

Coal of Africa Limited vs. Beeld

Ruling by the Deputy Press Ombudsman and the Press Panel

June 15, 2011

This ruling is based on the written submissions of BG Bowman Gilfillan Attorneys, for Coal of Africa Limited (“CoAL”), and Cliffe Dekker Hofmeyr Inc. for Beeld newspaper, as well as on a hearing that was held on June 9, 2011 in Johannesburg. Adv Anthony Stein represented CoAL and Adv Faan Coetzee the newspaper. The members of the panel who assisted me were Peter Mann (press representative) and Ethel Manyaka (public representative).

COMPLAINT

CoAL complains about a story in Beeld, published on January 4, 2011, and headlined *Rivier glo onder grond raakgeboor – Vrees dat vars water en soutwater al gemeng het* (*Underground river said to be drilled open – Fears of already merged fresh water and salt water*).

The complaint is that the story untruthfully and inaccurately states that:

- CoAL is drilling in a sensitive ecological area which has hit and opened up an underground river;
- CoAL caused a “merger” of the two rivers in the area;
- the mine does not have a water license or official approval, and that CoAL was in fact mining;
- CoAL’s CEO said the Minister of Mineral Resources has approved the mine; and
- CoAL is still in an “experimental phase”.

CoAL also complains that:

- the reportage regarding public participation is unsubstantiated;
- its views were not sought regarding a number of allegations in the story;
- Tempelhoff’s refusal to identify her source of serious allegations is irresponsible and unwarranted; and
- the caption to the picture is misleading and misrepresenting of the facts.

ANALYSIS

The story, written by Elise Tempelhoff, says that drilling at CoAL’s Makhado coal mine in a sensitive ecological area on the slopes of the Soutpansberg has allegedly hit and opened up an underground river. Tempelhoff quotes unnamed sources who said that the mine is situated above underground rivers feeding the Nzhelele Dam in former Venda. The story also says that the mine does not have a water licence or environmental approval

from the Department of Water Affairs, but adds that CoAL denies this. Environmentalists are reportedly concerned that water of the two river systems has already merged – which will constitute “an ecological disaster”.

We shall now consider the merits of the complaint (note that this finding is based on a translated version of the Afrikaans text):

Drilling in a sensitive ecological area, opening up an underground river

The intro to ***the story*** says: “Drilling at a coal mine of Coal of Africa (CoAL) in a sensitive ecological area on the northern slopes of the Soutpansberg, has allegedly hit and opened up an underground river.”

CoAL complains that it is not correct and accurate to state that it has “drilled into” a river and “opened up” a river. It also denies that there are any underground rivers in the area in question.

CoAL defends its position by arguing that:

- it was conducting a “bulk sampling” (and not mining) exercise at its Makhado project;
- groundwater in the area occurs in weathered and fractured zones in the Karoo rocks (implying that there are no underground rivers);
- drilling and testing of the aquifers around the bulk sample pit have shown that the aquifers have very low transmissivities and storage capacities with the result that the area can be described as being underlain by a minor aquifer system – making it impossible for rivers to start or flow in that area; and
- excavation of the bulk sample pit to below the natural water table (about 19m) has resulted in limited inflows, which are pumped into a holding dam and used for dust suppression during the bulk sample exercise (adding that this removal of water from a prospecting pit at these low volumes does not require a water use licence).

CoAL concludes that the intro (and the headline) is therefore incorrect and baseless, and says that this “sensationalist approach” is extremely damaging and harmful to its reputation.

Beeld replies that it did not state as a fact that CoAL drilled into a river, but rather correctly reported that it “allegedly” happened. It says: “This statement was reflected as one of the fears of the community.”

CoAL responds that Beeld should have known that the allegations it reported on could not be reasonably true and that the newspaper should have asked for its views on this matter.

At the *hearing*, the panel heard from Mr Carel Haupt, a hydro-geologist, that there are no underground rivers in the immediate vicinity, but only aquifers. He called the mentioning of “underground rivers” in the area a “misleading distortion” and concluded that it was impossible for CoAL to have “hit” and “opened up” a “river”. He called the drilling place in question a “minor aquifer” and told us that the water from such an aquifer flows at about one centimeter per day. The water in the drilling hole, he explained, was a consequence of the fact that CoAL drilled deeper than 19 metres, which is the level of the water table in that area.

