

ADJUDICATION PANEL RULING 1 AUGUST 2021

Complaint:

Independent Media Publication: Daily News

Journalist/s: Zainul Dawood/Nthombi Nkosi and Gcwalisile Khanyile

Photographer: Not applicable

Complaints lodged by: Narendh Ganesh and Abhir Dayaram

Date complaints lodged: 23 July 2021

Type of complaint: Sensational and misleading headlines and inaccurate reporting

Ruling:

Date ruling delivered: 2 August 2021

Applicable clauses of Independent

Media Press Code: Clause 2.1. Any publication will not publish inaccurate, misleading or distorted information.

Related complaints considered: Not applicable

Sanction/Remedy: No sanction proposed

Is this report notable?: Yes

Summary of notability: See final ruling.

1. Background:

1.1. Public violence and looting engulfed large parts of KwaZulu-Natal and Gauteng after the imprisonment of former president Jacob Zuma on 7 July 2021. In the ensuing days, the protests escalated into opportunistic criminality when civilians damaged property and roads, looted businesses and rioted.

1.2. Residents of the predominantly Indian township of Phoenix set up their own protection squads in response to pillaging and arson as the police were overwhelmed and outnumbered by criminal elements. Residents complained about the absence of police protection against looting mobs.

1.3. The community mobilisation turned violent in Phoenix and led to allegations of racism when vigilante groups took a criminal approach to “protection”, deliberately confronting alleged looters and ordinary citizens, and in the process allegedly committed brutal acts of violence.

1.4. The narrative of a “massacre” of between 350 and 500 Black people in Phoenix, allegedly perpetrated by Indian residents, gained significant traction in the days following the civil unrest. An executive of the National Funeral Practitioners Association of South Africa was quoted as saying that 500 bodies were piled up at the Phoenix state morgue.

1.5. Baseless reports in the conventional and on social media that the “hundreds of bodies” were all as a result of the “Phoenix massacre” seemed to have fuelled a particular narrative and exacerbated rising racial tensions.

1.6. KZN Health MEC Nomagugu Simelane-Zulu had by 21 July tried to dispel the false reports by a visit to the mortuary which she said was processing the remains of 128 individuals and stressed that they were not necessarily all linked to the civil unrest.

1.7. The Phoenix mortuary serviced a large catchment area as far south as Umbilo and as far north as Verulam. The government-run Gale Street mortuary was closed in April last year. Hence, the mortuary at Phoenix received bodies from the greater Durban area.

1.8. However, there was credible evidence being investigated by police of what appeared to be the indiscriminate murders of black people in Phoenix and black people allegedly being assaulted in Phoenix for “just being black”.

1.9. Subsequently, at least seven suspects linked to murders in Phoenix during the unrest were arrested and appeared in court. Some were allegedly connected to more than one murder case and others faced charges relating to attempted murder, malicious damage to property and defeating the ends of justice.

2. The complaints:

2.1. Both complainants, Narendh Ganesh and Abhir Dayaram, objected to the word “massacre” used in the front page headline of 21 July 2021: “PHOENIX MASSACRE CLAIMS 23 LIVES”.

2.2. Ganesh described the use of the word massacre as “distasteful, (dis)ingenuous and in my candid opinion absolutely mischievous”.

2.3. He argued that the headline could “perpetuate racial incitement at a time when a highly volatile and incendiary situation exists”.

2.4. Dayaram also cited the front page headline of 22 July 2021: “PHOENIX BODY COUNT RISES” which he said violated Clause 2 of the Independent Media Press Code.

2.5. He described them as “sensational, biased, distorted and inflammatory”.

2.6. Dayaram noted that red type was used in both headlines “PHOENIX MASSACRE” and “BODY COUNT”.

2.7. He said the massacre headline was based on conjecture and speculation and would promote fear and hatred and claimed that the use of red type suggested that this was the paper’s intention.

3. A summary of the deliberations of each panel member:

3.1. Allan Dunn

3.1.1. The complainants shared sharp disapproval of the term ‘massacre’ in the July 21 headline. They believed it was inflammatory.

3.1.2. Neither disputed the content of the accompanying report, which quoted KZN Premier Sihle Zikalala saying “a total of 22 people died in the Phoenix area”.

3.1.3. “They did not get sick but died tragically after they were shot, stabbed and other vicious ways of being killed. Many say this was a massacre. This is because too many people died at once.”

3.1.4. Where did the disputed term, “massacre”, first arise? Zikalala passage above introduced the word to describe events in Phoenix after he had visited bereaved relatives on July 20.

