



PRO BONO AND HUMAN RIGHTS

News and insights

ACHIEVING JUSTICE FOR VICTIMS OF RAPE AND ADVANCING WOMEN'S RIGHTS

The aftermath of the January 2010 Haiti earthquake left over a million people stranded with no option but to seek refuge in overcrowded displacement camps. The displacement camps failed to provide secure shelter, adequate lighting or any police presence and soon became synonymous with the reports of women and girls and even men and boys falling victim to rape and sexual violence. The high incidence of rape highlighted the need to redress rape and sexual violence policy and procedures in Haiti to prevent further incidences of rape and lend support to the victims. It also reignited the calls for rape law reform in Haiti.



MADRE, a US-based organisation that promotes the human rights of women worldwide, together with its sister organisation, KOFIVIV, proactively engaged other organisations to come to the assistance of the Haiti earthquake victims who were now left vulnerable to rape and sexual abuse. MADRE's mission is to advance woman's human rights by meeting immediate needs and building lasting solutions for communities in crisis. It has delivered over \$28 million dollars worth of support to community based women's organisations in Latin America, the Caribbean, the Middle East, Africa, Asia, the Balkans and the United States and strives to cultivate and sustain positive social change.



In order to address the shortcomings highlighted in Haiti's rape legislation and policies, MADRE partnered with a number of law firms to produce a two part report to assist the much needed law reform process in Haiti. The first report, *Achieving Justice for Victims of Rape and Advancing Women's Rights: A Comparative Study for legal reform* was published in September 2011. It was a collaborative effort by a number of firms, and included research contributed by Cliffe Dekker Hofmeyr in the form of Christine Jesseman, Tracy-Lee Erasmus and Sayjil Magan; DLA Piper and other international law firms.

Christine Jesseman
Director
Pro Bono and Human Rights



The report provides a comparative study of the rape laws and procedures in six different jurisdictions, which includes models of statutes, protocols for victim services and guides to police and prosecutorial procedures. In the second report, the comparative study will be used to identify best practices against which Haiti's current rape law and procedures can be measured in order to best guide legal and policy reforms.

Sayjil Magan
Associate
Corporate and Commercial



As Haiti undergoes its legal reforms, assistance by non-governmental organisations and pro bono legal support will continue to actively drive the social and legal reforms required. This project provided an opportunity for Cliffe Dekker Hofmeyr to make a contribution to an organisation which continuously

strives to make a difference and comes to the aid of the vulnerable to survive crisis when faced with poverty, disaster, violence and discrimination.

Tracy-Lee Erasmus
Associate
Environmental Law



WITHOUT FREEDOM, THE PRESS WILL NEVER BE ANYTHING BUT BAD

Since its establishment in 2007, the Press Council of South Africa (the Council) has faced a fusillade of criticism regarding its ability to regulate print media and its ability to promote accountable and responsible journalism.

Responding to concerns expressed (most notably by the ANC) regarding the effectiveness of the current model of regulating print media and calls for the establishment of a Press Tribunal, the Council constituted a commission, the Press Freedom Commission (the Commission), to investigate and report on various supervisory models available for the regulation of print media.

The Commission called on the public to voice its opinion on press freedom and asked for comment on the four possible regulatory models namely independent regulation; co-regulation; self-regulation and statutory regulation.

THE REGULATORY MODELS

The regulatory models being considered by the Commission are distinguishable from one another by the degree to which government is involved in the regulation of the print media.

Self-regulation

Self-regulation typically requires that the print media voluntarily commit to uphold a code of conduct that the media itself drafts. Typically the journalists, publishers and editors jointly establish a quasi-judicial body to adjudicate complaints. There is no government involvement in self-regulation.

The Council is a self-regulatory body. The South African Press Ombudsman and the South Africa Press Appeals Panel are the adjudicating structures established under its auspices. The Ombudsman is an independent person who is, by reason of the fact that he is required to have extensive editorial experience at a senior level, seen as being closely affiliated with print media. The Appeals Panel is comprised of three representatives from both the print media and three members of the public.

Independent regulation

Independent regulation requires the establishment of an independent regulator that is ostensibly independent of government and the media. Such a regulator would ordinarily be established by government in terms of statute and is funded by government.

Although the statutory mandate of independent regulators is generally to act independently of government without fear, favour or prejudice, governments, by their very nature, are seldom able to resist the temptation to interfere in the processes of independent regulators as has been seen in the case of South Africa's telecommunications and broadcasting regulatory authority, the Independent Communications Authority of South Africa.

Co-regulation

Co-regulation involves government, independent regulatory agencies, industry, independent self-regulatory agencies, civil society groups and citizens/consumers in an overlapping set of relationships. A key element of a co-regulatory framework is the self-contained development of binding rules by the co-regulatory organisation.

Government is generally tasked with enforcing compliance with the rules.

Statutory regulation

Statutory regulation anticipates that government alone will formulate and enforce legislation aimed at controlling the press. Statutory regulation is entirely inimical to a free press.

OUR CLIENT: SECTION 16

Section 16, a non-profit organisation, approached Cliffe Dekker Hofmeyr, requesting pro bono assistance in preparing representations to the Commission on their behalf.

Section 16 is a non-profit organisation whose aim is to bridge the gap between the legal fraternity and the public with a particular focus on press freedom and the protection of the public against any abuses of that freedom.

Cliffe Dekker Hofmeyr assisted Section 16 with its written submissions to the Commission and, on 1 February 2012, made oral representations on behalf of Section 16 to the Commission at hearings held in Braamfontein.

SECTION 16 SUBMISSIONS

Section 16 acknowledges that some form of press regulation is required in order to ensure that the press acts responsibly, professionally and with integrity and that it is held accountable when it fails to meet these standards.

The role of print media in a democratic society is to serve as a check and balance to any abuses of power by government. Section 16 therefore put it to the Commission that it would be highly inappropriate (and indeed dangerous) in a constitutional democracy that protects freedom of the media that government be involved in the regulation of the press.

Inherent in independent regulation, co-regulation and statutory regulation is the very real risk that, through government involvement, the fundamental right of freedom of expression will be undermined or even negated.

Self-regulation is the predominant trend internationally in media regulation and is largely accepted in constitutional democracies as the best form of regulation. In countries that respect the supremacy of freedom of expression, any government involvement in regulation of the print media is regarded as being entirely inimical to free speech and freedom of the media.

Self-regulation is, in Section 16's view, the only regulatory option that does not have the potential to lead to state censorship.

Section 16 is alive to the criticisms being levelled against the Council, in particular its perceived lack of independence. It therefore suggested to the Commission that the constitution of the Council be amended to allow for greater public participation in its management and adjudication processes so that the makeup of the Council is not weighted as heavily as it currently is in favour of the print media industry. In particular, Section 16 suggested that there should be greater public participation in the functions of the office of the Press Ombudsman and that the Council should take a more proactive role in monitoring compliance with its rules and code of conduct.

WHAT NEXT?

The Commission has consulted extensively in each province and has received widely divergent views from the public, interest groups, political parties, and independent government entities. The Commission is now charged with the onerous task of making recommendations on regulation of the press whilst taking all of these views into account.

Hopefully the Commission will be swayed by the sentiments of Section 16 and others who are committed to a free press that acts responsibly and with integrity. In the words of Albert Camus:

"A free press can be good or bad, but, most certainly, without freedom a press will never be anything but bad."

Kathleen Rice
Director
Technology, Media and
Telecommunications

