

Mr Alex Safian v The Guardian

Clauses noted: 1

Mr Alex Safian of CAMERA complained to the Press Complaints Commission that two articles headlined "Worlds apart" and "Brothers in arms – Israel's secret pact with Pretoria" published in The Guardian on 6 February and 7 February were inaccurate in breach of Clause 1 (Accuracy).

The complaint was not upheld.

The articles compared Israel and apartheid South Africa, contending that there were many similarities between policies in the two countries. It also argued that there was an alliance between the countries which led to Israel providing South Africa with the technology that that was central to its development of nuclear bombs.

The complainant said that the vast majority of the arguments used in the articles to compare Israel to apartheid South Africa were based on materially false accusations. The journalist had falsely attributed to Israeli leaders such as Ariel Sharon and Uzi Landau extreme anti-Arab positions. There was an inherent deception in the journalist's choices of interviewees, which constituted a wide range of Israel's critics. The journalist had repeatedly attacked Israel and its Jewish citizens as racist practitioners of Apartheid.

In addition, the complainant argued that there were a number of points of material inaccuracy in the articles, of which the following appeared to the Commission to be the most significant in terms of the Code.

First, he objected to the contention that Israeli governments reserved 93% of the land for Jews through state ownership, the Jewish National Fund and the Israeli Lands Authority. While this claim was common and appeared on thousands of websites and in many books, it was false. The Israel Land Administration administered the 79.5% of land owned by the government and the 14% owned by the JNF, totalling 93.5% of all land. State-owned land was equally available to all citizens of Israel, Jews and non-Jews.

Second, the articles falsely claimed that Israeli law barred Muslims and Christians from living in the Jewish Quarter of Jerusalem's Old City. In fact, the complainant said, non-Jews lived in the Jewish Quarter in substantial numbers while relatively few Jews lived in the Muslim Quarter. According to the most recent figures, at least 480 Muslims – or 22.5% of the population – lived in the Jewish Quarter; Jews made up only 1.68% of the Muslim Quarter's population. The expert, who had been quoted on this point in the articles, was not reliable.

Third, it was also incorrect that the Jerusalem's Arab residents were denied permission to build new homes or expand existing ones. Arabs in Jerusalem received building permits at the same rate as Ultra-Orthodox Jews, and paid an identical fee for water and sewage hook-ups. There were a number of reasons why Arabs chose to build illegally rather than applying for permits, including that to apply recognised Israeli control over the city, and that applying for permits cost a few thousand dollars.

Fourth, the claim that Israel prevented Israeli Arabs from forming their own political parties until the 1980s was inaccurate. Arabs had never been prevented from forming their own parties. In the 1977 elections, the Arab-dominated Democratic Front for Peace and Equality won five Knesset seats; a number of smaller Arab parties ran unsuccessfully including the Arab Reform Movement and Coexistence with Justice. The Democratic Front for Peace and Equality had been backed by the PLO. While there were affiliated parties, Arab Reform Movement and Coexistence with Justice were genuinely independent Arab parties.

Finally, the journalist's contention that Israel provided expertise and technology central to South Africa's development of its nuclear bombs – and its arms industry more generally – had been based on a few vague remarks of Alon Liel. Although there had been speculation over Israeli-South African collusion on developing a nuclear weapon, the evidence argued against significant cooperation. The Africa Confidential article referred to by the newspaper did not support its charges.

The newspaper said that the journalist had spent a number of years living in Israel and South Africa, and that he had drawn on his own experiences, observations and research, and had included a wide range of interviewees chosen for their specialist knowledge of the various issues. CAMERA was a pro-Israel pressure group that sought to influence press coverage of Israel, and contended that there was no systematic discrimination in Israel. The complainant was seeking to impose a political viewpoint. Many of his points were matters of interpretation, and some related to claims made by those interviewed and not by the journalist. The subject matter was largely historic, disputed and contentious, but the journalist's work was based on sound and accurate journalism.

The newspaper stood by the claim that 93% of the land in Israel was reserved for Jews. Around 70% of Israelis lived on JNF-owned land as it covered some of the most fertile and urbanised areas; much of the rest of the land was desert or water. JNF land could only be sold or leased to Jews and Jewish leaseholders were prevented from subletting to non-Jews. When human rights groups challenged this situation in 2005, the JNF threatened to cut all legal ties with the state to prevent anyone but Jews building on its land. The state-owned land administered by the ILA was less valuable, but almost none of it was leased to Arabs for farming. In any case, almost half of the ILA's board of directors was appointed by the JNF, whose policies set the policies for the use of the rest of state land. Israeli governments and the ILA applied the JNF's principles to state-owned land; it was wrong to contend that the state-owned land was equally available to Jews and Arab citizens.

On the point of non-Jews living in the Jewish Quarter of Jerusalem, the newspaper said that the claim came from a local lawyer, who was directly quoted. The government figures cited by the complainant hinged on definitions of what constituted the Jewish and Muslim Quarters: the Israeli government had one and Muslim authorities another. There was evidence to suggest that there were more Jews living in the non-Jewish quarters of the old city than non-Jews living in the Jewish Quarter.

