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SUBMISSION TO THE INQUIRY INTO MEDIA ETHICS AND CREDIBILITY

SOUTH AFRICAN NATIONAL EDITORS' FORUM

17 JULY 2019

1. INTRODUCTION

1.1. The South African National Editors' Forum (SANEF) is a non-profit organisation whose members are editors, senior journalists and journalism trainers from all areas of the South African media. We are committed to championing South Africa's hard-won freedom of expression and promoting quality, ethics and diversity in the South African media.¹

1.2. In October 2018 SANEF announced that it would be launching an Inquiry.² This was in the wake of a number of apologies made by the Sunday Times over stories such as the so-called "Rogue Unit" and the Cato Manor Death Squad. At the time SANEF welcomed Sunday Times editor, Bongani Siquko's, acknowledgment of editorial lapses, but we stated that this was only the first step in rebuilding and regaining the public trust. We said that this was a moment for individual media houses to seriously introspect and review editorial systems with a view to enhancing media credibility. To supplement and strengthen this process we announced that we would "institute an independent investigation into issues of editorial integrity" – across the industry as a whole and not with a Sunday Times-specific focus.

¹ <https://sanef.org.za/>

² <https://sanef.org.za/sanef-to-take-steps-after-sunday-times-apologies/>.

- 1.3. On 24 June 2019, two days after our AGM on 22 June 2019, we launched our Inquiry. This is our first submission to the Inquiry. We envisage that we will make a number as the process unfolds.
- 1.4. In line with the terms of reference of the Inquiry³, SANEF seeks to strengthen adherence to ethical codes and practices within the media industry, enhance public confidence in the practice of journalism in this country and secure the role of accountable, trustworthy, informative media free from manipulation by partisan or secret interests in our developing democracy, whether political, commercial or otherwise.
- 1.5. SANEF notes a number of editorial lapses in ethics and conduct. It is trite that there have been many rulings/judgments by bodies such as the Broadcasting Complaints Commission of South Africa (BCCSA) and the Press Council identifying ethical and conduct breaches by the media across the industry as is clear from their respective websites⁴. As just one high profile breach we note the Sunday Times reporting on the Cato Manor Death Squad. We note the recent withdrawal of the Taco Kuiper Award for that reporting⁵ and the fact that the National Prosecuting Authority recently withdrew all charges against General Booyens⁶.

2. DEFINITIONS

- 2.1. Throughout this document we refer, intentionally to co-regulation as opposed to self-regulation. This is deliberate but needs explanation as, in fact, it refers to two different models of co-regulation. In this regard:

2.1.1.the Electronic Communications Act, 2005 (the ECA) provides at section 54 for a dual model of content regulation. Essentially the Independent Communications Authority of South Africa (ICASA) allows broadcasters to choose between complying with its own prescribed Code enforced by ICASA's Complaints and Compliance Committee (CCC) or being a member of a body whose Code and enforcement mechanisms have been approved by ICASA, such as the BCCSA. This is a form of co-regulation; and

2.1.2.the print and online media are also regulated by a co-regulatory body as opposed to a purely self-regulatory body because of the significant role that public representatives play in the composition of the Press Council which, in turn, is responsible for enforcement of its Code of Ethics and Conduct for South African Print and Online Media.

³ <https://sanef.org.za/terms-of-reference-for-media-ethics-and-credibility-inquiry/>

⁴ <https://www.presscouncil.org.za/> and <https://bccsa.co.za/>.

⁵ <https://mg.co.za/article/2019-03-21-sunday-times-stripped-of-journalism-award-for-cato-manor-death-squad-reporting>

⁶ <https://www.iol.co.za/news/politics/i-feel-vindicated-booyens-after-mpa-withdraws-racketeering-charges-28941053>