3.1.5. But the premier offered no definitive view, or verification, on the description of a massacre. He did not endorse it, it was not his personal finding. He thought the term important enough to air, though, attributing its use to the views of “many”.

3.1.6. While the premier reportedly chose to mention the word, he was careful in its presentation, attributing it only to sentiment in the community.

3.1.7. The Daily News did not maintain a similar caution in its headline, failing to include a caveat that could have been included through any of several simple design devices - or through different word usage.

3.1.8. If the premier’s cautious use of ‘massacre’ was the prompt for the headline, it hardened into fact the views of those quoted by him in the body copy of the report.

3.1.9. The editor held, in response to Ganesh/Dayaram complaints, that the death toll justified use of the word “massacre”.

3.1.10. Was the “PHOENIX MASSACRE CLAIMS 23 LIVES” headline mischievous, or inflammatory, as the complainants argue? There is no evidence of the first. Attributing motives or intent without interrogation is highly risky.

3.1.11. On the accusation of an inflammatory headline, it is apparent that police investigators and others scrutinising what happened in that week of mayhem, and particularly in Phoenix, were still trying to fathom exactly what had happened. The deaths in Phoenix and elsewhere were still under investigation.

3.1.12. The reports of July 21 and 22 came as the chaos subsided. It was a time of national shock, bewilderment and first assessment. Facts, timelines, inventories and casualty lists were still being gathered and explanations remained elusive. This shone through the content of the two reports under discussion.

3.1.13. But the alleged inflammatory nature of the headlines of July 21 and 22 had no such effect. The headlines and articles appeared towards the end of the violence. There was no evidence that they rekindled tensions or unrest.

3.1.14. Clause 2 of the Independent Media Press Code, cited by complainant Dayaram, related to accuracy. It committed its news vehicles to not publish inaccurate, misleading or distorted information. It also holds that articles must distinguish clearly between comment, conjecture and fact.

3.1.15. Editor Mdluli argued that it was not for the Daily News to argue with its readers about the semantics of words. Given the focus of the complaints, however, the meaning of “massacre” and the context in which it was used, became the crux of this case.

3.1.16. Various dictionaries defined a massacre as a general slaughter of human beings (or animals), as indiscriminate killing of a number of human beings (or animals).

3.1.17. But our understanding of events in Phoenix in that terrible week remained inadequate. There was fear, hostility, confrontation and destruction, and at least 22 people were killed. How each death happened will be the stuff of inquests, police investigations and court trials. Then, perhaps, we would have a better picture of events in the Phoenix area in that week.

3.1.18. From what we can now glean, there was no massacre in the sense of victims being killed in a single, murderous action. There is no inkling, yet, of a Marikana-like event.

3.1.19. Did the deaths coincide with a particular roadblock, a particular patrol squad, or body of people? Was there an instruction to defend or engage lethally? We do not know.

3.1.20. Complainant Dayaram, stating that communities were forced to fend for themselves in the absence of police, raised the possibility of some vigilantes and criminal elements taking advantage. Did they? Were they responsible for murderous behaviour, human rights violations and other outright crime?

3.1.21. On July 20, however, the Daily News had been authoritatively told by the province's premier of at least 22 unrest-related killings in the Phoenix area. The toll, the locality and the timeframe of those deaths meet most of the dictionary definitions.

3.1.22. The report of July 21 also told us that the word "massacre" was already being widely used. The Daily News did not insert it into currency, but reflected it.

3.1.23. Was it wise to have used "massacre" in a headline amid such volatility and clear tension? There is a newspaper's duty to relate facts, tell it as it was without exaggeration or minimisation.

3.1.24. In these extraordinary circumstances, though, would it not have been advisable for a newspaper serving a community in dire trouble to select a headline more thoughtfully? To tell it as it was by, say, simply running an unrest death toll in Phoenix? The number alone made for a potent headline, and would not have airbrushed the human cost.

3.1.25. This is for the editor to consider. In extreme circumstances, there is a need for special care. Perhaps this will guide him and his staff into the future.

3.1.26. The second complaint about the headline 'PHOENIX BODY COUNT RISES', July 22: It is a factual headline. The differing numbers and rough qualifications in the report reflected the fluidity of the situation just days after the violence, and the fact that those in authority did not yet know sufficient facts.

3.1.27. The complainant contended that the use of red type for "BODY COUNT" in the headline buttressed his view of sensationalism. This has been an editorial style adopted by this editor a while ago to draw attention occasionally to other, unrelated reports. It is clearly an eye-catching device but was not exclusively used in this instance.

