The Media Policy and Democracy Project

exploring how the media can work better for society

PROGRAMME

INTERNATIONAL COLLOQUIUM ON PRESS REGULATION AND ACCOUNTABILITY

Theme - the press and democracy: systems of press accountability and questions of journalistic ethics

30 August 2013
UNISA, Pretoria

Hosted by the *Media Policy and Democracy Project*
www.mediaanddemocracy.com

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ABOUT THE MEDIA POLICY AND DEMOCRACY PROJECT:

The Media Policy and Democracy Project is a joint collaborative research project between the Department of Communication Science at the University of South Africa (UNISA), and the School of Journalism and Media Studies at Rhodes University which was launched in 2012, and aims to promote participatory media and communications policymaking in the public interest in South Africa.

The project involves three thematic areas:
1) media diversity and transformation
2) media accountability and media freedom
3) communications policy and the public interest

A main aim of the project involves community engagement whereby the findings produced will be presented in forums of public engagement, including the South African parliament, so as to positively inform various processes of communications and media policy making in our country and therefore serve to benefit the South African citizenry. The research relationship between UNISA and Rhodes University is one that has developed in a spirit of academic collegiality and out of a shared desire to, as researchers, work together to respond to the various and complex challenges faced by our field and our country. For more information go to **http://www.mediaanddemocracy.com**

ABOUT THIS COLLOQUIUM:

Questions of media accountability, and in particular the regulation of the press, have received much attention in recent months and years, not only in South Africa but around the globe (largely spurred on by the United Kingdom phone-hacking scandal and subsequent Leveson enquiry). While these debates rage on an international stage, the system of press accountability in South Africa has recently undergone two processes of review: the first conducted by the Press Council of South Africa (2010-2011), followed by an independent review, conducted by the Press Freedom Commission (2011-2012). The debates surrounding these reviews raised a number of pertinent questions relating to the South African press accountability mechanism including: the effectiveness of press self-regulation, the measure of public trust in the press, concerns of political interference in the regulation of the press, a perceived lack of quality journalism and a decline in journalistic ethics, and fears that the freedom of the press in South Africa is currently under threat. Significantly, such debates are not at all unique to South Africa, but form part of a global discussion on the role and position of the press in a democracy.

In South Africa and elsewhere, critics have argued that the individual's right to human dignity must be adequately safeguarded from needless damage in the press, and that a balance should be struck between the rights of freedom of expression and the right to dignity. However, parallel debates continue which are concerned with a marked decline on research indices in global press freedom. Africa, in particular, registers consistently low press freedom ratings while in many places journalists experience intimidating barriers to freedom of speech and inhibiting pressure from governments, regulators and authorities.

The main focus of this forum is the following question:
How can the press be best regulated in a manner which BOTH holds the press satisfactorily accountable and improves standards of journalism, whilst also safeguarding the freedom of the press from political interference, censorship and self-censorship?

INTERNATIONAL COLLOQUIUM ON PRESS REGULATION
AND ACCOUNTABILITY

08:00-09:00	Registration Tea & coffee
09:00-09:10	Welcome address
09:10-09:30	**Dr Julie Reid** **Introductory presentation** *Journalistic accountability in sub-Saharan Africa: press self-regulation in crisis*
SESSION ONE **Media regulation: East Africa and Kenya** **Respondent: Prof Pieter Fourie** **Chair: Dr Julie Reid**	
09:30-10:00	**Prof Levi Obonyo & Dr Clayton Peel** *Media Regulation in Emerging Democracies: A comparative analysis of statutory and voluntary media councils in East Africa*
10:00-10:30	**Dr Jacinta Mwende Maweu** *The Effectiveness of self regulatory Media Councils in Africa: The case of the Media Council of Kenya*
10:30-11:00	Discussion & responses
11:00-11:30	Tea & coffee
SESSION TWO **Press regulation: Zambia and Uganda** **Respondent: Mahmood Sanglay** **Chair: Prof Jane Duncan**	
11:30-12:00	**Fred M'membe** *Zambia's Unending Search for Press Accountability and System of Regulation*
12:00-12:30	**Adolf Emmanuel Mbaine** *Challenges to self regulation in Africa: The case of Uganda*
12:30-13:00	Discussion & responses
13:00-14:00	Lunch – 4th floor function hall, Kgorong Building
SESSION THREE **Rethinking ethics and regulation – a global view** **Respondent: Dr Glenda Daniels** **Chair: Prof Viola Milton**	
14:00-14:30	**Prof Marc Caldwell** *Dialogical selves and the problem of global media ethics*
14:30-15:00	**Dr Gabriël Botma** *A critique of the critic: Considering discourses on press regulation in South Africa and Britain*
15:00-15:30	Discussion & responses
15:30-16:00	Tea/coffee
SESSION FOUR **Questions of journalistic ethics** **Respondent: Okyerebea Ampofo-Anti** **Chair: Dr Julie Reid**	
16:00-16:30	**Prof Anton Harber** *Towards an ethic and practice of transparency among journalists*
16:30-17:00	**Dr Nicola Jones** *What is legal is not always ethical: the Sunday Times, City Press and Mail & Guardian's coverage of Reeva Steenkamp's alleged murder in the context of South African crime and court reporting*
17:00-17:30	Discussion & responses
17:30-17:45	Closing

