

**IN THE EQUALITY COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: 90405/18

In the matter between

SOUTH AFRICAN NATIONAL EDITORS' FORUM

First Complainant

NAVARANJENI MUNUSAMY

Second Complainant

PAULI VAN WYK

Third Complainant

ADRIAAN JURGENS BASSON

Fourth Complainant

MAX DU PREEZ

Fifth Complainant

BARRY BATEMAN

Sixth Complainant

and

THE ECONOMIC FREEDOM FIGHTERS

First Respondent

JULIUS SELLO MALEMA

Second Respondent

REPLYING AFFIDAVIT - MAHLATSE MAHLASE

I, the undersigned,

MAHLATSE MAHLASE

state the following under oath:

1. I am the Chairperson of SANEF, the first complainant. I am the deponent to SANEF's founding affidavit in this matter.

2. Except where the context indicates otherwise, the facts contained in this affidavit are within my personal knowledge, and are, to the best of my belief, both true and correct.
3. I am authorised to depose to this affidavit on behalf of SANEF.
4. I have read the answering affidavit of Mr Julius Sello Malema, deposed to on his own behalf (as first respondent) and on behalf of the Economic Freedom Fighters, the EFF (as second respondent).
5. Much of what is contained in Mr Malema's affidavit is legal argument. I do not intend to respond with legal argument in this affidavit. That will be done by our counsel at the hearing of this matter.
6. I also do not intend to respond to every allegation in Mr Malema's affidavit. I will confine my reply to the main contentions raised by the respondents. The individual complainants will also depose to replying affidavits that will be filed together with this affidavit. Any allegation that is not specifically addressed by me or the individual complainants, but that is contrary to what is contained in our founding, supporting or replying affidavits, is denied.

All six complainants are before this Court in their own right

7. Mr Malema contends, incorrectly, that there is only one complainant before this Court. Based on a superficial reading of the papers filed on behalf of the complainants, Mr Malema relies in particular on the first complainant's affidavit being styled a "founding affidavit" and the individual complainants' affidavits being styled "supporting affidavits".

8. As appears from the Form 2 filed by the complainants, read with Annexure A, there are six complainants who have come together to institute proceedings in respect of the complaint. Each complainant has filed a substantive affidavit.
9. I deposed to the first complainant's affidavit. The purpose of my affidavit was to set out the background facts relevant to the complaint, and to establish the factual basis for the relief sought. The affidavits deposed to by the individual complainants set out how each of them has been affected by the respondents' conduct. Each of them confirms that they align themselves with the contents of the complaint. They all expressly request this Court to grant them the relief sought in the Form to which their affidavits are annexed.
10. The facts alleged in the affidavits of the six complainants are therefore to be read together, as one complaint. The composite picture that emerges from these affidavits establishes, I submit, that the respondents, through their acts and omissions, have intimidated, harassed, threatened and/or assaulted the individual complainants, or that they have enabled an environment in which intimidation, harassment, threats and/or assaults on journalists, including the individual complainants, is encouraged and tolerated. Accordingly, each of the complainants is entitled to the same relief, i.e. the order that is sought in Annexure B to Form 2.

The application to strike out

11. I am advised that, it is for this reason, amongst others, that the application to strike out is also misconceived. The basis of the application is the contention of the respondents that it is only the first complainant that is before this Court.

According to the respondents, the contents of the affidavits of the individual complainants are therefore irrelevant.

12. That is incorrect. In fact, there are six complainants before this Court. Each of them has something to say that is relevant to the relief sought in Annexure B to Form 2. Their evidence relates to how each of them, and journalists generally, were affected by the comments made by Mr Malema in his speech on 20 November 2018, in the social media publications made by him and other EFF leaders subsequently, and in the responses of his and the EFF's supporters thereafter.
13. As complainants, they are all entitled to have their say. Their evidence is not liable to be struck out.
14. The respondents contend that they do not know the persons responsible for the barrage of online harassment, abuse, threats and intimidation directed at the complainants, the other journalists named by Mr Malema, other individuals in the media, and the media in general. They say that they have no influence over these persons and that they are not responsible for their tweets.
15. The complainants' case is that the respondents are liable for what they said and wrote, in creating an environment within which their supporters could feel justified in threatening journalists with violence and other forms of abuse. The liability of the respondents also extends to their failure to condemn the words and actions of their supporters. I submit that the respondents were and are under a duty publicly to condemn the actions of their supporters, even if they are unsure whether those who professed to be supporters are in fact not.

