at the North Gauteng High Court.

[Omar Al-Bashir Bashir Matter Legal Documents](#)

Check your load-shedding schedule here



20 °C 8 °C
Johannesburg, South Africa

Change City

1 comment

UPDATE: Temporary court order stops Bashir from leaving SA

SOUTH AFRICA Sunday 14 June 2015 - 12:24pm

by Erin Bates



File: Sudan's President Omar al-Bashir may not leave South Africa until Pretoria High Court Judge Hans Fabricius has made a ruling. Photo: AFP PHOTO / ASHRAF SHAZLY

PRETORIA – Court proceedings, in a [bid to have Sudanese President Omar al-Bashir arrested](#) in South Africa, are set to resume in the North Gauteng High Court on Sunday afternoon.

Judge Hans Fabricius heard an urgent court order on Sunday morning, to have Bashir arrested in South Africa for alleged war crimes. He stood the matter down until 3pm, after issuing an order blocking the Sudanese president from leaving South Africa.

Human rights group, the Southern African Litigation Centre (SALC), is waging a legal bid to have Bashir arrested for alleged war crimes.

It is seeking an order compelling the South African government to honour an International Criminal Court arrest warrant issued against Bashir.

Attempts by the South African government to have the matter immediately struck down failed on Sunday morning. Judge Fabricius made his ruling in order to give the South African government time to prepare an argument.

[#OmarAlBashir](#) Justice ministry immediately moves to have application struck down. Argue that [#AUsummit](#) hosting overrides Rome Statute

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[#OmarAlBashir](#) Justice ministry immediately moves to have application struck down. Argue that [#AUsummit](#) hosting overrides Rome Statute

11:40 AM - 14 Jun 2015

42 3

eNCA weather has got you covered



TRENDING

- 1 [PICTURES: Prophet feeds snakes to congregation](#)
- 2 [Money and fame driving force behind 'miracle' pastors: Baptist reverend](#)
- 3 [SHOCKING PICS: Pastor makes congregation strip](#)
- 4 [Durban teen's death: health department investigates](#)
- 5 ['Bookkeeper of Auschwitz' sentenced to four years in prison](#)

From 08:30 - 22:00

Load Shedding Status **Stage 1**

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FULL COVERAGE

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WATCH: Can Cosatu congress resolve rifts?

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CARTOON



- Nickolaus Bauer** @NickolausBauer · 55m
 #OmarAlBashir SALC says Justice ministry is buying time. Want an undertaking that Bashir won't leave SA while government prepares argument
- Nickolaus Bauer** @NickolausBauer · 50m
 #OmarAlBashir Justice ministry says decision to allow Bashir to attend was political one in accordance with hosting international #AUsummit
- Nickolaus Bauer** @NickolausBauer · 57m
 #OmarAlBashir Justice ministry requests two hours to adequately prepare their argument. Says papers were only served at 10am
- Nickolaus Bauer** @NickolausBauer · 50m
 #OmarAlBashir Justice ministry immediately moves to have application struck down. Argue that #AUsummit hosting overrides Rome Statute



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ABOVE: Judge Hans Fabricius of the North Gauteng High Court issued a temporary court order barring Sudanese president Omar Al-Bashir from leaving South Africa on Sunday, 14 June 2015. The International Criminal Court (ICC) issued an arrest warrant for Bashir. **SOURCE:** eNCA / Twitter / Louis Oelofse / Nickolaus Bauer.

Bashir was indicted in 2009 and 2010 for alleged war crimes committed in Darfur.

They include allegations of crimes against humanity, and inciting violence like mass torture, genocide, rape and murder.

South Africa ratified the International Crime Court (ICC) Rome Statute, which compels those who sign it to adhere to ICC arrest warrants.

Bashir is among the heads of state attending the [25th African Union \(AU\) Summit](#) at the Sandton Convention Centre. He reportedly [landed in Johannesburg](#) on Saturday afternoon.

On Friday, the South African government asked the ICC to exempt it from its obligation to arrest Bashir, as it was hosting the Sudanese president as an AU Summit delegate.

As the African News Agency ([ANA](#)) reported, "the South African government had urgently dispatched an envoy to the International Criminal Court (ICC) in The Hague to explain why it was letting him into the country and not arresting him."

[African leaders](#), including South African President Jacob Zuma and [Zimbabwean President Robert Mugabe](#), participated in [AU Summit meetings](#) on Saturday and Sunday.

- Additional reporting Nickolaus Bauer.