3.1.28. While the weight of words must remain a Daily News consideration, and an abiding regard by any editor, it is my view that it did not violate the commitments to accuracy in the Independent Media Press Code.

3.2 Yogin Devan:

3.2.1 it is clear from dictionary meanings attributed to “massacre” that the killings in Phoenix amounted to a “massacre” because that is exactly what took place – many people were killed in quick succession.

3.2.2. Hence the Daily News was correct in using the word “massacre” irrespective of why the deceased had been killed. The fact was that the killing of many people in a related incident was tantamount to a “massacre”. The Daily News headlines were not sensational. They told the stories as they were.

3.2.3. A close examination showed there was no mismatch between the information presented in the headlines and the more detailed information presented in the full stories. Hence, there was no attempt to sensationalise the headline, as claimed by the complainants. Negative news headlines draw attention and increase the likelihood that people would read a news story. There was no need to deliberately use negative headlines in the Daily News on 21 & 22 July 2021 because the body of the story had negative content relating to the deaths during the unrest.

3.2.4. As for the complaint about the deliberate use of the colour red in the headlines to “promote fear and hatred”, it must be noted that headline writing nowadays allowed for creativity. The colour red in the headlines corresponded with the bloody killings in Phoenix and made the point that this was a serious matter.

3.2.5. By no stretch of the imagination could the headlines in the Daily News alone contribute to racial polarisation and incitement of racial attacks. The headlines reflected the facts which were being repeated in all print, broadcast and online media.

3.2.6. The Daily News made it clear that there were “conflicting reports” from the National Funeral Practitioners Association (NFPA) and the KZN Health MEC. The former claimed there were 500 bodies whilst the latter said there were 128 bodies.

3.2.7. The newspaper presented what it considered to be the facts as it had been received from those who had been interviewed. There was no attempt to embellish or exaggerate the figures.

3.2.8. Did the articles violate the Press Code? It is not true that the Daily News articles were not accurate. There was no intention to publish inaccurate, misleading or distorted information. If some facts were contradictory (such as the numbers of bodies in the Phoenix mortuary) then that was

3.2.9.

only because even the authorities (such as the police and the KZN Health MEC) did not have figures that reflected reality.

3.2.10. I support the editor in his assertion that the complainants had failed to put forward evidence to prove that the two articles were inaccurate. There was no evidence to suggest that the Press Code had been infringed.

3.2.11. The killings in Phoenix have been claimed to be the end result of racial profiling. There has been the common refrain that “Indians killed black people for no reason”. Without providing evidence that the Daily News articles/headlines were inaccurate or “sensational, biased, distorted and inflammatory”.

3.2.12. The Editor was correct in his assertion that the complainants expressed "opinions" and "views" on how they believed the headline would be interpreted by the readers.

3.2.13. The Editor was also correct in asserting that the complainants had failed to provide any facts or evidence to disprove the headline and/or accuracy of the said article.

3.2.14. I concur with the editor that the Daily News “reported factually, based on the verified evidence from relevant sources and authorities”.

3.2.14. The complainants failed to prove that the Press Code had been violated. Hence, the complaints must be dismissed. The Daily News has no case to answer.

3.3. Zama Mkize:

3.3.1. The editor highlighted that it was the paper's duty to inform the public and to report fairly. However, it must be accepted that not all the stories would have the same reception from the audience.

3.3.2. The Daily News reports were based on verified information from sources which were clearly identified in the reporting. The deaths of so many people in a short space of time could not be trivialised. The deaths were a carnage, constituted a massacre and should be reported as such.

3.3.3. This was quite a gruesome story whose imagery of alleged, racially-polarised killings would set the country on fire. Whilst the occurrence of multiple deaths should never be overlooked by a media house, balanced, fair and responsible reporting should always be adhered to. Reporting with integrity required that the truth be revealed in the account and where possible the various facets of the story be reflected.

3.3.4. While editorial headlines make use of colourful emotive language to “excite” the audience, the headlines “Phoenix Massacre claims 23 lives”; “Phoenix Body Count Rises” were factual accounts depicting the cold blooded killings that resulted in multiple deaths. This fact could not be denied by anyone as ‘bodies’ were discovered.

3.3.5 The usage of the word “massacre” on stories previously published required that the institution redefined for itself the kind of language to be used in future, especially when racial conflict might result.