16. The individual complainants' statements are relevant to the determination of this matter. Read together, they establish a clear picture of the environment, enabled by the respondents, in which their supporters were free to threaten, intimidate, harass and abuse journalists, all in the name of the EFF.
17. I am advised that the fact that the complainants rely on tweets or other social media statements does not mean that they rely on hearsay evidence. The complaints do not rely on the tweets for purposes of establishing the truth of their contents. The fact is that the tweets (and the re-tweets) were published, and entered the public domain, on the dates reflected thereon.
18. The respondents say that they are unable to counter much of the evidence of Ms Munusamy. They seek that her evidence be struck out on this basis too. Alternatively, they seek a referral to oral evidence to test the veracity of Ms Munusamy's statements.
19. I am advised that Ms Munusamy's evidence cannot be struck out on the basis put forward by the respondents. Nor are the respondents entitled to a referral to oral evidence. The fact that the respondents have no personal knowledge of Ms Munusamy's experiences is not a basis to refer the matters raised in her affidavits to oral evidence. On the contrary, since there is no factual dispute on the papers, there is no dispute of facts that need be resolved by referral to oral evidence.
20. I am further advised that the respondents also misconstrue the nature of the proceedings before this Court and the appropriate tests to be applied. The Court is required to conduct an inquiry, to admit all relevant evidence, and to make an order that is appropriate in the circumstances.

The relief sought is competent under the Equality Act

21. SANEF is entitled to bring this complaint in its own name and in the interests of a group or class of persons, i.e. journalists. It does this in terms of sections 20(1)(a) and (c) of Act 4 of 2000 ("the Equality Act"). This is because SANEF is an organisation that advocates for media freedom and for the protection of journalists. SANEF is a legal person that has the capacity to sue and to be sued in its own name.
22. The individual complainants act in their own interest, and therefore fall within the ambit of section 20(1)(a) of the Equality Act.
23. I am advised that the complainants have the requisite *locus standi* to institute the present proceedings, and that they are entitled to claim the relief set out in section 21(2) of the Equality Act.
24. The relief sought by the complainants includes interdictory relief, mandatory relief, an apology, and a costs order, all of which, I am advised, is competent relief in terms of section 21(2) generally, and in particular sub-sections (f), (h), (j), (l) and (o).
25. The relief sought by the complainants seeks to put an end to the intimidation, harassment, threats and assaults that have been perpetrated on the second to sixth complainants and other journalists. This is because of the hostile environment that has been enabled by the respondents through their own acts of intimidation, harassment, threats and assaults on the individual complainants and other journalists, and through their express or tacit endorsement of, and failure unequivocally to denounce, the intimidation, harassment, threats and

assaults on the individual complainants and other journalists by their members and supporters.

26. Section 10 of the Equality Act prohibits hate speech. Harassment is expressly prohibited by section 11. It is the complainants' case that the conduct of the respondents contravenes both section 10 and section 11 of the Act. I am also advised that the respondents have misconstrued section 12 of the Act and that, in any event, it does not apply to the circumstances of this matter.
27. Mr Malema submits that the complainants have abandoned any reliance on section 11 of the Equality Act. That is not so. The relief sought in Annexure B expressly includes relief relating to the harassment of journalists. All that the complainants did was to withdraw a supplementary affidavit that sought to add declaratory relief to the relief set out in Annexure B.
28. Mr Malema further contends that the protections afforded by the Equality Act do not extend to the complainants by virtue of their occupation as journalists. Mr Malema accepts that freedom of expression in terms of section 16 of the Constitution (which includes the freedom of the press and other media) is of high constitutional importance and worthy of protection, but he states that "*it is not necessarily the case that journalists as such are equally protected.*" He also accepts that journalists "*should be free to work in an environment free of harassment*", but states that "*it is part and parcel of certain jobs that no matter how professionally one conducts oneself, one is still at risk of abuse.*"
29. I am advised that Mr Malema's understanding of the Equality Act is incorrect and that the Act does indeed make space for journalists to be protected by virtue of their occupation as journalists.