We note that Beeld did not dispute this testimony; also that, in its response to the complaint, it argued that it did not report the drilling and opening up of a river as a fact, but as an allegation.

The question now is if it was reasonable for the newspaper to have reported this allegation.

Firstly, we consider the fact that the sentence in dispute is factually correct – it states that there is an allegation that CoAL has hit and opened up an underground river. When seen in isolation, this is true – there is such an allegation (we have no reason to doubt that Tempelhoff was confronted with this allegation).

But that is not the end of the matter.

The story refers to *members* (plural) of an environmental group who told the newspaper that CoAL’s Makhado mine is situated above underground rivers feeding the Nzhelele Dam and adds: “One of these rivers has now allegedly been opened up.”

From this reportage, it seems as if Tempelhoff had more than one primary source. At the hearing, however, it emerged that she had one primary source only. This source, we were told, in turn informed members of the environmental group – which makes these members secondary sources.

The next question is: Did Tempelhoff ask CoAL for comment about this specific allegation prior to publication? In her email to CoAL Tempelhoff mentions underground rivers, *but she never put this specific allegation to the company*. She should have, as this allegation is in the intro, which in turn is reflected in the heading. She had ample time to do so – her email to CoAL is dated December 1 and the story was only published on January 4.

The use of a single, anonymous source is an extremely dangerous practice, as such a source may have ulterior motives and can easily misuse a publication for its own purposes. This may or may not have happened in this case.

Sanef has warned not for nothing of the use of single, anonymous sources.

We also noted that the journalist did not independently verify this allegation. She did report that she spoke to Mr Stephan Hoffman, chairperson of the Soutpansberg district agricultural union. He reportedly told her that some of the rivers originating from the northern side of the Soutpansberg flow in an easterly direction, and that, if a river containing fresh water merges with one containing salt water an ecological disaster would ensue.

There is no mention of the allegation in dispute.

So here is the situation: *Tempelhoff used a single, anonymous source to publish an allegation that she never put to the company concerned prior to publication or verified independently.*

Therefore, even though the intro truthfully states the allegation against CoAL, this reportage does not meet the standards of the Press Code and is fundamentally unfair to CoAL.

Note that this decision does not address the question whether CoAL's drilling opened up a river or not. Our task is not to establish the truth about this matter – our only concern is the quality of the journalism and the question if the Press Code was breached or not.

Causing a 'merger' of two rivers

The only time in ***the story*** where a possible merging of rivers is mentioned, is Hoffman's statement that reads as follows: "If the water of these two river systems merges, an ecological disaster will ensue." This is followed by a statement that environmentalists were concerned that two river systems had already merged and that they would hold CoAL responsible should this happen. The last sentences of the story read: "The area's fresh water rivers feed the Nzhelele Dam, upon which a large proportion of the population of the former Venda is dependent. This water is also used for irrigation."

The subheading reads: "Fears of already merged fresh water and salt water".

CoAL complains that it is untruthful and inaccurate to state that it is causing or has caused a "merger" of rivers and an ecological disaster is looming in the area. It argues that Tempelhoff used a named source (Hoffman) to make a non-controversial statement about the fact that some rivers flow east – only to then hide behind an unnamed source to draw distorted and sensationalist conclusions which have no basis in fact.

It argues that fresh springs do occur on the northern slopes of the Soutpansberg and drain into rivers which feed into the Nzhelele Dam. However, it says that the more saline deeper Karoo aquifers do not feed into these systems as they are below them – and water cannot flow uphill. CoAL concludes that this water can therefore not have an impact on the Nzhelele Dam, that there is no possibility of contaminating the fresh water source, and that there is no danger of it causing an ecological disaster.

CoAL adds that Tempelhoff never mentioned the “merger” of the systems and the possibility of an “ecological disaster” to it.

Beeld argues that the story merely reflects that there was a fear that the underground rivers might have merged or could merge. “This is a correct reflection of the fears of the community and the information provided to the author.” It also says that the statement that Makhado is situated on top of underground rivers “correctly reflects the sources for the statement”. The newspaper denies that its reportage was sensational – it says that the report “presents as speculation that one of the rivers might have been opened up”. It adds that the report correctly reflects what Tempelhoff observed when she flew over the terrain.

CoAL replies that Beeld failed to verify the accuracy of the allegations in dispute and that it should have sought its views in this regard.