3. THE CHANGING NATURE OF THE NEWSROOM AND THE IMPACT ON ETHICS

- 3.1. SANEF notes the increasing attacks on the credibility of the media nationally and internationally and is of the view that this is linked, among a number of issues, to the relentless, sustained assaults by populist leaders such as Donald Trump; structural shifts in the economic health and sustainability of the media, as well as technological shifts.
- 3.2. SANEF notes the crisis around the funding of quality journalism – we note the shrinking of advertising and the shifting of online advertising to Facebook, Amazon, Netflix and Google “the FANGs” - especially to Facebook and Google.⁷ We note the media’s experimentation with other funding options with mixed successes, including: membership models, donor-funded journalism⁸, crowd-funded journalism and the introduction of paywalls.
- 3.3. We note the particular difficulties of funding online media. In this instance we note the closing of the Huffington Post despite the fact it had 1.6m unique users and was the 9th largest online news site in South Africa. Nonetheless, it still had insufficient advertising to break even.⁹
- 3.4. We note that one of our strongest media companies, Media 24, reported in its audited financial statements for the year ending 31 March 2018 “deepening year on year losses, despite growing online audiences and engagement”.¹⁰
- 3.5. We note that only four years after entering the media sector¹¹, the Tiso Blackstar Group recently announced the sale of its print and broadcasting assets to Lebashe Investment Group despite having aggressively cut costs.¹²
- 3.6. We note the ongoing financial crises at the SABC which has brought the institution to its knees. Our public broadcaster is struggling to pay salaries, signal distribution costs, pay its creditors (including the independent production sector) and pay for maintenance of its ageing broadcasting infrastructure and buildings.
- 3.7. SANEF is also concerned about the state of community media (print and broadcast) in South Africa and notes the lack of sustainable funding models for community media. The financial challenges facing the commercial media are heightened for the community media sector. Consequential trends such as community broadcasters essentially being taken over by state

⁷ <https://themediainline.co.za/wp-content/uploads/2018/05/PAYING-THE-PIPER-The-sustainability-of-the-news-industry-and-journalism-in-South-Africa-in-a-time-of-digital-transformation-and-political-uncertainty.pdf>

⁸ <https://theconversation.com/donor-funded-journalism-is-on-the-rise-in-africa-why-it-needs-closer-scrutiny-119894>

⁹ <https://www.fin24.com/Companies/ICT/media24-and-huffpost-to-end-sa-partnership-20180716>

¹⁰ <https://www.media24.com/wp-content/uploads/2019/03/Media24-Holdings-AFS-2018-signed.pdf>

¹¹ <https://www.bizcommunity.com/Article/196/15/129506.html>

¹² <http://www.inceconnect.co.za/article/tiso-blackstar-hit-by-impairments-as-it-cuts-costs>

structures such as local municipalities by way of funding agreements undermines the credibility and independence of such community media outlets.

3.8. In this difficult economic environment, SANEF notes the waves of retrenchments that have taken place over the last decade. We note the research done by Glenda Daniels for the *State of the Newsroom Report, 2018*. In a chapter titled “Left out in the cold”, she points to the shocking statistics that in 2008 the media industry employed 10 000 journalists, but by 2018 this had been reduced by 50% - to 5000.¹³

3.8.1. We note the weakness of trade unions across the industry – except at the SABC - and the devastating impact this has had on journalists in terms of poor pay, poor working conditions, and little or no support around retrenchments. We believe that this has directly undermined a cooperative, humane working environment in the newsroom which in turn has undermined the quality of news.

3.8.2. We note that this toxic working environment has been further deepened by the difficult political climate in the country in which journalists have to cover violent crime, unrest and service delivery protests. We note the harassment and abuse of journalists – online and in the real world – and the particular abuse of women journalists.¹⁴ We believe that this too, has had a detrimental impact on the physical and mental health of journalists who suffer from post-traumatic stress disorder (PTSD), depression, anxiety and other conditions which often go undiagnosed and untreated. This too undermines the quality and accuracy of news.

3.8.3. We note that with the shrinking of newsrooms, younger journalists receive little or no mentorship from news editors. Further, we note the loss of beat reporters with specific content knowledge. We believe that these issues collectively create an environment that does little to safeguard against inaccuracies and mistakes.

3.9. We note that simultaneously with these cuts to newsroom resources there have been significant developments on the technology front - these have also placed editorial roles under severe strain. We note the immediacy of breaking news (across a variety of platforms – i.e. print or broadcast as well as websites, Facebook, Twitter, etc.) and the rush to be the first to break the news. We note that this endangers fact-checking and sub-editing with a resultant decline in accuracy. In this regard we note the important comments made by our SANEF member, Verashni Pillay, when she resigned from the Huffington Post. Her resignation was triggered by her publication of an opinion piece calling for white men to be denied the vote for a period of time. The piece, ostensible written by a Ms Shelley Garland was in fact a spoof

¹³ http://journalism.co.za/wp-content/uploads/2019/07/State-of-the-Newsroom-report-2018_updated-20190709.pdf