3.3.6. It is the responsibility of the editorial team to preview the impact of the story on society, especially race relations in South Africa. Therefore, a toned-down headline, could have been used to harness and foster racial tolerance and nationalism, without the story losing its essence.

3.3.7. It is my view that although the story accounts might have been factual and accurate, the sensational tone of the headlines did not take into account the context within which the media-house operated its business.

3.3.8. It is the media's role to promote nationhood and a common South Africanness. Independent Media cannot afford to be racially divisive on its platforms. It would therefore be incumbent on the editorial teams to define language that may be appropriately used, without sacrificing the integrity of the stories' content.

3.3.9. Responses gathered for this assignment seem to define the personal perspectives of either the complainants or the editor without the empirical oversight of the society within which the Daily News operates. This, Independent Media cannot afford to do; the country cannot burn at the expense of graphic cold blooded "racial" killings evoked by sensational media. The media house should be above such perspectives or standpoints.

3.3.10. The Press Code can be revisited to ensure that human dignity and racial tolerance, the cornerstones of our South African Bill of Rights, are embraced for consideration by the editorial teams. Media operates on the goodwill of the society, therefore cannot contribute to its destruction. Editors bear such responsibility as they execute their functions.

3.3.11. As a panellist in the Ombud's office, I submit that the headline stories did not breach the Independent Media Online Press Code and recommend that the above-named remedial action be adhered to forthwith. It is my view and conclusion that the article had not breached the Independent Media Press Code.

3.4. Val Boje:

3.4.1. The use of the word "massacre" in "Phoenix Massacre" in the Daily News headline of July 21 was sensational. However, I did not find it to be "conjecture" (an opinion not based on fact) or "speculative" as the killings had occurred.

3.4.2. Ganesh described the use of the word "massacre" in the headline as distasteful, ingenuous (sic) and mischievous. While the use of the word may be distasteful, it is not disingenuous and there is no proof it was intended to be mischievous.

3.4.3. "Massacre" was an emotionally charged word used on social media to feed into a climate of fear and racial tension.

3.4.4. At this time, the print titles of Independent Media have a responsibility to report rationally and fairly, and to choose words carefully to avoid any risk of promoting animosity in the communities they served.

3.4.5. The headline of July 22 which referred to the “Phoenix body count rises” was not confirmed in the report and the strap headline was misleading. The complainants were correct in that the headline did not accurately reflect the facts available, and there was conjecture that more bodies meant there were more deaths than had been confirmed in Phoenix.

3.4.6. The report itself was confusing. While it was clear that not all the bodies in the mortuary were from the unrest and killings in Phoenix and other areas, it was unclear if the “body count” from stampedes and killings increased. Or was it merely a case of one mortuary dealing with multiple causes of death - both natural and unnatural - from across eThekweni which had been affected by the earlier riots and killings.

3.4.7. The complaints were not frivolous and had merit. Readers were entitled, indeed encouraged, to lay complaints and have them investigated by the Office of the Ombud.

3.4.8. The scope of the investigation was the two headlines identified and not (as Ganesh said) generalised “reporting of late”. For this to be investigated required more information.

3.4.9. The word “massacre” should have been avoided in relation to the Phoenix killings as it had the potential to perpetuate incitement at a time when emotions in the community were running high.

3.4.10. On the question of whether its use in a headline constituted racial incitement or was inflammatory, I do not believe it had enough power to aggravate the conflict as readers would understand the context that had been set out in the report.

3.4.11. I urge sub-editors and all editors within Independent Media to take cognisance of the complaints, this ruling and practise extreme caution in their choice of words in headlines.

3.4.12. In the case of the headline and strap of July 22, they were inaccurate and misleading. I do not believe that either headline was deliberately mischievous: rather that they reflect poor editing.

3.4.13. I propose an apology and correction be published by the Daily News and on IOL.

4. Editor’s Contention:

4.1. The editor of the Daily News, Ayanda Mdluli, argued in response to both complaints that the term ‘massacre’ was appropriate - the number of dead alone justified it.

4.2. He contended that neither complainant offered any counter-evidence on the violence in Phoenix, and summed up his reply, in part, thus:

4.3. “The complaints and complainants are expressing “opinions” and “views” about how they think or believe the headline would be interpreted by the readers. The complainants do not provide any facts, or evidence to disprove the headline, let alone evidence to prove accuracy of the said article.

The Daily News reported factually, based on the verified evidence from our relevant sources and authorities.”