It says that Hoffman told it that he had informed Tempelhoff that potential water streams mixing was applicable to the *Waterpoort* area, which is approximately 30 km west of Makhado. From this, CoAL concludes that the newspaper has manipulated statements of her sources so as to fit her story.

CoAL adds that Beeld had no technical information to support “its speculation”. It says that this lack should have indicated to the newspaper that its rumours may not be reasonably true, and that it should have sought to verify it.

At the **hearing**, Haupt told the panel that a merging of rivers is not possible (as there are no such rivers in the area) and that, even if it did, it cannot pose a threat to the Nzhelele Dam as it is situated above the Makhado project and water cannot flow uphill.

The panel notes that Hoffmann, in the story, does not refer to the Makhado area. His reported statement is a general one, namely that an ecological disaster would ensue if a fresh water river merges with one containing salt water. Yes, mention is made of the Soutpansberg area, but there is indeed no mention of a possibility that it may happen at Makhado. He is not quoted as saying that he was concerned that this may occur at the site.

Hoffmann cannot be regarded as Tempelhoff’s source in this matter, as he made a general statement about the Soutpansberg area and did not refer to Makhado at all. The only reasonable conclusion to come to is that the concern by her primary source rubbed off on her secondary sources.

This leaves us with the same situation as was the case in the first part of the complaint. The concern that underground rivers have already merged may be accurate as it is reasonably true that it was a concern, but again:

- the journalist’s reportage of environmentalists’ concerns is based on one primary source only;

- this source is anonymous;
- CoAL was not asked for comment prior to publication; and
- there was no independent verification.

Mining, water license, official approval and general authorisation

The story says: “The mine doesn’t have a water licence or environmental approval from the department of water affairs for mining activities at the foot of the Soutpansberg.”

The story also states:

- CEO of CoAL John Wallington said that Minister of Mining Affairs Susan Shabangu has approved the Makhado mine and that CoAL has obtained approval in compliance with both the Mineral and Petroleum Resources Development Act and the National Environmental Act;
- Acting Chief Communications Director (CDD) of the Department of Environmental Affairs Roopa Singh denied that the Department has given CoAL approval for mining activities and adds that no environmental impact study was done by CoAL for this project;
- Wallington claimed that CoAL was still in an “experimental phase” and therefore did not require a water licence; and
- Wallington said that the Department of Water Affairs had given CoAL “general approval”.

CoAL complains that it is not truthful or accurate to report that the “mine” did not have a water licence or approval by the Environment Department of Environmental Affairs for the “mining operations” that it was reportedly conducting.

CoAL also denies that Wallington said that the Department of Water Affairs gave CoAL “general approval”. It says: “CoAL said it has general authorization for water usage from the Department of Water Affairs for the activities pertaining to the bulk sample.” A “general authorisation”, it argues, means that water use is permitted and that no water use licence is required. It adds: “Any water specialist in South Africa would know what a general authorization is and what it entitles operators to do” – and concludes that Tempelhoff apparently chose to approach this article without any reliable or recognized technical specialist.

It explains that CoAL is not mining (yet) and argues that the continuous use of the words “mine” and “mining” is a “deliberate distortion of the facts intended to increase the sensationalism of the allegations which she (Tempelhoff) makes”.

Regarding official approval, CoAL says that on December 2, 2010 it informed Beeld/Tempelhoff that:

- formal processes for the mining rights application were not completed at that stage (it was not mining) and that it had not lodged its mining environmental

management programme, environmental impact assessment and application for a water use licence;

- all regulatory requirements regarding environmental authorization had been met for the then current bulk sampling (not mining); and
- it had approved an environmental management plan for the activities pertaining to the bulk sample and that “general authorization” meant that it was authorized to use water (It says that “general authorization” is a mechanism provided for in law to use water without a licence as long as the water use falls within what is permitted by a gazette general authorization).

However, it says that these pieces of information are not reflected in the story in any meaningful way.

CoAL adds that Singh’s denial that it had the necessary approval to mine creates the wrong impression that it was mining at the time of publication. It says: “As Beeld/Ms Tempelhoff knows no mining activities are presently being carried out, as such it is obvious that any department approached with a question regarding whether mining activities have been authorized would respond in this way.” It reiterates that the newspaper/journalist knew that it was in the process of obtaining relevant authorization and licences to mine.