The complainant had ignored the statistics quoted in the article that 1,695 building permits had been awarded in Jerusalem, with only 116 falling within the Arab parts of East Jerusalem. In 2005, 212,789 sq metres were built with permits in Jerusalem; 7 % was in Arab neighbourhoods. Although all building permit applications by Arab residents in East Jerusalem were approved, the city authority operated a system where Arab residents needed clearance to apply for building permits; they could be rejected on several grounds. The city did not keep statistics on how many Arabs were told they could not apply, but in 2001 the authorities said that 1,367 homes were built illegally in Arab neighbourhoods of Jerusalem, which gave some indication as to how many people wanted to build homes.

Arab Israelis were subject to military rule from 1949 to 1966 and came under restrictions on their freedom of speech and right to organise politically; this included an effective ban on political parties. The practical effect was to direct Arab political activity towards parties led by Jewish Israelis. The Democratic Front for Peace and Equality was not an Arab party as such; it was a communist party led by a Jew with no Arab nationalist element. Other ostensibly Arab parties were affiliated to the main Israeli parties. It was not until the 1980s that truly independent Arab parties emerged. The Israeli Supreme Court upheld the right of the government to ban Arab parties that proposed that Israel should not be defined as a Jewish state. There were still attempts to restrict Arab political activity. Moreover, the article had not indicated that there was a law that restricted the formation of Arab parties.

Information about Israel's nuclear cooperation first emerged in the 1980s and was expanded on at the end of apartheid. Publications documented details of a secret trial in the mid-1980s at which it emerged that South Africa sold yellowcake to Israel and Israel supplied enough tritium to South Africa to manufacture 12 atomic bombs. The newspaper cited several other sources in support of the claim that Israel assisted South Africa in developing nuclear weapons and its arms industry.

The complainant in reply argued that many of the sources cited by the newspaper had contradicted its contentions. It was established, he said, that Israeli Arabs were able to lease land from the ILA, and have access to JNF land. He challenged the newspaper's claim that the boundaries of the Jewish and Muslim Quarters of Jerusalem were in dispute.

Adjudication

The Commission first observed that the article had been presented as the view of the journalist and the sources he quoted. He had made clear that his claims would be contentious, and indicated that the majority of Israelis would not accept the comparison between Israel and apartheid South Africa. Readers would, in the Commission's view, be aware that this represented a particular – and polemical – approach to an extremely complicated subject, and that other versions of a historical account of the position in Israel would undoubtedly exist. It was clear from the manner in which the articles were presented that they represented the writer's personal thesis, based on his own experiences.

Others would disagree with him – and it was apparent to the Commission that much of this complaint was founded on the complainant's fundamental disagreement with the hypothesis at the centre of the articles. However, inherent in freedom of expression is the right for newspapers to publish challenging and partisan material, which inevitably includes political judgements with which many will disagree. The newspaper was entitled – in the Commission's view – to select material, in the form of quotations (which had not been disputed by the people quoted) or statistics, that supported the clearly-stated premise of the article. It was not obliged to attempt to balance every statement with reference to a counter-argument or counter-interpretation that existed elsewhere and opposed the position espoused in the article. The role of the Commission was to determine whether the article was misleading in its presentation of that position, and whether any significant inaccuracies could be established, in breach of Clause 1 of the Code.

However, it was certainly not in the Commission's power to come to a decision as to what constituted historically-accepted fact. The particular points of alleged inaccuracy specified within the complaint were all widely disputed in different accounts. For example, regarding the newspaper's contention that 93% of land in Israel was reserved for Jews, there was the following conflict: the complainant had indicated that the land, which was administered by the ILA, was equally available to all citizens; the newspaper did not accept this, contending that the ILA applied the JNF's principles to state-owned land, which was – in any case – less valuable than that owned by the JNF. This was obviously a point of considerable historical dispute – indeed the claim had been widely disseminated elsewhere – which it was not the Commission's job to reconcile.

The same difficulty existed in regard to the claim that Arab Israelis had been prevented from forming their own political parties, which was based on the newspaper's view that truly independent Arab parties did not emerge until the 1980s. There was clearly disagreement as to what constituted a truly independent Arab party, and at what stage they therefore came into existence. It was not within the power of the Commission to make a decision on this point. The article did not claim that there was a law that suppressed Arab Israeli political activity, but rather that forces existed to prevent the formation of specific Arab parties. It was not for the Commission to prove this either way; it stood as the journalist's own contention, which the newspaper was entitled to publish.

The other claims of inaccuracy all rested on a basic conflict between the accounts on which the newspaper was choosing to rely and those put forward by the complainant. The claim that non-Jews

were restricted from living in the Jewish Quarter was based on the comments of a named source, and did not include the suggestion that non-Jews did not live at all in the Jewish Quarter. The claim that Arabs were denied permission to build new homes was based on the statistic that twelve times as many new homes were legally built in Jewish areas as in Arab ones; this denial of permission included the fact that Arabs were discouraged from applying for permits in the first place. Finally, the article had quoted several named sources in support of its contention that Israel provided expertise and technology central to South Africa's development of its nuclear bombs, something which had been widely reported.

While the Commission acknowledged that the complainant was able to question the merits of such claims, it felt that the newspaper was entitled to publish them, provided that their provenance was made clear in the article. It considered that readers would not have been misled as to the basis for the article's justification of its arguments, and would recognise that other evidence might exist – in such a complex political area – to oppose it.

It did not consider that any breach of Clause 1 had been established and the complaint was, therefore, not upheld.

● Adjudication issued 31/07/2006