Dr Gabriël Botma

Dr Gabriël J. Botma is the Chair of the Journalism Department of Stellenbosch University. He is the founding editor and publisher of *Global Media Journal – African Edition*. In 2011 he obtained a PhD degree with the dissertation *Manufacturing cultural capital: Arts journalism at Die Burger (1990-1999)*. He has published research articles in prominent journals such as *Ecquid Novi: African Journalism Studies*, *Critical Arts*, *Communicatio* and *Journalism and Mass Communication Educator* in the field of political economy, cultural studies and journalism education. Until his appointment at SU he was arts editor and theatre critic of Die Burger in Cape Town. From the late 1980s he worked as a journalist in different capacities and also served on the judging panels of the M-Net Book Prize (1996, 1998) and Fleur du Cap Theatre Awards (1996–2004). He rejoined the Fleur du Cap panel last year.
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Prof Marc Caldwell

Prof Marc Caldwell is professor and head of department in the Department of Communication at the University of Fort Hare in the Eastern Cape. His previous academic appointments were as senior lecturer at the former Natal Technikon (now Durban University of Technology) and senior lecturer at the former University of Natal (now University of Kwazulu-Natal). Before his academic career, he was a journalist at the Daily Dispatch in East London.
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Prof Anton Harber

Anton Harber is the Caxton Professor of Journalism at Wits University, chair of the Freedom of Expression Institute and a founder of e-publisher Mampoer Shorts. He was a founding editor of the *Weekly Mail* (now the *Mail & Guardian*) and an executive director of Kagiso Media. He wrote *Diepsloot* (Jonathan Ball, 2011), winner of the Recht Malan Prize, *The Gorilla in the Room* (Mampoer Shorts, 2013). He co-edited the first two editions of *The A–Z of South African Politics* (Penguin, 1994/6), *What is Left Unsaid: Reporting the South African HIV Epidemic* (Jacana, 2010), and *Troublemakers: The best of SA's investigative journalism* (Jacana, 2010).
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Dr Jacinta Mwende Maweu

Dr. Jacinta Mwende Maweu teaches philosophy and media studies at the University of Nairobi, Kenya. She holds a PhD in political economy of the media and media ethics from Rhodes University, South Africa. She also holds a Bachelors degree in philosophy and literature, Masters degree in philosophy and a Masters degree in communication studies from the University of Nairobi. Her research interests include political economy of the media, media ethics, social and political philosophy, media and human rights, media and society and critical thinking in communication. Jacinta has presented various papers on the political economy of the media and media ethics in various international conferences.
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Adolf Emmanuel Mbaine

Adolf Emmanuel Mbaine practised journalism for four years (1992-1996) before joining the Department of Journalism and Communication (formerly called Dept of Mass Communication) at Makerere University as an Assistant Lecturer in 1996. He completed his MA in Journalism and Media Studies at Rhodes University in 2002. He is pursuing a PhD at Rhodes University. His main research interests are mostly around media law, policy and regulation. He has worked with Article 19 on issues of media law policy and regulation, among other organisations.
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Fred M'membe

Fred M'membe is the founder and Managing Director of Post Newspapers Limited and Editor-in-Chief of The Post, a daily newspaper that he has been editing from inception in 1991 when it was a weekly newspaper called Weekly Post. He is a Ph.D candidate in Journalism and Media Studies - Rhodes University. He is also a Doctorate in Business Administration (DBA) candidate – Binary University of Entrepreneurship and Management in collaboration with University of Zambia. He holds the following academic and professional qualifications and experience: Master of Laws, University of Lusaka; Master of Arts in Economic Policy Management, University of Zambia; Bachelor of Accountancy, University of Zambia; Bachelor of Laws, University of Zambia; Advocate of the High Court of Zambia; 1986-88, Financial Accountant, Zambia State Insurance Corporation; 1988-91, Audit Senior, KPMG Peatmarwick, Lusaka. Fred M'membe is a recipient of numerous media awards including: Commonwealth Press Union Astor Award (1996); South African Union of Journalists Pringle Medal (1996); Percy Qoboza Foreign Journalist Award, US National Association of Black Journalists (1999); World Press Hero Award, International Press.
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Prof Levi Obonyo

Levi Obonyo is an Associate Professor of communication and media studies, and also the Dean of the School of Communication, Language and Performing arts at Daystar University. A graduate of Temple University in Philadelphia, USA, he previously headed the department of communication for over five years. He has taught courses in media studies over the last two decades. Until recently Prof Obonyo served as the Chairman of the Media Council of Kenya – the body tasked with regulating media in the country and is currently a member of the Communications Appeals Tribunal – a statutory body that provides alternative mediation mechanism for disputes within the telecommunication and media industry. He has published many articles in academic journalists, chapters in books, and co-authored a book, *Journalists and the rule of law*. Prof Obonyo was the keynote speaker in 2012 at the Biennial communication scholar's conference at the University of Botswana. He was also the African Visiting Scholar of the Month in the Africa Speaks Lecture Series in the Department of Communication Sciences, UNISA in 2009. He is a member of the editorial board of *Ecquid Novi* and has served as an external examiner at many universities including the University of Dar es Salaam in Tanzania and Multi Media University in Kenya.