It also says that Singh was not the right person to ask as the relevant authority to grant water licences is the Department of Water Affairs. It says: “Ms Tempelhoff, as a specialist environmental reporter... appears to have deliberately approached and quoted the wrong authority in order to twist the facts and make it appear that CoAL does not have authorisations which it in fact does not require at this point.”

This reportage, CoAL concludes, was causing it further harm.

Beeld says that it has requested CoAL’s Environmental Management Programme and the water use licence.

With regard to the “general authorization”, the newspaper says that “bulk sampling” activity is subject to the National Water Act (NWA) which defines it as taking water from a resource, storing of water, altering beds of water courses and diverting streams, engaging in a controlled activity identified as such (which includes irrigation of any land with waste or water containing waste generated though any industrial activity or by a water work, disposal of waste or water containing waste in a manner that may detrimentally impact on a water resource, and removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for people’s safety).

It adds that a person may only use water without a licence if that water use is permissible:

- under Schedule 1 of the NWA; or
- as a continuation of an existing lawful use; or
- in terms of a general authorisation.

The newspaper says that water use should also address the purposes of the NWA.

Beeld says that CoAL “apparently only received a general authorisation after it had struck the fresh water body” – until such time “it acted irregularly”.

As far as mining is concerned, the newspaper says that bulk sampling usually does not exceed 30x50 meters and that the Makhado project is at least 30x150 meters. It argues: “The general public understands what is being done by Complainant as mining activities. Members of the community complained that they were denied access to inspect the activities and could merely conclude that ‘mining activities’ were taking place.”

Beeld says that, even if the Department of Mineral Resources has approved CoAL’s mining/prospecting, it still needs to get environmental authorization for activities such as using water and building roads, and clearing indigenous bush and trees. “This documentation has still not been provided as requested.” It adds that even bulk sampling needs environmental authorization, saying that the relevant authority in this case would be the National Department of Environmental Affairs (DEA). It argues: “If Ms Singh thought it was a regional matter, she would have referred the author to the Limpopo regional office. The report correctly reflects what she informed the author of.” It adds that the story correctly reported what Singh told Tempelhoff (and what Wallington replied).

Beeld says that CoAL’s distinction between a “general approval” and “general authorization” is “highly technical”, that it is due to translation/interpretation, and that it does not materially affect the meaning of what was conveyed to the public. “Laymen would understand authorization also to mean approval.”

In its response, **CoAL** denies that bulk sampling requires all the water uses that Beeld refers to. It says that the only water uses required for its bulk sampling are:

- taking water from a resource;
- storing water;
- altering beds of water courses and diverting streams; and
- removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people.

CoAL says that its water uses for bulk sampling fall under general authorization and that it is duly registered as required. It argues that Section 39 of the NWA which regulates general authorisation and general authorization notices are not even mentioned in Beeld’s response, and that a general authorisation is not regulated by the section quoted in the newspaper’s reply.

Regarding the size for a bulk sampling pit (30x50 vs. 30x150), CoAL says that there is no standard size for this. It says: “Beeld has not provided any document supporting its assertion. The bulk sample at Makhado was performed as authorized by the Prospecting Right which does not limit the size of sampling.”

CoAL says that it is not correct to say, as Beeld does, that the national DEA deals with environmental authorisations “generally” – these are issued by the provincial departments. “This is not a national function handled by a ‘regional’ office.” It adds: “An environmental authorization is seldom triggered for bulk sampling and is not required in this case.”

It concludes that Beeld’s lack of technical understanding of the GA led to it reporting incorrectly, unfairly and untruthfully.

The panel will now address the issues of mining, water licence and official approval (general authorization) in that order.

The story (and the caption) states it as a fact that CoAL was *mining*. At the hearing, Beeld argued that anything that is taken out of the ground can be defined as mining (including prospecting), and that CoAL’s activities were “mining” in the public’s eye.

However, the panel accepts that:

- there is a fundamental difference between “mining” and “prospecting” and that that difference is well understood by members of the public;
- a holder of a prospecting right may not mine;
- a company will follow entirely different processes to apply for mining and for prospecting;
- if after prospecting it is considered viable to mine, a separate mining right must be applied for; and
- CoAL was not mining at the time of publication.