SANEF's authority to be a party to the institution of these proceedings

30. Mr Malema contends that SANEF is not properly before this Court because its Management Committee (Mancom) is not empowered by its constitution to authorise legal proceedings. Accordingly, so Mr Malema contends, annexure "MM1" to my founding affidavit is invalid. Mr Malema is not correct. Mancom is empowered to institute litigation in the name of SANEF. I have annexed a copy of the SANEF constitution as Annexure "MM1".
31. Clause 7.15 of SANEF's constitution provides: "*The Management Committee will be responsible for the implementation of policy and for the administration of the Forum as referred by the Editors' Council.*"
32. Mancom therefore is responsible for the day to day implementation of SANEF policy and administration. One of the express provisions of the constitution, contained in clause 4.2.9, is that SANEF is committed, amongst other things, to defending "*media freedom through all available institutions, including the Constitutional Court*". The defence of media freedom (including the protection of journalists) is a fundamental SANEF policy.
33. Annexure "MM1" to my founding affidavit is the resolution by Mancom, dated 5 December 2018, in terms of which it was resolved that: (a) SANEF institute legal proceedings in this Court and/or the High Court for appropriate relief against the EFF and the leadership of the EFF, including Mr Malema; and (b) I be authorised to depose to all affidavits and to sign all documents necessary to prosecute the said proceedings.

34. In the preamble to the Mancom resolution, it records a decision by the SANEF Council on 24 November 2018 *“to gather legal advice on possible recourse against the EFF, its leader and supporters”*.
35. The complaints were lodged in this Court on 13 December 2018. On 9 February 2019, the SANEF Council met again. I was present at that meeting of the Council. One of the matters discussed during the meeting was the litigation against the EFF and its leader.
36. The Council noted that the matter was proceeding in this Court. The minute of the meeting correctly records the discussion as follows: *“The decision to explore legal action against the EFF that was taken at our last Council meeting in November 2018 was taken forward by Mancom. The case is now proceeding in the Equality Court and a judge has been allocated.”* I attach a copy of the minutes of that meeting, marked Annexure **“MM2”**. I have redacted the parts of the minute that have no bearing on the current proceedings.
37. I submit that the minute reflects the position at SANEF, that Mancom has the power to institute litigation in its implementation of policy and administration of SANEF. I have been advised that, if SANEF is incorrect in its understanding of the powers of Mancom, then the Council ratified the Mancom decision of 5 December 2018 at its meeting on 9 February 2019.
38. I point out that Mancom has been authorising litigation in the name of SANEF for the more than 20 years of its existence. In terms of clause 7.16, Mancom is required to *“report on the activities and financial and other affairs of the Forum (SANEF) at the annual general meeting of the Forum...”*

39. In my four years as a member and an office bearer of SANEF, I have attended all its annual general meetings. SANEF has litigated extensively during this time. The authority of Mancom to institute litigation has never been queried, either at the annual general meeting or otherwise.

The obligations on the respondents to foster an enabling environment for journalists

40. Mr Malema denies that the speech he made to EFF supporters outside the Zondo Commission on 20 November 2018 constitutes hate speech and an incitement to violence against members of the media. He maintains that as a member of Parliament and leader of a political party and a law-abiding citizen he is deeply conscious of his right to freedom of speech, provided that he does not propagate war, incite imminent violence or advocate hate based on race, ethnicity, gender or religion.
41. Mr Malema claims that the complainants have deliberately misrepresented what he said on the day in pursuance of their own narrow political agendas to frame the EFF in a negative light. In his answering affidavit, he relies on the following portion of his speech (which I quoted in paragraph 18 of my founding affidavit):

“These people I’m mentioning them by name, you must engage with them from a civilized point of view. You must never be violent with them. Violence is for the empty heads. In the EFF we thrive through superior logic. Some of them are women. You must be extremely gentle with them. And don’t use their gender status to attack them. Engage with them from an intellectual point of view. Display discipline and intellectual superiority when engaging with them. And don’t kill them.”