Tweets

mailandguardian @mailandguardian 6h
 Govt filed a notice applying for leave to appeal a ruling that it should have detained #OmaralBashir while in SA. ow.ly/PCUwf
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Navisio Global @NavisioGlobal 20h
 Hard to watch. Life under the Antonovs in southern #Sudan. #omaralbashir seems to have earned his genocide indictment nytimes.com/2015/07/13/opi...
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John Andrews @johnandrews46 21h
 #Sudan's atrocities still go unpunished, with #OmaralBashir still not before the #ICC. Very good video from Kristof. nyti.ms/1Hr1Qzi
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Natalia Bonilla @nataliabonilla 23h
 The Worst Atrocity You've Never Heard Of #Sudan #OmaralBashir via @NickKristof fyi @AfricasaCountry nyti.ms/1fD90HT
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Failure to arrest al-Bashir 'unconstitutional'

2015-06-15 15:30

The High Court in Pretoria has ruled that the failure to detain Sudan President Omar al-Bashir was inconsistent with the Constitution. Read on to see how the ruling unfolded.



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To sum up...

The High Court in Pretoria has ruled that the failure to detain Sudan President Omar al-Bashir is inconsistent with the Constitution, and he must be detained pending a formal request from the ICC.

Judge President Dunstan Mlambo, along with Judge President Aubrey Ledwaba and Judge Hans Fabricius, will read their reasons for the ruling into the court record next week.

Advocate William Mokhari, for the government, then confirmed immediately that the State had reliable information that the Sudanese president had already left the country.

Mlambo ordered that an affidavit be filed, indicating exactly how al-Bashir was able to leave the country from Waterkloof Air Force base, despite the base having been served an interim order barring him from leaving.

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Read on to see how the ruling unfolded in Court 4F in Pretoria...

15 Jun 15:26

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Court adjourns.

15 Jun 15:26

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Mlambo: "It has been clear that we were concerned as a court whether we were in jurisdiction.

Mlambo then instructs the State to explain how Al-Bashir was able to leave the country.

"We would request an affidavit. We issue an order that an affidavit be filed for the time he left and port of exit."

15 Jun 15:22

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Mkhari now speaks: "Government now has reliable information that Omar al-Bashir has departed."

His departure will be fully investigated, Mkhari adds.

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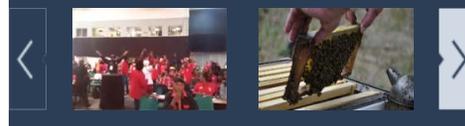


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"Having heard council and having read the documents, it is declared by the court, that the conduct of the respondent, having failed to arrest Bashir, is inconsistent with the Constitution," continues Mlambo.

"The government must take steps to detain him, pending a formal request from the ICC."

15 Jun 15:16

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Mlambo: "We have reached a decision.

"We will hand down an order, and the reasons will follow in a week's time."

15 Jun 15:14

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The Judges are back, and are now reading their summary...

15 Jun 14:36

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The High Court in Pretoria will 'send word back shortly' on its decision whether Sudan's President Omar al-Bashir can be arrested while in South Africa, Judge President Dunstan Mlambo told a packed courtroom.

He said he and his colleagues, Deputy Judge President Aubrey Ledwaba, and Judge Hans Fabricius, would confer for 15 minutes and let the court know their decision.

15 Jun 14:30

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Mokhari summarises Goodman's stance: "Are you saying the State is completely powerless to protect a head of state when there are international warrants issued?"

"Yes my lord," she replies.

15 Jun 14:29

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Goodman says the SALC stands by its argument, that government can never confer immunity when it negates its international obligations to the Rome Statute.

15 Jun 14:25

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SLOW MOVING TRAFFIC between the N7 bridge and Sable Road exit

Goodwood

14:59 PM

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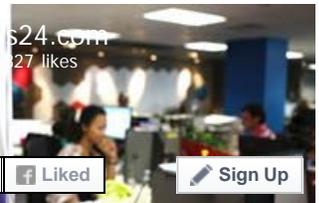
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Goodman says the ICC is not in the business of giving 'opinions'. It is a decision, she says.

15 Jun 14:23

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Judge president Mlambo states that he will adjourn for 15 minutes.

Before he does, Goodman for the SALC gets to reply.

15 Jun 14:20

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Mlambo: "Do you persist this matter is not urgent?"

"We are not taking issue that the matter is urgent," Mokhari replies.

15 Jun 14:17

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"If Al-Bashir had come to South Africa on holiday, would he have been arrested?" Judge Mlambo asks Mokhari, referring to Cabinet's decision to grant immunity and subsequent promulgation.

15 Jun 14:02

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"We see no conflict between SA law and international law," Mokhari concludes.

"I will submit that the applicants have failed to satisfy that first threshold - that Bashir 'does not have immunity'.

"For present purposes, the application should be dismissed and the interim application should lapse and allow Bashir to return to his country."

15 Jun 13:59

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"To make it have a force of law, it must be promulgated, and that has happened in terms of the notice I have mentioned.

"It did not go through the parliamentary process, but it was promulgated, thus giving it that force of law.