The newspaper asserted in its evidence that Tempelhoff was an experienced environmental journalist – which is exactly the reason why she should know the difference between prospecting and mining.

We also note that Tempelhoff:

- was told by CoAL that it was prospecting and not mining;
- did not report CoAL’s denial that it was mining; but
- chose to report it as a fact that the company was indeed mining.

Beeld’s argument that prospecting is seen by the public as mining is not acceptable. It was the newspaper’s duty to point out to the public that CoAL was not mining.

Regarding the water use licence: The story states as a fact that the “mine” does not have a water licence. As CoAL was not mining at the time of publication, this statement is unfair – one does not need a licence for something that one does not do.

Lastly, the sentence regarding the matter of official approval reads: “Ms Roopa Singh, acting chief communications officer of the department of environmental affairs, has however denied that this department has given CoAL approval for mining activities.” However, the relevant Department that must authorise a company to mine is not Singh’s

department, but the Department of Minerals and Energy. Tempelhoff got the wrong answer because she consulted the wrong Department.

In the story, the words “algemene goedkeuring” appear, which translates to “general approval”. Of course, this should have been “general authorization”, which in Afrikaans will be “algemene bemagtiging” or even “volmag”. The panel did not want to read too much into this error in translation.

The Minister approving the mine

The sentence in dispute says: “Upon enquiry Mr John Wallington, chief executive of CoAL, said that Ms Susan Shabangu, minister of mining affairs, has approved the Makhado mine.”

Firstly, **CoAL** denies that Wallington ever said that anybody has approved the Makhado mine. On the contrary, it says that it told Beeld that no authorization for mining had been sought or granted yet. “What has been sought and granted is authorization to take a bulk sample as part of prospecting operations.”

It adds that Tempelhoff never asked CoAL whether the “Makhado mine” was approved – she merely asked for a copy of the water licence. It refers this office to e-mail correspondence to the effect that it told Tempelhoff that all regulatory requirements have been met for the current bulk sample (and not for mining).

Beeld does not reply to this part of the complaint.

As the **panel** has accepted that CoAL was not mining at the time of publication, it follows that we do not believe that the sentence in dispute is reasonably true – neither the reportage that Wallington said that Shabangu has approved the mine, nor the possibility that she has in fact done so.

In an ‘experimental phase’

The sentence in dispute reads: “When **Beeld** asked Wallington for a copy of CoAL’s water licence, he replied that CoAL is still in an ‘experimental phase’ and doesn’t require a water licence for that.”

CoAL complains that the phrase “experimental phase” is a misquotation which is either due to poor journalistic practice or it is an intention to harm it and its CEO. It denies that Wallington used the phrase “experimental phase”, adding that “experimental phase” and “minimal use of water authorized by general authorization” are two distinct things.

Beeld does not respond to this part of the complaint.

At the **hearing**, the newspaper explained that the phrase “experimental phase” (“eksperimentele fase”) was an attempt to translate “bulk sampling” into Afrikaans. While this may not be the best possible translation, bulk sampling or prospecting can indeed be understood to be “experimental”.

Public participation

Tempelhoff **reports** that Wallington claimed that the community was informed about the Makhado project. Then, the sentence in dispute: “Community leaders from, inter alia, Louis Trichardt have however denied that this is the case.”

CoAL says that Tempelhoff summarises views of unidentified community leaders who denied that “the community” had been consulted about the Makhado project and complains that this summarization is unsubstantiated. It says: “CoAL conducted and concluded public participation for prospecting and bulk sampling.” It adds that this fact is not reflected in the story.

It also says that it took “a progressive step” to engage with communities on an ongoing basis. It says: “To this end, CoAL has facilitated the formation of a unified community engagement forum to represent communities affected by the Makhado project.” Again, it says, the story does not reflect this fact, even though Tempelhoff was informed of the above and of CoAL’s undertaking to keep all interested parties informed.

Beeld replies that Tempelhoff was approached by community members in Louis Trichardt and in Venda to ask CoAL for “all approvals” of the Makhado Bulk Sampling project. It says that the journalist did ask CoAL, but that it failed to produce any documents. “Members of the public were concerned about the operation because of the sensitivity of the Limpopo basin and that they presumed an aquifer was being drilled through and that it could impact on the Nzhelele Dam. *Beeld* published the fears of the community.”