42. The interpretation that Mr Malema gives to the speech he made is selective, opportunistic and designed to detract from what he actually said on the day. His purported call for EFF supporters to act with restraint is inconsistent with what he said earlier in his speech, which I quoted in paragraphs 14, 15 and 17 of my founding affidavit. I submit that any person who heard that part of Mr Malema's speech would have had no doubt that he was advocating violence against the perceived enemies of the revolution, including the members of the media and the journalists he identified by name.
43. Mr Malema's claim that he was not advocating violence in the speech is also inconsistent with his own social media posts shortly after the speech, as well as those of the EFF and other EFF leaders. It is also clear that his speech spurred his supporters on to launch a sustained and targeted attack at the journalists mentioned by him, and other journalists. The affidavits filed by the complainants contain several examples of social media posts by Mr Malema, other EFF leaders, and supporters in which the second to sixth complainants were attacked and threatened with physical harm.
44. In this regard, I draw attention to the social media posts by Mr Malema and other EFF leaders which evidence that, instead of calling for restraint, Mr Malema's comments were intended to have the opposite effect. They had the desired effect. If Mr Malema had intended to call his supporters to order, he would have done so. He did not. Instead he re-tweeted some of the most hateful comments made by his supporters, without distancing himself and the EFF from those comments, thereby endorsing them.

The complainants are not politicians

45. Mr Malema maintains that the complainants are politicians and that they are not true journalists. He contends that the complainants function as political opponents of the EFF and himself, under the guise of operating as journalists.
46. This is not correct. The individual complainants are professional journalists, who function as political and/or investigative journalists. They are not limited to disseminating facts, but are also vital to stimulating public debate on current affairs, including debate on Mr Malema and the EFF.
47. In any event, if Mr Malema and the EFF have any doubts about the integrity or professionalism of the complainants, they ought to lodge complaints with the South African Press Council and Ombudsman, the Broadcasting Complaints Commission of South Africa, or institute actions for defamation against the journalists concerned. They have not lodged any complaints or pursued any actions for defamation against any of the complainants.
48. I submit that the respondents are not entitled to treat the complainants, or any journalist, in the manner they have done. They cannot threaten violence or condone violence against journalists. They are under a duty to ensure the safety of journalists. They cannot treat the complainants and other journalists as if they are their political opponents.

Conclusion

49. SANEF persists in asking this Court to grant the relief as set out in the Form to which my supporting affidavit is annexed.

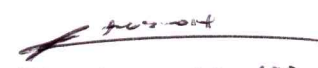

DEPONENT

I certify that the deponent:

- (a) has acknowledged that she knows and understands the contents of this declaration; and
- (b) that she has no objection to taking the prescribed oath, that she considers the oath binding on her conscience and has in due form sworn that the contents of this declaration are true and has signed the same.

Before me at Fairlands Police station on this 16 day of July 2019




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COMMISSIONER OF OATHS

"MM 1"

Constitution of the South African National Editors' Forum

1. PREAMBLE

1.1 South Africa's most senior print, magazine, broadcast and other electronic media editors and media educators, have formed an association to be known as the South African National Editors' Forum ("the Forum") and this association and the members thereof commit themselves to a programme of action to defend and promote media freedom and independence. This document comprises the constitution of the Forum.

1.2 The Forum is founded on the belief and understanding that:

1.2.1 Public and media scrutiny of the exercise of political and economic power is essential;

1.2.2 The law related to the operation of media should be consistent with South Africa's Bill of Rights in its protection of freedom of expression;

1.2.3 Journalists and media owners have a duty to work to the highest professional standards and ethics;

1.2.4 Journalists and media educators embrace a learning culture by committing themselves to ongoing education and training.

2. NAME OF THE FORUM

The Forum shall be known as the South African National Editors' Forum ("SANEF").

3. LEGAL PERSONALITY AND STATUS

The Forum shall be a juristic person with perpetual succession notwithstanding changes in the composition of its membership or office bearers and capable of acquiring and disposing of rights (including the right to moveable and immovable property), of incurring obligations, of entering into legal transactions and of suing and being sued in its own name, and for all purposes to have an identity and existence distinct from its members or office bearers. The Forum shall be a non-profit entity in that it is not being formed in order to personally enrich any of its members or office bearers, and the members or office bearers shall have no rights in the property or other assets of the organisation solely by virtue of their being members or office bearers. The organisation's income and property are not distributable to its members or office bearers, except as reasonable compensation for services rendered.