"All delegates, included heads of states, including Al-Bashir, have been granted immunity."

15 Jun 13:58

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"An agreement concluded under the auspices of the AU falls under that category [mentioned in the Constitution]," Mokhari says.

The agreement was between South Africa and the commission of the AU.

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"Our submission is that indeed South Africa has an obligation to observe international law... In doing so, the law has been domesticated," he says.

Mokhari now turns to the Constitution.

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15 Jun 13:52

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"It [the legislation] is all encompassing of those invited to attend the AU summit.

"As I understand... The applicant's submission is that the international law obligations are domesticated by being enacted into domestic law."

15 Jun 13:49

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"If heads of state are not delegates, then what are they?"

Mokhari asks in relation to the legislation. It is very clear, he continues, that this is all encompassing.

"We have to then ask if the heads of states currently in the country have immunity."

15 Jun 13:44

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"It is our understanding that President al-Bashir has immunity," Mokhari says.

"There is no inconsistency with SA law and international law."

15 Jun 13:43

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"I can confirm that President al-Bashir's name was not on the list of persons to depart from Waterkloof Air Force base."

15 Jun 13:40

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Advocate William Mokhari for the government now gets up to speak...

15 Jun 13:37

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15 Jun 13:34

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Goodman: "He [Bashir] is subject to the jurisdiction of this court."

15 Jun 13:34

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Meanwhile, back in court:

"There is no formal agreement between South Africa and Sudan on paper," says Isabel Goodman.

"The Cabinet's decision [to grant Al-Bashir immunity] has no effect in law."

15 Jun 13:26

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Sudan's State Minister for Information has confirmed that Sudan President Omar Al-Bashir has left Johannesburg.

Yasser Youssef told Reuters that Bashir's plane was expected to land in the Sudanese capital Khartoum at about 18:30 local time.

"Bashir will address the crowds that will gather to meet him," he added.

15 Jun 13:21

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"If Bashir has left, how will government explain the blind ignorance of a High court order?" asks Goodman.

15 Jun 13:12

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Isabel Goodman for the SALC now addressing the court...

15 Jun 13:09

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Advocate William Mokhari has told the court that officials at AFB Waterkloof were informed of the court order preventing President Omar al-Bashir from leaving South Africa.

But, Waterkloof Air Force base doesn't function as a port of entry as it doesn't have an immigration official, the court heard.

15 Jun 13:06

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Court is continuing on the assumption that al-Bashir is still in the country.

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Waterkloof Airforce base was allegedly informed about the interim court order preventing Al-Bashir from leaving the country, eNCA reports.

15 Jun 13:01

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15 Jun 12:57

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Advocate William Mokhari says it isn't easy to confirm if Al-Bashir is still at the AU summit in Sandton.

"He could be in his hotel, he could be shopping," he says.

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Judge President Dunstan Mlambo is asking Mokhari to confirm that there is no official confirmation that President al-Bashir has left.

Mokhari replies, "Yes, there is no official confirmation yet."

15 Jun 12:54

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Meanwhile, back in Pretoria, the High Court has reconvened.

"As we sit, I do not have official confirmation that he [al-Bashir] has left the country," says Advocate William Mokhari.

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But, she has just reported that...

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BBC's Southern Africa correspondent, Nomsa Maseko, tweeter earlier:

15 Jun 12:36

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15 Jun 12:31

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Court arguments "could well be academic", reports eNCA's Nickolaus Bauer, if it is indeed true that the jet that left Waterkloof Airforce base was carrying the the Sudan president.

15 Jun 12:25

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Back in court, Advocate Mokhari had told the High Court in Pretoria before the adjournment that five ports of entry still had to confirm receipt of Judge Hans Fabricius's interim order, handed down on Sunday, that Al-Bashir be prevented from leaving the country.

15 Jun 12:19

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15 Jun 12:17

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Al-Bashir's jet was repositioned late last night from OR Tambo International Airport to Waterkloof presumably for better security control, Erika Gibson says.

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No flightplans were scheduled for the Sudan president out of Waterkloof Airforce base.

15 Jun 12:13

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Netwerk24 journalist Erika Gibson has been at Waterkloof Airforce base, and has been following the jet's 'unplanned' takeoff for the past 50 minutes.

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It is still not 100% clear if Al-Bashir was on board the plane. But his plane has just left the airforce base.

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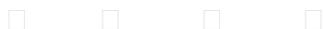


2:49 am - 15 Jun 2015



Isaac Moselane @Not_Top_Room · Jun 15

@gibsonerika please confirm report



Erika Gibson @GibsonErika · Jun 15

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Adriaan Basson @AdriaanBasson · Jun 15

Breaking: @GibsonErika reports that Al Bashir's jet is preparing for take-off from Waterkloof. @Follow_SALC