4.4. The editor argued also that it was the paper's duty to inform the public and to report fairly. But it must be accepted that not all newspaper stories would have the same reception from its audience.

4.5. He said the Daily News had based its report on verified information from its sources who were clearly identified in the article, and argued that the casualty numbers were “way understated”.

4.6. “The deaths of so many people in a short space of time cannot be trivialised,” Mdludli said. “It is a fact that the deaths are a carnage and constitute a massacre, and should be reported as such.”

5. Final Ruling:

5.1. In a 3 to 1 split decision, the panel found that the Daily News front page headlines on July 21 and 22 were not in breach of the Independent Media Press Code.

5.2. They agreed that in terms of various dictionary definitions, the multiple killings that had occurred at Phoenix amounted to a massacre.

5.3. They concurred with the editor that the headlines arose from the interviews and statements of identified sources including the utterances of the Premier of KwaZulu-Natal, Sihle Zikalala and the local MEC for Health.

5.4. They rejected the notion that the massacre headline was mischievous and inflammatory as no evidence existed to substantiate a claim by one of complainants.

5.5. They agreed that the headline “PHOENIX BODY COUNT RISES” on 22 July was factual. It reflected the fluidity of the situation days after the violence and the fact that those in authority did not have an accurate assessment of the number of dead arising from the violence.

5.6. They also rebutted one of the complainant’s contention that the use of red type in the headlines buttresses his view of sensationalism. They concurred that has been an editorial style adopted by the editor a while ago to draw attention occasionally to front page stories., unrelated reports. It was clearly eye-catching device but was not exclusively used in the instance of the Phoenix violence.

5.7. They were agreed the headlines in the Daily News, post facto the week of violence, could not be blamed for the racial polarisation and incitement that arose.

5.8. Panel member Val Boje, in a minority view, felt the headline and strap of the story published on July 22, were inaccurate and misleading. She contended they were not deliberately mischievous but reflected poor editing.

5.9. As a censure, she proposed an apology and correction be published by the Daily News and on IOL.

5.10. I supported the majority views of the panel that the headlines were not out of sync with the contents of the stories published on 21 and 22 July 2021 in the Daily News and were not in breach of clause 2.1. of the Independent Media Press Code

5.11. I and the entire panel, however, were ad idem on an important caveat: the importance of editors giving due consideration to the balanced use of words and language during a time of racial strife and enmity.

5.12. Dunn raised the question: "In these extraordinary circumstances, though, would it not have been advisable for a newspaper serving a community in dire trouble to select a headline more thoughtfully? To tell it as it was by, say, simply running an unrest death toll in Phoenix? The number alone made for a potent headline, and would not have airbrushed the human cost. This is for the editor to consider. In extreme circumstances, there is a need for special care. Perhaps this will guide him and his staff into the future".

5.13. Zama took the point further by stating it was the responsibility of the editorial team to preview the impact of the story on society, especially race relations in South Africa. She suggested a toned-down headline could have been used "to harness and foster racial tolerance and nationalism, without the story losing its essence". She said

although the stories might have been factual and accurate, the sensational tone of the headlines had not taken into account "the context within which the media-house (Independent) operated its business".

5.14. Boje stated that the print titles of Independent Media had a responsibility to report rationally and fairly, and to choose words carefully to avoid any risk of promoting animosity in the communities they served.

5.15. It is my view and the recommendation of some of the panelists that the company review its press code to incorporate the essential values of human dignity and racial tolerance as stipulated in the preamble of South Africa's Constitution.

5.16. The owner of Independent Media, Dr Iqbal Surve', outlined this imperative more eloquently when he said in an opinion piece, published in late July 2021, that the media had great power which came with great responsibility and accountability.

5.17. "It has a vital and essential role in nation building and as an influencer should commit to that and not inflaming already strained ethnic and racial issues for the sake of eyeballs to column inches."

5.18. Surve's statement seemed to be or could be converted into a company injunction directed at editors and editorial staff as fundamental values they could and should embrace.

5.19. I therefore urge the office of Independent Media's Ombud, in the light of this final ruling, to:

a) Explore the possibility of amending the Independent Media Press Code to include clauses related to content and headline writing that adhered to the promotion of racial tolerance and nation building;

b) To offer this adjudication and ruling to editors and editorial staff as a topic of debate and a basis to review and implement editorial practices that enhance sensitivity surrounding racial tolerance and harmony among their diverse readership.

6. Panel Members:

6.1. Allan Dunn, Zama Mkize, Devan Yogin and Val Boje. Final ruling:
Moegsien Williams