The newspaper argues that the community is so concerned about this operation that it made an aircraft available to Tempelhoff and a photographer to determine the size of the project.

It adds that:

- according to community members, CoAL never approached them, never answered their questions, never made any documents available and never held meetings with them;
- the series of questions posed to CoAL about community meetings, which is required by law, remains unanswered and there seems to be no evidence of such meetings; and
- Tempelhoff asked to be registered as an interested and affected party, but that she has not as yet been registered.

CoAL replies that Beeld seems to confirm that Tempelhoff is abusing her position as journalist by demanding information not for any journalistic purpose, but to assist those who oppose the Makhado project. It says: “Any interested party could participate in this process (of public participation) and public participation records are readily available.”

It also contests Beeld’s allegation that it has “failed to produce” the documents that Tempelhoff had requested. It says that it told the journalist that the relevant people were on leave and would respond to her on their return, adding that she only reiterated her request for documents after the story in dispute was published. CoAL says it then repeatedly invited Tempelhoff to its offices to inspect the requested documents. “To date Ms Tempelhoff has not yet taken up the invitation.”

Regarding Beeld’s statement that it reported the fears of the community, CoAL argues that reporting on unsubstantiated and unqualified fears of a vaguely named community without a right of reply is in breach of the Press Code that states that comments should be made fairly and honestly.

CoAL also says that Tempelhoff has been informed that her request to be registered as an interested and affected person was received. It adds that it will ensure that she is part of the consultation process when the DMR issues the directive to conduct a public participation process.

At the **hearing**, CoAL furnished the panel with documentation that confirmed that it has written letters to the public, has held a public meeting and has advertised, asking the public for input. While CoAL may not have consulted the entire community, it is clear that CoAL did meet or exceed the minimum legal requirements as far as public participation is concerned. It was not fair to report that some leaders were not consulted, whilst omitting that it has indeed met the requirements set by law.

Views not sought

CoAL complains that:

- in some instances, regarding some “serious allegations”, Beeld did not seek its views; and
- in other instances, the newspaper did seek its views but then its answers were twisted, distorted, were not fully reflected and were summarized in such a manner that context and facts were inaccurate.

It does not specify what these “instances” are, but does say that it has already set out examples of this.

Beeld does not respond to this part of the complaint.

Instances where Beeld was allegedly not asked for comment include the statements about the “merging” of rivers, a possible “ecological disaster” and the alleged fears of the community.

Examples of instances where CoAL says that the newspaper did ask for comment, but allegedly did not “meaningfully” publish them, include statements to the effect that formal processes for the mining rights application were not completed at that stage (it was not mining yet as it had not yet received any authority to mine); that it had not lodged its mining environmental management programme, environmental impact assessment and application for a water use licence; that all regulatory requirements regarding environmental authorization had been met for the then current bulk sample; that it had approved an environmental management plan for the activities pertaining to the bulk sample; and that “general authorization” meant that it was authorized to use water.

The panel looked at what Tempelhoff had asked CoAL as well as at what she had not asked the company – and compared that to what she published. We also studied how she reflected CoAL’s responses to her queries.

Firstly, she asked CoAL for various documents, but she did not ask CoAL if:

- it had been mining;
- Makhado was located on top of underground rivers that feed the Nzhelele Dam;
- it had hit and opened up an underground river; and
- it could cause an environmental disaster as fresh water may be mixed with salt water.

The issues mentioned above are all material to the story. The panel felt strongly that Tempelhoff should have put these allegations to CoAL prior to publication.

Tempelhoff did not ask CoAL if it had hit an underground river, but she did state it as a fact in her email of December 1. While the panel found it peculiar that CoAL did not respond to that statement, we are firmly of the view that she had an absolute responsibility to put this allegation to them directly, in the form of a question, prior to publication. Had she done so, they would have had the opportunity to confirm or deny the allegation and she would have been able to adjust her report accordingly.

Not to do so breaches the most fundamental standards of journalism.

Secondly, we looked at material issues that Tempelhoff chose to omit from CoAL’s response. CoAL told her that:

- it was now in a position to apply for mining rights – yet Tempelhoff proceeds to report that the company was already mining; and
- substantial stakeholder and community engagement has taken place over the last two years and the process was continuing; a local community forum has been established and consultation was ongoing between the committee of the local community’s representatives and CoAL’s management – instead, she reported

that community leaders from Louis Trichardt said that they were not informed/aware.

