



RIGHT2KNOW

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Right2Know submission calling for public access to the disciplinary hearing of Siphon Hlongwane.

INTRODUCTION

- 1 The Right2Know Campaign (R2K) a public advocacy campaign launched in August 2010 and has grown into a movement centred on freedom of expression and access to information. R2K's advocacy includes campaigning for a free and diverse media that can serve the information needs of all living in South Africa.
- 2 R2K respectfully requests that the public and other media be granted access to the scheduled disciplinary hearing instituted by Media24 against journalist, Siphon Hlongwane, in the public interest.
- 3 R2K makes this request as a public advocate for media freedom, free flows of information and in the interests of open justice. In the *Company Secretary of*

Arcelormittal South Africa v Vaal Environmental Justice Alliance (69/2014) [2014] the SCA held that VEJA is a genuine advocate for environmental justice; that courts should adopt a "common sense" approach to public participation and collaboration; and that VEJA is entitled as an advocate for environmental justice to access the information. R2K is an proven advocate for the media freedom, freedom of expression and open justice.

- 4 The underling matters concerning the internal disciplinary hearing of journalist Mr Siphon Hlongwane for his part in publishing the controversial blog "Could it be Time to Deny White Men the Franchise?" on the Media24 owned Huffington Post SA website are of unprecedented public interest, and intersect with numerous concerns of the R2K articulated in the campaigns policy position on media freedom and diversity.

PUBLIC ACCOUNTABILITY

- 5 In the campaign's policy position on 'defend(ing) media freedom', R2K has committed to campaign for *"the various sections of the media ...be supported to develop and improve voluntary media accountability mechanisms, to strengthen the accountability of the media to the ethics of journalism and to society"*
- 6 Media24 is owned by NASPERS and is Africa's largest publisher, printer, and distributor of magazines and related products, as well its largest newspaper publisher. In South Africa, Media24 has a significant market share of satellite television and control 40% of all print distribution. It is a well established principal that where private companies wield public power and the more concentrated the [media] industry, the more public power they have, conferring a higher threshold for public accountability in a democratic society.

7 The Daily Maverick (DM) reported on the findings and recommendations of the “Siegal Committee report.” The Siegal Committee emerged in response to scandal around lack of editorial controls in the face of anonymous sources, commonly known as ‘the Blair scandal.’ The response from the Committee is telling for the matters at hand. The report recommended that:

“After the damage inflicted by the Blair scandal and the events that followed, we recommend a dramatic demonstration of our openness to public accountability,” and later added that “we must affirm the values of transparency, fairness, and accountability throughout our newsroom”.¹(emphasis added)

8 In the same DM article, it is reported that in 2000 the Human Sciences Research Council reported public trust in the South African media had fallen from 66% in November 1999 to 40% in September 2000, following the survey and interview of more than 2,600 South Africans across the country.²

9 In the 2008 Sunday Times scandal, which saw a series of false or vastly inaccurate stories published, a four-person panel was appointed to review the Sunday Times' editorial processes. The panel was asked to make recommendations "to enable the Sunday Times to produce bold, incisive journalism that maintains the utmost credibility with its audience"³. Despite the panel's recommendations the report be subject to ‘*open debate*’ and the document be released to the public in full, it remained suppressed for two

¹ Michelle Solomon (2011) Free, responsible media is about public interest AND public trust, in Daily Maverick 19 May 2011 <<https://www.dailymaverick.co.za/opinionista/2011-05-19-free-responsible-media-is-about-public-interest-and-public-trust/>>

² Ibid

³ Sunday Times Review Panel Report (2008) “Where the Sunday Times went wrong” <<http://www.politicsweb.co.za/news-and-analysis/where-the-sunday-times-went-wrong>>

and a half years. The erosion of public trust, and the resultant deepening the credibility crisis could not be overstated:

"It is probably more likely that people will mistrust the Sunday Times because of its secrecy. This secrecy creates the impression in the minds of the public that there are secrets that the Sunday Times won't reveal, and that perhaps the rot is deeper than the executive summary shows."⁴

- 10 An opinion piece published on the *Sunday Times* matter, a critique was offered on how the press typically attempts to deal with problems which question its credibility, and offered recommendation on a more robust and accountable method:

" Nowadays, however, real repair of the journalistic paradigm requires something extra. It takes ongoing openness about the measures taken to ensure journalism lives up to its claims. Only by leading in this, by freely disclosing its processes and its problems, and the steps taken to deal with them, can the Sunday Times stop giving ammunition to the enemies of journalism. In the US, a current slogan is that "transparency is the new objectivity". In our case, we need the newspaper to practice transparency as "the new credibility"⁵. (emphasis added)

- 11 Media academic, Herman Wasserman's, apt observation in light of the Sunday Times case echoes the principle of media transparency: *"A culture of openness, transparency and a free flow of information is necessary for citizens to realise their rights. But it would be naïve to limit this culture only to "elected officials" ...if South African media "want to be*

⁴ Michelle Solomon (2011) 'Sunday Times and me, Part II: The Empire strikes back, sort of' in Daily Maverick, 12 May 2011 < <https://www.dailymaverick.co.za/opinionista/2011-05-12-sunday-times-and-me-part-ii-the-empire-strikes-back-sort-of/#.WSWIJDOB1sM>>

⁵ Guy Berger (2011) "For the Sunday Times, transparency should be the new credibility" <http://thoughtleader.co.za/guyberger/2011/06/27/for-the-sunday-times-transparency-should-be-the-new-credibility/>

taken seriously as watchdogs over government, if they want to fight for transparency in public life..., then they should have the guts to turn the gaze upon themselves."⁶(emphasis added)

- 12 R2K is of the view that an open internal disciplinary hearing will not only be important in fostering a publicly accountable media, but also be crucial in building the public's trust in the media, underscored by the principle of open justice and the free flow of information.