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Dr Clayton Peel

Dr Clayton Peel is a Senior Lecturer in communication and journalism at Daystar University. A practiced journalist in his native Zimbabwe, where he served as Deputy Editor of *The Chronicle*, Peel was involved in the formative stages of voluntary media regulation endeavours before the Zimbabwe government unilaterally introduced legislation for a statutory media council and stringent regulatory requirements in 2000. Awarded a doctorate by the University of Wales (UK), Peel's research interests have been focused on the "alternative media" generated by the Christian constituency within Zimbabwe, and the substantial Zimbabwean diaspora in South Africa and overseas, and how these sources have provided perspectives outside the constraints faced by secular media houses and practitioners operating inside Zimbabwe. Recently published works include his MA thesis/dissertation on The Church's Communication Practice in Zimbabwe: contrasts between the media practices of Bishop Nolbert Kunonga and Archbishop Pius Ncube, and a chapter from his doctoral research entitled *Exile and the Internet* which has been included in a series on Studies in Forced Migration.

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Dr Julie Reid
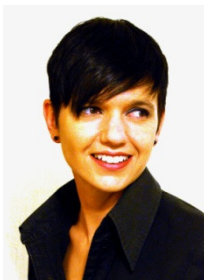
Dr Julie Reid is based at the Department of Communication Science at the University of South Africa (UNISA) and specialises in media studies. Her research interests include the topics of media and communications policy and regulation, and she is currently a project leader for the *Media Policy and Democracy Project* (MPDP) – an inter-university collaborative research initiative. Julie is an activist for media and press freedom, a working member of the *Right2Know Campaign* and sits on the Media Freedom and Diversity sub-committee of the *Right2Know Campaign*. She is also the Deputy President of the South African Communications Association (SACOMM). Julie writes opinion pieces for various newspapers, magazines and online news media, mostly on media politics and issues of media freedom in South Africa. She is the editor of the book *Looking at media: an introduction to visual studies* (Pearson, 2013). In 2013 she was

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Okyerebea Ampofo-Anti

Okyerebea is a senior associate in the Dispute Resolution Practice of Webber Wentzel. She joined Webber Wentzel as a candidate attorney in 2007 and served articles in the Dispute Resolution Department and the Media Department. She completed her articles and was admitted as an attorney in 2009. She currently works in a team that specialises in media law and public law. Okyerebea obtained her LLB degree (cum laude) at the University of Pretoria in 2004. She went on to complete her LLM in Human Rights and Democratisation in Africa, also at the University of Pretoria, in 2005. In 2006 Okyerebea clerked for Chief Justice Pius Langa at the Constitutional Court of South Africa. In 2009 she completed a five month secondment as an intern in the Appeals Chamber of the International Criminal Court. In 2011 she was selected by the Media Magazine as one of the top 40 people under the age of 40 in the media industry. She also serves on the board of *the Media Magazine*.
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Dr Glenda Daniels

Dr Glenda Daniels is a senior lecturer at Wits Journalism, heading the *State of the Newsroom Project*. She holds an MA (*cum laude*) and a PhD in Political Studies at Wits University specializing in media and democracy. She is author of the book *Fight for Democracy: The ANC and the Media in South Africa*. She has been as a journalist for over 20 years having started her career at the then *Weekly Mail* in 1990, and has since worked for most of the country's print media companies in various positions including crime reporter, labour correspondent, senior features writer, chief copy editor. Her last newspaper position was as the *Mail & Guardian's amabhungane's* advocacy co-ordinator. She joined Wits Journalism in 2012. Daniels is also a media freedom and information rights activist, and served on the first national working group of the Right2Know campaign.
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Prof Pieter J. Fourie

Pieter J. Fourie is the pervious head (1987-2004) of and professor in the Department of Communication Science at the University of South Africa. He holds a BA, BA Honours (Drama), BA Honours (Communication) and a Master's degree from the North-West University (previously the Potchefstroom University for Christian Higher Education) and a DLitt et Phil degree from the University of South Africa. Before he joined academia in 1976 he was a journalist. He is the author and editor of a number of books on media studies, has published more than eighty research articles and chapters in books, delivered more than a hundred papers and seminars and is a NRF rated researcher. He is the editor of *Communicatio: South African Journal for Communication Theory and Research* for more than thirty years. He serves on the editorial boards of five research journals and is a member of a number of key disciplinary related academic committees and boards. He was twice the president of the South African Communication Association (SACOMM) and was awarded the Stals Prize by the Suid-Afrikaanse Akademie vir Wetenskap en Kuns for his contribution to communication science in South Africa. On previous occasions he was guest professor in Communication at the University of Amsterdam and the Free University of Brussels and a member of the external quality control and audit commissions for communication science in Flanders and in the Netherlands. He is a frequent external examiner of both undergraduate and postgraduate studies at South African and overseas universities and the promoter of fifteen completed doctoral students.
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Mahmood Sanglay