CoAL's Mr Riaan van der Merwe also told the journalist prior to publication that CoAL was not mining. She chose to ignore this response as well.

The panel expected more from an experienced, award-winning journalist. The obligation to listen to the other side and to report its views fairly is fundamental to sound, ethical journalism.

Refusal to identify source of serious allegations

The story says: "Members of an environmental group, who at this stage don't want to be identified fearing victimization from mine management, told *Beeld*..."

CoAL says that, whilst it respects the obligation of the press to protect confidential sources of information, Tempelhoff's refusal to identify the source of the serious allegations is irresponsible and unwarranted. It says: "Simply calling a person an 'environmentalist' does not give that person any particular technical expertise..." and adds: "...Tempelhoff allows these 'technical experts' to make wild and unsubstantiated comments without any professional responsibility for their statements."

It also argues that Tempelhoff's reason for not identifying the "environmentalists" (namely fear) is made without any evidence of previous victimization made by CoAL "and presumably without requiring any substantiation from the people or groups themselves of how this 'victimisation' may manifest itself." It also asks how would "mine management" be able to "victimize" technical experts and environmentalists who presumably are not employed by the mine and have no other connection to the mine?

CoAL says that this statement is "highly defamatory".

While the **panel** can understand that Tempelhoff's source may be victimized, it is not clear to us how members of an environmental group may suffer at CoAL's hands if identified. We find it unfortunate that the journalist did not mention at least one name from this group.

Nonetheless, we recognize that she was justified in not disclosing her primary source.

The caption to the picture misleading

The caption says: "Aerial view of CoAL's Makhado mine at the foot of the Soutpansberg."

CoAL complains that the reference to its “mine” is incorrect as it is not a mine. It says: “What is depicted in the picture is a bulk sampling pit and not a mine.” It argues that there is a huge difference between the two. The use of the word “mine”, CoAL says, is meant to fit the story line that it was mining without the relevant rights, licences and authorisations.

Beeld does not respond to this part of the complaint.

The panel has already decided that CoAL was not mining. The caption is therefore misleading.

FINDING

Drilling in a sensitive ecological area, opening up an underground river

The use of a single, anonymous primary source to publish an allegation without asking CoAL for comment prior to publication or without independent verification is **in breach of**:

- Art. 1.1 that states: “The press shall be obliged to report news...fairly”;
- Art. 1.4: “Where there is reason to doubt the accuracy of a report and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be mentioned in such report”; and
- Art. 1.5: “A publication should usually seek the views of the subject of serious critical reportage in advance of publication...”

Causing a ‘merger’ of two rivers

The use of a single, anonymous primary source to publish a concern without asking CoAL for comment prior to publication or independent verification is **in breach of** Art. 1.1, Art. 1.4 and Art. 1.5 of the Code as stated above.

Mining, water license, official approval and general authorisation

The constant reportage that CoAL was mining at Makhado is in breach of the following clauses of the Press Code:

- Art. 1.1: “The press shall be obliged to report news truthfully, accurately and fairly”;
- Art. 1.2.1 and 1.2.2: “News shall be presented in context and in a balanced manner, without any intentional or negligent departure from the facts whether by ...misrepresentation (and) material omissions...”;
- Art. 1.3: “Only what may reasonably be true...may be presented as fact...”;
- Art. 1.4; and

- Art. 1.5.

The story states as a fact that the “mine” does not have a water licence. This is unfair reportage, as CoAL was not mining and one does not need a licence for something that one does not do. This statement is **in breach of** Art. 1.1 of the Press Code.

The complaint regarding the use of the words “general approval” is **dismissed** as this is a mere error in translation.

The Minister approving the mine

It is not reasonably true that Mr John Wallington said that Ms Susan Shabangu, minister of mining affairs, has approved the Makhado mine. This statement is **in breach of** Art. 1.3 of the Press Code.

In an ‘experimental phase’

The attempt to translate the phrase “bulk sampling” into “an experimental phase” is not entirely incorrect as bulk sampling or prospecting can indeed be understood to be “experimental”. This part of the complaint is **dismissed**.

Public participation

While it may be true that some community leaders from Louis Trichardt denied that they were informed about the Makhado project, CoAL did engage in a public participation process which met its legal obligations. The omission of this fact is **in breach of** Art. 1.2.2 of the Press Code.