¹⁴ <https://www.sanef.org.za/wp-content/uploads/2018/10/Glass-Ceilings-Report-19-October-2018.pdf>

written by a white man, Marius Roodt, with the express aim of “showing the lack of editorial discernment in the South African media”¹⁵. In an article reflecting on the circumstance of the publication of the piece, she said that Roodt: targeted a stretched newsroom that was being asked to do “way too much with too little resources”. She stated that she was refused sub-editors despite her warning that the publication would run into legal trouble given the rate at which they were publishing. She also claimed that the editorial team was under enormous pressure from management to produce traffic and clicks. Finally, she argued that management made a “mistake in how they resourced the newsroom”.¹⁶

3.10. Linked to the point above, SANEF notes the demand for online audience engagement. We note that this leads to the so-called click-bait phenomenon¹⁷ in which misleading headlines unfairly attract audiences to click on the page only to find a very different story – again undermining credibility and trust.

3.11. On the positive side, SANEF notes that despite this very difficult environment, South African journalists have delivered some outstanding journalism – journalism that changed the politics of the country, including, arguably, leading to the removal of former-President Zuma. We note the collaboration of three journalism organisations on the Gupta Leaks stories including amaBhungane¹⁸, Scorpio¹⁹ and Media 24. We believe that this collaboration produced some of the best journalism the country has ever seen, journalism we can all be immensely proud of.

4. THE PHENOMENON OF STATE AND CORPORATE CAPTURE OF JOURNALISTS AND ATTACKS ON JOURNALISTS AND JOURNALISM

4.1. SANEF notes the huge number of allegations and counter-allegations regarding alleged state and corporate capture of journalists, journalism and indeed entire media houses. We believe that this is an issue that needs to be dealt with head-on by the Panel. We have therefore dedicated a specific section to explore it.

4.2. The Bell Pottinger scandal is well-known but it does bear repeating that the Public Relations Communications Association (PRCA), a UK Body, expelled Bell Pottinger as a member (its most serious sanction) for breaching all four parts of the PRCA’s Code of Conduct and, particularly, its failure “to deal fairly and honestly with...intermediaries, the media of communication...and above all else the public”²⁰.

¹⁵ <https://www.news24.com/SouthAfrica/News/i-do-not-regret-it-huffpost-fake-blogger-20170525>

¹⁶ <https://thediaonline.co.za/2017/08/verashni-pillay-opens-up-about-her-hate-speech-appeal-victory/>

¹⁷ https://www.cjr.org/analysis/the_mission_sounds_simple_pay.php

¹⁸ <https://amabhungane.org/>

¹⁹ <https://www.dailymaverick.co.za/section/scorpio/>

²⁰ <https://www.prca.org.uk/campaigns/ethics/bell-pottinger-case-study>

4.2.1. The social media campaign highlighting issues around “white monopoly capital” conducted by Bell Pottinger was, the PRCA found, likely to and did “inflame racial discord” in South Africa. What is of particular concern to us, however, is that the narrative underlying Bell Pottinger’s social media campaign found its way uncritically into a number of stories in the news media. While SANEF believes that strong arguments can certainly be made around the racialised nature of our economy, this was done crudely and, we believe, expressly, in this formulation, to undermine critical reporting. For example, Carl Niehaus was given a platform in the opinion pages of Independent Online to opine that the “mass media is captured by white monopoly capital”.²¹ Many other journalists have noted the manner in which the Bell Pottinger narrative was used by politicians and found its way into the mainstream media²². This was particularly so in the pages of the New Age newspaper and ANN7, both Gupta-owned media outlets. Besides the narrative in their media outlets, the Guptas established “news sites” which published deliberately false stories, including, for example, publishing a photo-shopped images of well-known journalist and editor Ferial Haffajee ostensibly sitting on the lap of Johann Rupert in an attempt to undermine her reportage of government corruption²³.

4.2.2. Journalists investigating corruption and state capture have been vilified for being agents of “white monopoly capital”, culminating in a July 2017 restraining order being obtained by SANEF against then-lobby group, Black First Land First (BLF). The BLF had stated that journalists should be physically and verbally attacked for their alleged support of white monopoly capital.