4. OBJECTIVES OF THE FORUM

4.1 The sole object of the Forum will be to carry on in a non-profit manner and with an altruistic or philanthropic intent one or more public benefit activities as contemplated in Part 1 of the Ninth Schedule to the Income Tax Act, (Act 58 of 1962), and in particular –

4.1.1 The promotion of access to and dissemination of information in the media and a free, independent and pluralistic press;

4.1.2 The promotion or advocacy of human rights and democracy.

4.2 The ancillary objectives of the Forum and the means whereby it will seek to achieve its objectives will be –

4.2.1 To serve as a forum to promote the common interests of its members (as contemplated in clause 6.1) in respect of its sole object;

4.2.2 To nurture and deepen media freedom as a democratic value in all our communities and at all levels of our society;

4.2.3 To foster solidarity among journalists and to promote cooperation in all matters of common concern among the print and electronic media;

4.2.4 To address and redress racial and gender imbalances prevalent in journalism and news organisations in South Africa and to encourage the equitable spread of media ownership;

4.2.5 To promote media diversity in the interests of fostering maximum expression of opinion;

4.2.6 To help aspirant and practising journalists to acquire or develop new skills and enhance professionalism through media education programmes;

4.2.7 To promote rules and regulations guaranteeing professional freedom and independence in broadcast media and all media funded by public authorities;

4.2.8 To encourage government to ensure transparency and openness in administration and to pass laws ensuring maximum freedom of information;

4.2.9 To defend media freedom through all available institutions, including the Constitutional Court.

4.3 The objectives of the Forum may be promoted by any means authorised in this constitution but will specifically exclude–

4.3.1 Any trading or other profit making activities save to the extent permitted by section 30(3)(b)(iv) of the Income Tax Act, as set out in clause 8.2 below;

4.3.2 The provision to any of its members of financial assistance or of any premises or continuous services or facilities for the purpose of carrying on any private business, profession or occupation.

5. POWERS OF THE FORUM

With a view to achieving the aforementioned objects as set out in clause 4 above, the Forum shall be empowered to:

5.1 Encourage programmes for corrective action and a transformation of culture within news organisations as a whole;

- 5.2 Compile and circulate regular progress reports and establish a database;
- 5.3 Investigate and recommend industry guidelines and targets;
- 5.4 Conduct media education and training programmes;
- 5.5 Make education and training integral to corrective action;
- 5.6 Encourage liaison between industry and teaching institutions and promote industry commitment to these institutions;
- 5.7 Research and report on media education and training needs and teaching activities in regard to quality and relevance of trainers, materials, infrastructure and students;
- 5.8 Monitor the process of accreditation of journalism programmes;
- 5.9 Hold periodic conferences, meetings and seminars on issues relating to the objects set out in clause 4 above;
- 5.10 Publish media of various kinds in the furtherance of the objectives;
- 5.11 Engage in research into various issues affecting the media;
- 5.12 Monitor legislative and judicial activities and to take steps to intervene or to attempt to bring about changes where it is deemed by the Forum to be in the interests of furthering the objectives of the Forum. In this regard the Forum shall be empowered to provide practical assistance in litigation on matters affecting the objectives as set out above;
- 5.13 Co-operate with national and international organizations who have objectives similar to those set out in clause 4 above, or with any organization with whom co-operation could further the objectives of the Forum;
- 5.14 Do all things incidental to the above-mentioned powers that are desirable and necessary in order to achieve the objectives of the Forum.

6. MEMBERSHIP

[Click here to download the membership form](#)

6.1 Membership shall be open to any person in South Africa who is a senior editorial executive in the print and electronic media, including newspapers, magazines, regional publications, radio and television, on-line news media, community media and to people of similar status in media education. A "senior editorial executive" shall be defined as a journalist with executive or managerial responsibilities. Besides Editors, nominations can be drawn from Deputy Editors, Assistant Editors, Sports Editors, News Editors and other executives at this level.

6.2 Membership shall be at the discretion of the Editors' Council, and shall be considered by the Editors' Council after consultation with the Regional Convenor and the Management Committee.

6.3 The Editors' Council referred to above shall be constituted in accordance with paragraph 7 of this Constitution and shall have the discretion to:

6.3.1 Determine the procedure for applications for admission of new members, subject to the following: prospective members shall be proposed and seconded by a Forum member in good standing;

6.3.2 Admit on such terms as it may determine, any associate, affiliate or ordinary member;

6.3.3 Expel any member subject to the right of any such expelled party to appeal the decision. Such appeal shall be decided by a majority of the members of the Editors' Council.

6.3.4 Delegates who attended the founding meeting in October 1996 are automatically members on payment of the annual subscription fee and completion of the membership application form.

6.4 Membership shall be voluntary and members shall belong to the Forum in their individual capacities.

6.5 The members will pay annual membership fees. The amount to be paid, and when it will be paid, will be determined by the Editors' Council from time to time.