Mahmood Sanglay is a media activist and a Fulbright fellow in Journalism. He holds post-graduate qualifications in Education and English Language and Literature. As President of the Association of Independent Publishers (AIP), representing the interests of the largest group of small, independent and grassroots publications in South Africa, he has an interest in both the editorial and the business aspects of newspaper publishing. He heads AIP's campaigns for the sustainability of the independent press by means of projects-driven initiatives, research, policy issues and the setting of industry standards for the sector. One of his successful campaigns is the certification of independently-owned newspapers by the Audit Bureau of Circulations. A current campaign involves lobbying Government Communications and Information System (GCIS) and the Independent Electoral Commission to allocate 30% of their advertising budget for the sustainability of community media. Mahmood also serves on the board of Print & Digital Media South Africa and the Forum for Community Journalists. As a board member of the Press Council of South Africa he serves as an industry representative on the Panel of Adjudicators. He is also director and senior writer for Muslim Views, published in Cape Town, the leading South African Muslim newspaper with a publishing history of over 50 years.
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Gabriël Botma

A critique of the critic: Considering discourses on press regulation in South Africa and Britain

This paper argues that the first decade (and a little more) of the 21st century has seen contradictory tendencies with regards to media freedom and regulation in both established and "developing" democracies. On the one hand, the rise of new and social media meant that it has become increasingly harder for stakeholders to keep information out of the public domain and control its dissemination. On the other hand, dissatisfaction amongst both authorities and the public with the performance of especially the print meant that this sector experienced increasing regulatory pressure in an effort to ensure social responsibility and accountability.

Obvious recent examples of this trend is the Leveson Enquiry in Britain after the tabloid phone hacking scandal and continued pressure in South Africa for a statutory Media Appeals Tribunal, which led to the introduction of a co-regulation system (between the media and the public) instead of a long-standing self-regulating mechanism for the press. It is interesting to note that current plans for British press reform also include a measure of co-regulation with the public, because the existing British system of self-regulation, like the one in South Africa, was deemed "toothless" by media critics.

The central question in this paper is why media critics in both countries are set on tightening the regulatory framework around the press, while the freedom to publish on the internet is arguably becoming greater? To be true, there are existing regulating measures on the internet and plans afoot to deal with transgressions in cyberspace. But, while the people formerly known as the audience are gaining in voice and influence, both public and official opinion seemingly agree that the members of the press not only possess too much power, but are misusing it.

Are media critics, including academics, stuck on dated normative models of the press and a traditional view of more or less direct "media effects"? What is the role of continuing discourses of modernity and European Enlightenment in conceptions of the press as a central vehicle for "development" and the establishment and enhancement of democracy?

This paper will refer to Michel Foucault's theory of discourse to consider how the discursive regime around press regulation is constructed by media critics. According to Foucault, systems and institutions of power/knowledge, such as regulatory frameworks and bodies, are "created" by discourse. This paper considers the growing movements towards greater regulation of the press in Britain and South Africa as examples of discursive regimes that can exercise power/knowledge.

The aim of the paper is too analyze and compare critical discourses of the press in Britain and South Africa in order to identify central discursive themes about the role of the press in society. The focus will fall on recent developments in Britain, following the Leveson Enquiry, and in South Africa, around the announcement of a new system of co-regulation in 2012. Critical discourse analysis methods will be employed to select and analyse published material.

The analysis will be guided by a three-step framework developed in Botma (2011). Firstly, it is accepted that media critics regard the print media as an important part of and platform for political, economic, social and cultural struggles in Britain and South Africa. Therefore the analysis in this section will focus on discourses in which the press is identified as a site of struggle by media critics. This will arguably shed light on (often unstated) departure points on conceptions of the role of the press in society amongst media critics.

The second departure point is that discourses about the role of the press would show clear overlaps because media critics in Britain and South Africa are locked into the same functionalist discourses of journalists as "top-down" professional communicators to the public. In this section a comparison of critical discourses in Britain and South Africa will arguably identify key discursive themes that are shared by media critics.

Thirdly, this paper accepts that media critics (national and transnational) do not comprise a homogenous grouping and that discursive struggles and differences will therefore occur. The third section of the analysis will therefore identify key areas and themes of difference of opinion between critics of the press in Britain and South Africa.

This paper will contribute to insight about perceptions about the role of the press in a changing society, as it addresses the troubling question whether the views of media critics have been keeping pace with the rapid changes in media and society over the last number of decades.

Reference
Botma, G.J.2011: Going back to the crossroads: Visions of a democratic media future at the dawn of the new South Africa. *Ecquid Novi: African Journalism Studies*, 32(02), pp. 75 - 89.

Marc Caldwell

Dialogical selves and the problem of global media ethics

One difficulty with communication ethics is that the term 'communication' itself is usually defined too vaguely. Where definitions are attempted, these usually render the term synonymous with information flow (and exchange), interaction, impressions, perception and/or human behaviour. Even where the term is given its Aristotelian definition of "a commons", it is seldom clear how this end result derives from communication as a process.