Views not sought

Tempelhoff neglected to ask CoAL questions relating to the essence of her story; and where CoAL did respond, she ignored some material issues. This is **in breach of** Art. 1.1 and Art. 1.2 of the Code.

Refusal to identify source of serious allegations

Tempelhoff was justified in keeping her primary source’s name confidential. This part of the complaint is **dismissed**.

The caption to the picture misleading

The caption misrepresents CoAL's activities at Makhado as mining. This is **in breach of** Art. 1.2.1 of the Press Code.

SANCTION

Beeld is directed to:

- **apologise** to CoAL for causing unnecessary harm as set out in the text that follows; and
- **include**, in its heading, the words “apology/apologise” (“om verskoning”) as well as “CoAL”.

The following text should be published on page 2. (We write the text in Afrikaans to eliminate any possible problems with translation):

Coal of Africa (CoAL) het 'n klag by die Nasionale Persombudsman gelê oor 'n berig wat Beeld op 4 Januarie vanjaar gepubliseer het onder die opskrif *Rivier glo onder grond raakgeboor – Vrees dat vars water en soutwater al gemeng het*.

Die storie, geskryf deur Elise Tempelhoff, sê dat CoAL se boorwerk by 'n steenkoolmyn in 'n sensitiewe ekologiese gebied aan die noordelike hange van die Soutpansberg glo 'n onder-aardse rivier raakgeboor en oopgestoot het en dat dit tot 'n ekologiese ramp kon lei.

Die Adjunk- Persombudsman, Johan Retief, het op 7 Junie 'n verhoor gehou. Hy is bygestaan deur twee lede van die Persraad se paneel, Peter Mann en Ethel Manyaka.

Die paneel het bevind dat Tempelhoff die Perskode verbreek het deur ernstige bewerings oor CoAL te publiseer sonder om vooraf die maatskappy se kommentaar daaroor te kry en dit onafhanklik te verifieer. Die bewerings sluit in dat CoAL 'n ondergrondse rivier sou raakgeboor en oopgestoot het, dat sout- en varswater daardeur kon vermeng het en dat dit 'n ekologiese ramp kon veroorsaak het, dat ondergrondse riviere in die omgewing die Nzheleledam sou voed, dat die maatskappy by Makhado sou myn, en dat die minister van mynwese die myn sou goedgekeur het.

Tempelhoff het ook nagelaat om CoAL se ontkenning te publiseer dat hy by Makhado myn.

Hiermee het sy 'n basiese joernalistieke reël verbreek deur nie na albei kante van die saak te luister en dit te rapporteer nie.

Die paneel het ook verskeie onakkuraathede in die berig opgemerk, soos dat:

- CoAL by Makhado gemyn het, terwyl die maatskappy slegs geprospekter het met die oog op moontlike latere mynbedrywighede;
- CoAL nie 'n waterlisensie vir sy “myn” gehad het nie; en

- mnr. John Wallington van CoAL sou gesê het dat me. Susan Shabangu, minister van mynbou, die Makhado-“myn” sou goedgekeur het.

Tempelhoff het ook nagelaat om te noem dat CoAL die minimum-vereistes nagekom het wat betref sy openbare deelname-proses.

Afgesien daarvan dat sy nie CoAL se mening gevra het en bewerings onafhanklik geverifieer het nie, het sy boonop haar storie op ‘n enkele primêre anonieme bron gebaseer – ‘n uiters gevaarlike joernalistieke praktyk.

‘n Klag oor die gebruik van die woorde “eksperimentele fase” en “algemene goedkeuring”, asook dat sy haar bron(ne) bekend moes maak, is van die hand gewys.

Beeld vra hiermee om verskoning vir skade wat hy onnodiglik aan CoAL aangerig het.

Besoek www.presscouncil.org.za (rulings, 2011) vir die volledige bevinding.

APPEAL

Please note that our Complaints Procedures lay down that within seven days of receipt of this decision, anyone of the parties may apply for leave to appeal to the Chairperson of the SA Press Appeals Panel, Judge Ralph Zulman, fully setting out the grounds of appeal. He can be reached at khanyim@ombudsman.org.za.

Johan Retief, Deputy Press Ombudsman
 Peter Mann, press representative
 Ethel Manyaka, public representative