6.6 If any member shall fail to pay the appropriate subscription for a period of six months after it has fallen due, the membership shall automatically lapse without prejudice to the members' right to apply for re-admission on payment of the subscription fee.

6.7 Any member may resign at any time in writing.

6.8 The liability of any member for the obligations of the Forum shall be limited to the amount of any subscription that may be due and owing at the time that the obligation of the Forum arose, and the members shall not become liable for any of the obligations or liabilities of the Forum solely by virtue of their status as members of the organisation.

6.9 Membership of a member shall terminate if a member ceases to be a senior editorial executive within the scope of 6.1 above, but subject to the provisions of 6.3. Council may allow membership to continue on the strength of the value the member brings into the Forum.

7. STRUCTURE

The primary and most senior decision-making body shall be the members of the Forum at the annual general meeting. The structures of the Forum as set out below shall implement the policy made at any annual general meeting, in accordance with the powers set out below.

The Editors' Council

7.1 The overall management of the Forum shall be vested in the Editor's Council which shall consist of twenty members of whom at least three shall be persons who are not connected persons, as defined in section 1 of the Income Tax Act, in relation to each other.

7.2 The Editors' Council will be elected from the general membership at an annual general meeting of the Forum. The members elected to the Editors' Council shall hold office for one year, and shall be eligible for re-election.

7.3 In electing members of the Editors' Council it is a requirement that they reflect the constituent elements of the Forum as defined in 6.1. However notwithstanding this requirement in the event that it is impossible to reflect each of the constituent elements, the membership of the Editors' Council shall reflect the constituent elements set out in 6.1 as closely as is possible in the circumstances.

7.4 The Editors' Council shall meet not less than four times per year. The quorum for any meeting of the Editors' Council shall be one half of the Editors' Council members.

7.5 Meetings of the Editors' Council shall be summoned by the Chairperson, who shall convene additional Editors' Council meetings if any five members of the Editors' Council request such a meeting in writing.

7.6 The Editor's Council shall elect from among its members a Management Committee consisting of a Chairperson, a Deputy Chairperson, a Secretary General and a Treasurer, none of whom shall be connected persons in relation to each other, as contemplated in clause 7.1 above.

7.7 The Editors' Council shall be empowered to appoint individuals or an advisory committee which may include non-members of the Forum to advise it on various matters. Such parties may be invited to attend and participate in Editors' Council meetings, but shall not have the right to vote.

7.8 The Editors' Council shall have the power to appoint an Executive Director who shall manage the day-to-day running and fundraising activities of the Forum and who will ex officio be a member of the Management Committee and of the Editors' Council.

7.9 The Editors' Council shall, subject to the foregoing, retain the right to delegate any of its powers to such persons or bodies as it may decide.

7.10 The Editors' Council shall not distribute any of the Forum's profits or gains other than in order to achieve the objects for which it has been established.

7.11 The Editors' Council shall ensure that the activities of the Forum are wholly or mainly directed to the furtherance of its principal objects.

7.12 The Editors' Council shall have the power to dismiss or discipline any employees of the Forum, and may delegate this power to the Executive Director.

7.13 The Editors' Council shall and is hereby given the right to open a bank account in the name of the Forum. All of the Forum's financial transactions shall be conducted through the said banking account. The Editors' Council is empowered to appoint signatories to the banking account, not necessarily limited to the members of the Editors' Council.

7.14 The Editors' Council shall cause proper accounting records to be kept as are necessary fairly to present the state of affairs and business of the Forum and to explain the transactions and the financial position of the business of the Forum. The accounting records shall be kept at the main place of business of the Forum or at such other place or places as the Editors' Council thinks fit.

Management Committee

7.15 The Management Committee will be responsible for the implementation of policy and for the administration of the Forum as referred by the Editors' Council.

7.16 The Management Committee shall report on the activities and financial and other affairs of the Forum at the annual general meeting of the Forum. The roles of the office bearers shall be:

7.16.1 The Chairperson leads the forum and has overall oversight responsibility for the affairs of the forum as determined by the Editors' Council. The chairperson is the official spokesperson, chairs Forum meetings, has a casting vote in the case of a voting deadlock and represents Sanef at regional and continental general meetings of Editors' Forums.

7.16.2 The Deputy Chairperson shall deputise for the chairperson.

7.16.3 The Secretary General oversees the ordinary business of the Forum and the work of its employees, including in particular issues of membership and record-keeping.