Even more problematic is the notion of interpretation when considered in relation to intentionality in acts of communication. For one, there seem little or no grounds to deem communication to have been accomplished where intention is deemed absent on the part of a message sender. On the part of the receiver, on the other hand, there are equally strong grounds to question whether communication has been successful where interpretation has been misconstrued, negotiated and/or rejected.

These difficulties are enhanced in a context of global media. It is difficult enough to envisage and shape a form of journalism ethics that responsibly serves a public interest on a local, regional and national scale. On a global scale, the difficulties of being a "responsible press" only become writ large; and what that 'public interest' entails is almost anyone's guess. Perhaps a rule of thumb would hold that local issues should make local news, and global issues should make global news. But a jingoistic press tub-thumping a local issue can lead a country or region to war with its neighbours (leading to a global issue). So-called 'issues' that are presented as global can be promoted (even

sponsored) by interests that are entirely regional. Nick Davies' book *Flat Earth News* (2008) cites a number of recent cases.

Most often these difficulties derive from the assumptions we have about both communication and persons. One view holds that global media ethics is an extension of journalism ethics, interpreting standard ethical principles in an international manner, or in a more 'cosmopolitan' tone.[1] The difficulties with this view stem in part from seeing a 'cosmopolitan' audience in terms of a local 'media market'; except that the global 'market' becomes a counterpart of commodity globalization, and any sense of encouraging 'global conversation' amounts to causing a spike on Twitter. No conversation; only comment.

The transmission models of communication that reflect that patterns of news production and consumption that prevail to are typically prone to difficulties of limiting global journalism to simply a wider reach of local news, mainly because these production and consumptions patterns limit communication to their technical means, and limit communicative behaviour to mentalistic procedures. Such models give primacy to instrumental reasoning that favours technical solutions over human solutions, and means over ends, thus leaving one barely able to address problems of communication ethics with any satisfaction. A 'global media ethics' that corresponds to such conditions can only be a procedural protocol given to minimizing harm without the hope of doing any good.

Dialogical models of communication offer a more nuanced and holistic understanding of communicative interaction, but gain little ground in the absence of a suitably dialogical model of communicators, or persons, themselves. Questions of communication ethics remain equally opaque. This paper explains how Canadian philosopher Charles Taylor's philosophical anthropology offers a model of human communication that enhances the capacity to deal with questions of communication ethics in terms of persons understood as dialogical selves. To be a person in the full sense you have to be an agent with a sense of yourself as an agent, "capable of making plans, holding values, and exercising choice" (Taylor 1985: 257).[2]

Anton Harber

Towards an ethic and practice of transparency among journalists

This paper will argue for a new ethic and practice of radical transparency among journalists, and explore some of the challenges around the implementation of such an idea.

It has become standard international best practice for a journalist whose objectivity may be compromised by a potential conflict of interest to either not cover that story or to declare their interest to the audience. This practice, I will argue, is a based on outdated notions of objectivity and independence. A reconsideration of the meaning of these notions points to a need for a new and different approach to individual journalist's interests, affiliations and potential conflicts of interest.
The paper will explore contemporary interpretations of notions of independence and objectivity/fairness as well as the relationship between transparency and accountability. By doing so, I will strive to show that for individual journalists to be accountable to their publics, they should be obliged to declare all their interests and affiliations - not just in relation to a particular story or institution, but to their whole body of work. In other words, journalists should use the internet to

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[1] http://ethics.journalism.wisc.edu/resources/global-media-ethics/
[2] Taylor, C. (1985). The Person, In M. Carrithers, S. Collins and S. Lukes (eds.), The Category of the Person: Anthropology, Philosophy, History. Cambridge: Cambridge University Press. Pages 256-281.

post a full list of interests and affiliations, much as they expect from elected officials or the judiciary. This is what I mean by radical transparency: it must be full, detailed, complete and up-to-date and include any source of income, investment or affiliation which may be seen as establishing an interest which may affect the coverage of a story.

I will argue that codes of conduct and conditions of employment should be adapted to encourage this new level of declaration of interests, not for individual stories but for the individual's overall professional practice. This will help restore the trust and credibility in the practice of journalism which has been lost in recent years, and will also serve to set a model for transparency among all professions, in keeping with the journalists' pursuit of openness and accountability among public servants.

This proposal poses practical issues and challenges, and raises a number of difficult questions, such as just how much information should be made public; does it apply to a spouse or partner; and what is the balance between accountability and the right to privacy? I will explore some of these issues.

Nicola Jones

What is legal is not always ethical: the Sunday Times, City Press and Mail & Guardian's coverage of Reeva Steenkamp's alleged murder in the context of South African crime and court reporting.

The Oscar Pistorius case has placed the limits of crime and court reporting in South Africa, in particular the sub-judice rule, in the spotlight. The Valentine's Day shooting of Reeva Steenkamp, Paralympian star Pistorius' girlfriend, drew unprecedented local and international attention, with global traditional and social media providing constant coverage for the first two weeks. Because of the huge engagement from citizens on social media, this presented the traditional South African media with extraordinary challenges; as a result, for example, before the bail hearing took place, explosive allegations were published including rumours of a bludgeoned skull, a bloody cricket bat, and a pattern of domestic abuse. Dawes (2013) has argued that the situation created massive risks for the media "because of the competitiveness of the environment, the requirements of speed and because the legal and forensic issues are complex and the picture can change very quickly". Eaton (2013), on the other hand, has argued that when it comes to "sociopathic scandal-mongering, certain sections of South Africa's media can compete with the foulest in theworld".