OPEN JUSTICE

- 13 The principle of open justice has now been constitutionalised through the entrenchment of a right to a fair public hearing in section 34 of the Constitution and the right to a public trial in terms of section 35 of the Constitution. Our Courts have held "*it is clear from section 34 that the constitutional 'default position' regarding the dispensing of justice is that it must be done in public rather than behind closed doors. It is also clear that this principle applies not only to court proceedings per se, but also, where appropriate to other fora where justice is dispensed.*"⁷

- 14 Open justice allows the citizenry to engage with the issues that are being tried, thus promoting freedom of information and expression. In *S v Mamabolo*⁸ the Constitutional Court held as follows:

⁶ Michelle Solomon (2011) 'Sunday Times and me, Part II: The Empire strikes back, sort of' in Daily Maverick, 12 May 2011 < <https://www.dailymaverick.co.za/opinionista/2011-05-12-sunday-times-and-me-part-ii-the-empire-strikes-back-sort-of/#.WSWIJDOB1sM>>

⁷ *Media 24 Limited and Three Others v National Director of Public Prosecutions and Two Others* [2012] JOL 29172 (GNP) at para 40.

⁸ 2001 (3) SA 409 (CC)

“Since time immemorial and in many divergent cultures it has been accepted that the business of adjudication concerns not only the immediate litigants but is matter of public concern which, for its credibility, is done in the open where all can see. Of course this openness seeks to ensure that the citizenry know what is happening, such knowledge in turn being a means towards the next objective: so that the people can discuss, endorse, criticise, applaud or castigate the conduct of their courts and, ultimately, such free and frank debate about judicial proceedings serve more than one vital purpose. Self-evidently, such informed and vocal public scrutiny promotes impartiality, accessibility and effectiveness, three of the more important aspirational attributes prescribed for the judiciary by the Constitution.”⁹

- 15 The Johannesburg Bar Council has ruled that open justice is applicable to disciplinary enquiries of the Bar Council. In the matter of *Media 24 Limited and Another v Menzi Simelane and Another*,¹⁰ the Bar Council held as follows:

“It is certainly in the public interest that the manner in which the Society disciplines its members is not shrouded in secrecy. All advocates and in particular, members of the Society, are expected to be committed to the highest ethical standards. The rules of the Society are directed at maintaining those standards. The public has the right to expect that the Society will not falter in holding its members to account when they are accused of transgressing the rules. The process must be transparent. If it is not conspiracy theories will thrive.

For an association that is committed to the maintenance of the rule of law and the administration of justice, it is also in the interests of the Society that it be seen to

⁹ At para 29.

¹⁰ Ruling on Media Access in the Disciplinary Enquiry of the Johannesburg Bar Council into the Conduct of Menzi Simelane dated 26 February 2014.

hold its members to account. To do this, the Society must act transparently when it disciplines its members.”¹¹

- 16 The CCMA in the *Lackay vs SARS* matter in 2015 ruled in favour of principle of open justice in arbitrations manifestly in the public interest.
- 17 Open justice also goes some way to ensure a process is seen to be fair, best expressed in the much quoted adage, *“not only must justice be done; it must also be seen to be done.”* The principal of justice ‘being seen to be done’ is particularly relevant in this case. Questions of fairness and bias, and its interplay with race and gender, have been raised, for instance, in the treatment of former editor, Verashni Pillay, one of the few black women in a senior position in the news media. It is probable that similar questions will come to bear in the disciplinary process for journalist, Siphon Hlongwane.
- 18 R2K asserts that precedent exists for disciplinary processes to be public, particularly where the matter is squarely in the public interest and is of public concern, as in the case in the matter at hand.

PUBLIC INTEREST

- 19 The Huffington Post South Africa blog-post attracted attention of websites globally. Locally, it was arguably seen as the biggest credibility crisis for journalism in South Africa, to date, spawning a flurry of public commentary and blogs on editorial processes, accuracy checks, the scourge of fake news and click-bait journalism.

¹¹ At paras 25 – 26.

- 20 The blog post also attracted the outrage of some South Africans, many who submitted multiple complaints about it to the press ombudsman. The ruling itself attracted considerable public interest, including from the South African Editors Forum (SANEF) . The interpretation of hate speech has caused concern around reporting in newsrooms.
- 21 The blog post and the subsequent fall-out have also brought to the fore, issues around race, social power, white privilege and transformation of the media in South Africa – all with bearing on the perceived credibility and public trust in the media.
- 22 It is manifestly evident that the process and outcome of the disciplinary hearing are a matter of wide public interest both locally and internationally.
- 23 R2K urges Media24 to embrace the principles of transparency, public accountability, and the public interest, and grant public access to the disciplinary hearing.

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