7.16.4 The Treasurer oversees the financial administration of the Forum, its annual budget and audit, presents financial statements and directs fundraising activities.

Project Leaders

7.17 The Editors' Council is entitled to appoint Project Leaders from among its members to drive and report on projects either individually or by convening sub-committees.

7.18 These projects should include: education and training, monitoring and defence of media freedom, diversity and ethics.

Regional Convenors

7.19 The Editors' Council is entitled to appoint Regional Convenors from among its members to act as liaison between the region and the Management Committee.

7.20 The Regional Convenors will establish a support network of members in each media house and journalism training institution in the region to carry out Sanef activities.

7.21 The Editors' Council has established the following standing regions: Western Cape , Eastern Cape , KwaZulu-Natal , Central and Gauteng.

8 INCOME TAX ACT RE PUBLIC BENEFIT ORGANISATIONS

For the purposes of compliance with subsection (3)(b) of section 30 of the Income Tax Act and for so long as the Forum shall be approved as a public benefit organisation the following requirements of that section shall apply (including any amendments to the Act unless they are varied by subsequent amendments to this Constitution):

8.1 Any funds of the Forum not required for immediate use for its objectives may be invested, provided they are invested: -

8.1.1 With a financial institution as defined in section 1 of the Financial Services Board Act, 1990;

8.1.2 In any listed financial instrument of a company contemplated in paragraph (a) of the definition of "listed company" in section 1 of the Income Tax Act;

8.1.3 In such other prudent investments in financial instruments and assets as the Commissioner for the South African Revenue Service may determine.

8.2 The Forum may not carry on any business undertaking or trading activity, otherwise than to the extent that –

8.2.1 the undertaking or activity is –

(a) Integral and directly related to the sole object of the Forum; and

(b) Carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost and which would not result in unfair competition in relation to any taxable entities; or

8.2.2 The gross income derived from all such business undertakings or trading activities does not exceed the greater of –

(a) 15 per cent of the gross receipts of the Forum; or

(b) R25,000; or

8.2.3 The undertaking or activity, if not integral and directly related to the sole object of the Forum as contemplated in 8.2.1, is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or

8.2.4 The undertaking or activity is approved by the Minister of Finance by notice in the Gazette.

8.3 The Forum may not accept any donation that is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation. No donation may be accepted that is subject to conditions that are designed to enable the donor, or any connected person in relation to the donor, (other than an approved public benefit organisation), to derive any direct or indirect benefit from the application of the donation.

8.4 A copy of any amendment to this constitution shall be submitted to the Commissioner for the South African Revenue Service.

9. MEETINGS

9.1 The general meeting of the Forum shall be held annually at a date and place determined by the Editors' Council and shall be open only to members in good standing.

9.2 Members shall be given at least three weeks' notice of an annual general meeting.

9.3 The business of the annual general meeting shall be as follows:

9.3.1 To receive the annual report of the Management Committee;

9.3.2 To approve and adopt the financial statements;

9.3.3 To appoint auditors;

9.3.4 To elect the members' representatives to the Editors' Council for the following year;

9.3.5 To deal with any other relevant business.

9.4 Special general meetings shall be convened in the event that the Chairperson of the Editors' Council is requested by not less than 20% of the members of the Forum to convene such a meeting. In this event the Chairperson shall direct the Secretary to convene a special general meeting by giving members not less than three weeks' notice in writing of the meeting, and the business to be dealt with thereat. The Editors' Council shall have the power to convene a special general meeting at any time on the same notice as set out in this clause.

9.5 The quorum for an annual general meeting or a special general meeting shall be 10% of the membership present. If no quorum is available at such a meeting, the Chairperson may re-convene the meeting upon another date, and the re-convened meeting, if it so decides, may proceed to transact business even if the requisite quorum is not present, subject to there being at least one representative from each constituent element which occurs as a result of 7.3.

9.6 Members shall endeavour to reach decisions by consensus but if this is not possible decisions shall be taken to the vote.

9.7 All paid up members of the Forum shall be entitled to vote.

9.8 Voting shall take place by show of hands, unless a member who is entitled to vote, requests a secret ballot in which case the Chairperson shall order a poll by secret ballot. The reasonableness of such a request shall have to be established by the Chairperson.

9.9 Each member shall have one vote and decisions, other than as otherwise provided for in this Constitution, shall be taken by way of simple majority.