This paper attempts to answer the question, have the media crossed the line between what can and cannot – and indeed, should and should not - be reported in South Africa with regard tocrime and pending court proceedings? The concerns here are whether justice might be impaired by leaked evidence being reported, therefore undermining Pistorius' right to a fair trial. Until recently, court reporters were instructed not to introduce evidence but only report it as it emerged during the trial; they were instructed never to embellish the court record in case they prejudiced the process of law and the presumption of innocence. As Harber (2013) points out, reporters who transgressed in the past would be called before the judge or magistrate, often in open court, and reprimanded, as well as facing the possibility of being charged with contempt of court.

This paper, consequently, critically analyses the online coverage of the *Sunday Times,City Press* and *Mail & Guardian* newspapers from 14 February to 28 February 2013 with the ultimate intention of determining both the legal and ethical implications of this coverage. It briefly discusses two issues which have influenced media coverage in recent years, namely the 2007 Supreme Court of Appeal decision ruling that the right to a fair trial must be weighed against the right to freedom of expression, and the rise of social media, whose unprecedented speed and widespread dissemination

of information among ordinary members of the public has led to traditional media being challenged to confront this phenomenon in various ways.

The paper thus examines the sub-judice rule and the current uncertainty surrounding this legislation. According to Milo and Singh (2013), this rule "creates an obvious tension between the administration of justice, which it purports to protect, and the constitutional right to freedom of expression, which includes the right to receive and impart information". According to Barker (in De Beer, 2002: 267), there are several ways the media can transgress this rule, including evidence relating to the case being published before being presented in court, pronouncing the guilt of the accused before the court verdict, attacking the credibility of a witness, and publishing facts that a judge or magistrate is not allowed to know while a trial is pending such as that an accused has previous convictions.

Where social media is concerned, writers continually debate how journalists should report on events as fairly and accurately as possible, and one of the fundamental issues raised within this process is the concept of "public interest". It is understood that, at times, "the public has a legitimate need to know information that other people would like to keep private" (Jones, 2008), and journalists are frequently faced with a moral dilemma when disseminating private information – how far should they infringe on an individual's fundamental right to privacy? Ethicists generally agree that "it is just for a journalist to violate the privacy of an individual only if information about that individual is of overriding public importance, and the public need cannot be met by any other means" (Hodges, 1994: 203). But how relevant is this discussion in the current climate of new media technology? Website applications such as Twitter and Facebook encourage users to collapse distinctions between public and private, and concentrate on sharing and collaborating information and ideas, and the Pistorius saga set social media alight with rumours, allegation, gossip and even "fan clubs". Dawes (2013) argues that the role of traditional media in this situation is "to help make meaning out of it" without newspapers or journalists losing sight of their focus or identity. Ultimately, this paper argues if journalists should be at liberty to use private information circulating throughout social networks, or if like other gossip, this information should be treated with caution. It explores how journalists dealt with appropriating information from social networks in the overall Pistorius coverage, and if there are times when professional journalism ethical guidelines should take preference over what is strictly legal.

Jacinta Mwende Maweu

The Effectiveness of self regulatory media councils in Africa: The case of the Media Council of Kenya

This paper seeks to examine the normative framework within which journalists operate as they make their daily ethical decisions in Kenya and the extent to which the Media Council of Kenya is effective as the national media self regulatory mechanism. The Media Council of Kenya (MCK) is an independent national institution established by the Media Act 2007 as the leading institution in the regulation of media and the conduct and discipline of journalists. Among the core functions of the Council include the promotion and protection of the freedom and independence of journalists and the promotion of high professional and ethical standards among journalists and the media.

Normative theories of the media generally describe the ideal values, roles and acceptable standards against which media systems may be structured and evaluated; they outline both the internally chosen purposes of the media and the claims from outside about how the media should conduct themselves.

Since the advent of political and economic liberalization and democratization in Kenya in the early 1990s, commercial media in Kenya have undergone a shift from an environment in which their freedom was highly controlled by an authoritarian system of government to one of self-regulation through codes of conduct and an independent media council. Media freedom in Kenya is explicitly protected under section 34 on the Bill of Rights in the new constitution. Before liberalization in the early 1990s, the commercial media in Kenya were expected under the authoritarian government to play a pivotal role in promoting the development agenda under the normative framework of development journalism, and the government could always intervene if it felt that the media was not discharging this role effectively. Most debates about media freedom and responsibility since liberalization have therefore centered on the relationship between the media and the government. Media accountability and performance in Kenya today continues to be evaluated against the bench marks of the liberal- pluralist democratic model which centres on media- government relations.

The main argument that this paper makes is that the Media Council of Kenya as the official 'independent' national self regulatory media mechanism is a 'toothless bulldog' that does not have the teeth to bite hence it cannot effectively discharge its outlined roles of ensuring media accountability and the professionalism of journalists in Kenya. Qualitative interviews of practicing and former journalists of two leading media houses in Kenya (the Nation Media Group and the Standard Media Group) show that as much as the media council of Kenya has provided journalists with the code of conduct there is no concerted efforts from the council to ensure adherence. Most of the interviewed journalists also confessed that a large number of journalists, the interviewees included are not guided by the outlined ethical principles in the code as they make their daily decisions, but by the 'realities' of the newsroom. From the research findings it also emerged that most journalists do not even know what the media council does and the public has little knowledge and trust in the council to arbitrate on complaints lodged against the media. Most of the interviewees observed that as it is now, the media council is skewed towards the media industry and that undermines its capacity as the self-regulatory mechanism. For instance, the current chairman of the council is also the editorial director at the Nation Media Group. The CEO of the Nation Media is also one of the representatives of the Media Owners at the Council.

We therefore advocate for a more diverse membership involving the consumers' representatives (public), the private and public sector representatives, the media and the journalists. As it is now, it is not practical to expect the same media owners and journalists to self right themselves especially in the newly commercialized media environment in Kenya where journalists' and media freedom and responsibility is under severe commercial threats. From the research findings, the journalists also observed that the best way to ensure effective media self regulation would be a mix of internal and external self regulatory mechanisms. Internally there should be strict policy guidelines and concerted efforts from the management to enforce the code of conduct and externally we should have a strong objective and credible Council.

Adolf Emmanuel Mbaine

Challenges to self regulation in Africa: The case of Uganda

The issue of the balance between freedom of the press and the rights of other people to privacy, dignity and reputation, as well as the security concerns of the state has been a thorny one across many jurisdictions, over time. Notions like media accountability and social responsibility have come up to explain why the media should publish/broadcast certain information and why, in some cases, it should not.

One of the key ingredients in this balance is the conduct of the journalists who are key agents in the gathering and dissemination of information for public consumption. The question of who regulates the journalists has, then, become a very pertinent one. Many governments and some other political actors seek to impose statutory regulation because it is efficient and effective since it is underpinned by legislation; as exemplified in its use for the medical and legal professions. There are also emerging voices in favour of co-regulation, especially of the version involving the public and the media, without the participation of the state.

Most journalists, however, tend to prefer self-regulation, defined by Haraszti (2008) as "…a joint endeavour by media professionals to set up voluntary editorial guidelines and abide by them in a learning process open to the public. By doing so, the independent media accept their share of responsibility for the quality of public discourse in the nation, while fully preserving their editorial autonomy in shaping it." Self-regulation is acceptable to the media because it is largely free from state control, involves a peer review mechanism, is less costly and focuses more on correction rather than retribution for editorial mistakes, among other advantages.

In 1995, the Parliament of Uganda enacted the Press and Journalist Act to regulate the press in Uganda. The Act created a Media Council. The statutory Media Council's functions, as laid down in the Act, include the regulation of conduct and promotion of good ethical standards and discipline of journalists; arbitration of disputes between the media and the public and between the state and the media; and the exercise of disciplinary control over journalists, editors and publishers, among others. Needless to say, the statutory Media Council has never enjoyed the support of journalists and editors, or even human rights organizations and donors.

In 2006, journalists' associations, together with editors, established an alternate (voluntary) Independent Media Council of Uganda (IMCU) to promote media self regulation and responsibility in Uganda. The creation of IMCU was, significantly, a response to the government's earlier introduction of statutory regulation for journalists in both the print and electronic media. It was hoped that with the introduction of IMCU, the statutory Council would be rendered irrelevant and redundant. Additionally, the existence of a fully functional IMCU would help the media's case to have the Press and Journalist Act repealed, and together with it, the Media Council.

However, the IMCU seems to have been deterred by serious challenges and has failed to become fully functional, seven years since it was inaugurated. This failure of the IMCU has raised questions as to whether the media in Uganda can regulate themselves (the government holds the view they cannot) for accountability and enforcement of ethical standards. In the meantime, the statutory council continues to operate although it is also hampered by lack of financial resources, partly because it enjoys very little or no support from the media industry it is supposed to regulate in the first place.

This paper will discuss the key challenges that have inhibited self-regulation efforts in Uganda, so far, and suggest the way forward. The paper will also look at instructive experiences in self-regulation from the African continent and beyond.

Fred M'membe

Zambia's Unending Search for Press Accountability and System of Regulation.

Questions of press accountability in Zambia have been on the agenda for public discourse for over two decades now.

And the last four years have seen increased attention being given to how the press should be regulated. The increased attention to questions of press accountability in Zambia has to some extent been influenced by the debates that have been taking place in the United Kingdom following the phone-hacking scandal and subsequent Leveson enquiry. It has also been influenced by the recent reviews of the system of press accountability in South Africa conducted by the Press Council of South Africa (2010 – 2011) and by an independent review conducted by the Press Freedom Commission (2011 – 2012).

Despite the topicality of press regulation in Zambia since 1991, there is presently no comprehensive study about the most suitable regulatory model for the press in Zambia. The available literature has focused much more on broader themes.