9.10 A notice shall be deemed to have been sufficiently dispatched and forwarded in writing to a member at the number or last address as provided by such member to the Secretary and in the case of a posted notice shall be deemed to have reached such members ten days after the date of posting.

9.11 The Secretary will open a minute, and every annual general meeting, special general meeting, meeting of the Editors' Council or Management Committee will be minuted and recorded in the minute book.

10. AMENDMENTS TO THE CONSTITUTION

Any clause of the constitution may be amended by a resolution passed by a two thirds majority of voting members present in person at an annual general meeting or special general meeting provided that at least three weeks' notice of the meeting, specifying the proposed constitutional changes, is given to members. In addition, the Editors' Council shall be entitled to effect such amendments to the Constitution as may be required in order to enable the Constitution to comply with any laws, or to enable effect to be given by the Editors' Council to the intentions of this Constitution. In the event that an amendment is effected by the Editors' Council, such amendment shall be deemed to have been ratified as required in terms of this Constitution unless such amendment is opposed by a two thirds majority of voting members within ten days of notification to such members of the change in question.

11. FINANCIAL YEAR END

The Forum's financial year end shall be the last day of February of each year.

12. DISSOLUTION

12.1 The Forum may be dissolved by a resolution of two thirds of voting members present at an annual general meeting or special meeting of the Forum provided that the notice of the proposed resolution is given to members not less than three weeks before the date of the meeting. The Chairperson shall forthwith upon receipt of the notice, advise all members of the proposed resolution.

12.2 If a resolution is duly passed for the dissolution of the Forum, or if for any reason the Forum ceases to exist, its assets remaining after the payment of its debts shall be transferred to one or more similar public benefit organisations, approved in terms of section 30 of the Income Tax Act, as may be decided by the Editor's Council.

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SANEF COUNCIL MEETING – CAPE TOWN – 9 FEBRUARY 2019

MINUTES

1. PRESENT

Mahlatsi Mahlase, Moipone Malefane, Kate Skinner, Katy Katopodis, Izak Minnaar, Sbu Ngalwa, Janet Heard, Judy Sandison, Adriaan Basson, Glenda Daniels,, Dianne Hawker, Sheldon Morais, Maxwell Maseko, Monica Laganparsad, Sam Mkokeli, Latiefa Mobara, Julie Reid, Khadija Patel, Beauregard Tromp, Nathan Geffen, Chris Louw, Chiara Carter, Marianne Merten, Patricia Handley, Amina Frense, Pippa Green, George Claasen, Yves Vanderhaegen, Marenet Jordaan, Willem Jordaan and Sandra Roberts.

2. APOLOGIES

Mary Papayya, Reggy Moalusi, Frances Mdlongwa, Angela Quintal, Franz Kruger, Anton Harber, Gwen Ansell, Henning Viljoen, Tshamano Makhadi, Prudence Thlale, Lizette Rabe, Bintu Petsana, Raymond Louw, Pieter Du Toit, Elan Rossouw, Paula Fray, Anthea Garman, Angie Kapelianis, Mapula Nkosi, Krivani Pillay and Henriette Loubser.

3. OPENING

4. MEETING WITH FACEBOOK

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mmc

5. MANAGEMENT COMMITTEE REPORT

6. MEDIA FREEDOM REPORT

Sam Mkokeli delivered the report.

EFF legal case to prevent harassment of journalists

The decision to explore legal action against the EFF that was taken at our last Council meeting in November 2018 was taken forward by Mancom. The case is now proceeding in the Equality Court and a judge has been allocated.

7. FINANCIAL REPORT

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8. DIVERSITY AND ETHICS REPORT

Glenda Daniels presented the report.

Glenda highlighted the issue of cyber bullying of women journalists and asked if the committee could get office support. She was assured that the office was pursuing this matter through the EFF court case.

9. EDUCATION AND TRAINING REPORT

10. COMMUNITY MEDIA REPORT

11. MARKETING REPORT

12. REGIONAL REPORTS

13. POLICY AND REGULATORY REPORT

14. PRESS COUNCIL REPORT

15. BCCSA REPORT

16. CLOSING REMARKS

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Mahlatshe thanked everyone for coming. Next council meeting is our AGM on 22 June 2019 in Johannesburg.

Minutes compiled by Moipone Malefane.

February 2019

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MMK