In attempting to address the issue of how the press can best be regulated to maximise accountability without compromising independence, the paper tries to identify the key criteria such a regulatory regime would have to meet. The paper examines the existing approaches to press regulation and also analyses the new suggestions that are being bandied around. In examining and analysing these approaches, the paper tests the effectiveness of each regulatory regime in terms of credibility and durability with both the press and the public; fairness and objectivity of standards; independence, transparency of enforcement and compliance; effectiveness and credible powers together with remedies; and the need for sufficient and independent funding taking into account the constraints facing the industry.

This is found to be necessary because what is needed is a genuinely independent and effective system of press regulation that would both work for the industry and for the public.

Although statutory regulation of the press seems does not seem to receive much favour from both the industry and the public, the paper examines the value of a statutory self-regulation or co-regulation regime.

An absolute application of statutory regulation, however, does not and will not provide the solution to questions of press accountability. And accordingly is likely not to be further pursued or analysed as an option or press accountability and system of regulation that may constitute best practice.

The paper recommends a press regulatory regime that represents the interests of the public as well as the press. There is a realisation that the current press regulatory system and even the proposed new model for the Zambian press does not go anything like far enough to demonstrate sufficient independence from the industry or sufficient security of high and unalienable standards for the public.

The current and proposed media self-regulation regimes seem to fail to meet the test of independence because there are dominated by media or media-related people.The goal must be a genuinely independent and effective self-regulatory system. To be independent such a regulatory system must include people from outside the industry. The inclusion of people from outside the

industry raises questions about the concept of 'self-regulation'. How can this be said to be self-regulation when it includes people from outside the industry? This introduces a new concept of 'co-regulation' of the press – that is regulation of the press by a joint undertaking between the press and the public.

There is a strong feeling that whatever form of independent self-regulatory or co-regulatory regime is adopted there should be legislation to underpin the independent self-regulatory or co-regulatory system and facilitate its recognition in the legal processes. However, such legislation should not establish a body to regulate the press: it should be left to the process to come forward with its own body that meets the criteria laid down. The intention of such legislation is to ensure that there is a legal duty on the part of the government to protect the freedom of the press and provide and independent process to recognise the self-regulatory or co-regulatory system and assure the public that the basic requirements of independence and effectiveness will be met. And by recognising the self-regulatory or co-regulatory system by statute this would give legal benefits to those who subscribe to the system. What is being advanced here is an independent press regulatory system with a statutory verification process to ensure that the required levels of independence and effectiveness are met by the system to the benefit of the press and the public.

This being a media policy and democracy issue, the paper anchors its theoretical framework on the democratic theory and justifies why this should be so.

Levi Obonyo & Clayton Peel

Media Regulation in emerging democracies: a comparative analysis of statutory and voluntary media councils in East Africa

The debate on an appropriate regulatory framework for media in Africa has been an ongoing one. Right from independence there have been those that considered the role of the media to be that of a collective mobilizer to be applied towards collective national development. Too often development was defined rather narrowly, and from the perspective of those in power, allowing for a regulatory framework that facilitated the pursuit of these limited interpretations. But as democracy takes root in the continent and the contestation of the media space continues, competing voices are advocating regulatory frameworks that have ranged from the more constricted ones on the one hand to those that advocate for self regulatory mechanism. It is a debate not confined to the African continent. Statutory or self regulation is a question confronting freedom of information advocates. Countries with a complacent media sector, such as Zimbabwe, have had that choice made for them by governments (Compagnon, 2011, p. 131); (Chuma, 2011, p. 271) but there are other countries that have been successful in adopting self regulatory frameworks. Nyamnjoh has opined that African countries want a conformist media that appropriates government objectives (Nyamnjoh, 2005, p. 161). Even liberal South Africa has vacillated in its stance on media freedoms, (Kruger, 2009, p. 7), against a global standard moving towards non-statutory enforcement (Article 19, 2006).

This competing legislative arena has, in some cases, created a crisis of information flow even in western democracies such as Britain. There has been a contestation, going back to the end of WWII between the theories of a free media and the development-oriented theories which see media platforms as tools for national cohesion and reaffirmation of government objectives (McPhail, 2011). The founding fathers of postcolonial states may have had legitimate concerns in the face of challenges presented by nation-building, but their aspirations, however well-meaning, became linked to Soviet-style totalitarian objectives, which were to resist a free media environment. This mindset continues to influence some emerging democracies, where scholars tend to view

governments as more concerned with retaining political power than pursuing their original development goals (Nyamnjoh, 2005).

The aim of this paper is to learn, by literature review, field observation and interviews, what models the state and media actors, particularly in East Africa, have adopted in their respective situations, how state and media players have interacted, what input media players have had into any legislation, and the satisfaction or dissatisfaction of voices from either side as each country's models have been implemented. Through field trips and interactions with each context, we intend to interrogate concerns that legislated control of the media environment is necessarily harmful; that self-regulated councils constituted by media practitioners themselves as "courts of honour" (Kruger, 2009)are the way forward; and that ulterior political motives alone drive the government media regulation agenda in the 21st century.