4.3. In 2018, spurred largely by the political party the Economic Freedom Fighters (the EFF), an allegation was made that a number of journalists, including Anton Harber and Thandeka Gqubule, had been Stratcom operatives during the Apartheid era. Both sued for defamation and the case is ongoing.²⁴

4.4. The EFF also recently lost a case instituted by talk show host and journalist Karima Brown²⁵. The EFF openly attacked Brown for her critical reporting against them. In that case, the High Court held that the EFF had violated section 8(c) of the Electoral Code in that it failed to take reasonable steps “to ensure that journalists are not subjected to harassment, intimidation, hazard, threat or physical assault by any of their representatives or supporters”.

²¹ <https://www.iol.co.za/news/opinion/mass-media-is-captured-by-white-monopoly-capital-10312605>

²² <https://www.biznews.com/guptaleaks/2017/06/09/bell-pottinger-white-monopoly-capital>

²³ <https://www.biznews.com/guptaleaks/2017/06/09/bell-pottinger-white-monopoly-capital>

²⁴ <https://www.news24.com/SouthAfrica/News/anton-harber-thandeka-gqubule-drag-eff-to-court-over-stratcom-comments-20181207>

²⁵ Brown v Economic Freedom Fighters and Others Case No: 14686/2019.

<http://saflii.org/za/cases/ZAGPJHC/2019/166.html>

- 4.5. What the above cases are showing is a worrying trend of political parties, their representatives, and others, not challenging allegedly poor or biased reporting through formal channels such as the BCCSA or the Press Ombud but instead, relying on the informal tactic of labelling journalists as being associated with Apartheid and/or white monopoly capital. SANEF is of the view that this appears to be a deliberate political strategy to unfairly undermine reporting of political issues across the political spectrum. The effects of this are to put question marks around the credibility of the media in the minds of the public without ever having to justify such claims unless the journalists themselves go to the expense of taking the matter to court. SANEF is of the view that this can only have a chilling effect on the media and, particularly, on journalists. This in turn, undermines the media's ability to play its watchdog role of holding the powerful to account. SANEF notes that these trends mirror similar political trends internationally of delegitimising the media by politicians as is clear from UNESCO's *World Trends in Freedom of Expression and Media Development: Global Report 2017/8*²⁶.
- 4.6. More recently, journalist Piet Rampedi, has argued that he was "hounded" for exposing the SARS "rogue unit". Rampedi, a former Sunday Times journalist has accused several of his former colleagues of being involved in a cover-up driven by Minister of Public Enterprises, Pravin Gordhan, for Tiso Blackstar's commercial gain.²⁷ He has taken to twitter to attack a number of journalists, media houses, civil society organisations and activists by name²⁸. As SANEF, we defend Mr Rampedi's right to criticise the media (and SANEF), but believe that this should be done through the formal channels where the public can have sight of actual judgments and findings by persons qualified to make such findings.
- 4.7. An example of a media house clearly subject to state capture but forced, through a complaint, to change its reporting was the SABC under Hlaudi Motsoeneng. Mr Motsoeneng notorious announced in the run up to the 2016 Local Government Elections that the SABC would not be broadcasting any footage of violent protests. Two civil society organisations complained to ICASA's CCC that this was a violation of the Broadcasting Act. The CCC agreed and ordered the SABC not to censor such news footage. We include this example anecdotally as we are aware that the Inquiry's Terms of Reference do not include the SABC.
5. BEHAVIOUR OF MEDIA HOUSES THAT UNDERMINES THE CREDIBILITY OF THE MEDIA AS A WHOLE
- 5.1. Linked to the above, another recent phenomenon undermining the credibility of the media, has been vicious internecine battles between media houses, for example, between the Independent Group and the Tiso Blackstar Group.

²⁶ <https://unesdoc.unesco.org/ark:/48223/pf0000259756>

²⁷ <https://citizen.co.za/news/south-africa/social-media/2151772/i-was-violated-for-five-years-for-exposing-rogue-unit-piet-rampedi/>

²⁸ See his tweets over the weekend of 13/14 July 2019 under this Twitter handle @pietrampedi aka Mr Putin.

- 5.2. In response to critical news stories published in Tiso Blackstar publications regarding the listing of one of his companies, Dr Iqbal Survé, CEO of the Independent Group, openly referred to Tiso Blackstar journalists' stories as "having all the hallmarks of Stratcom and dirty tricks"²⁹. However, he declined to pursue the matter through formal channels thereby denying Tiso Blackstar the opportunity of formally defending its reporting and/or its reporters.
- 5.3. Further, the Independent Group has in fact ceased to be a member of the Press Council altogether, thereby denying the public a valuable means of complaining about its own reporting and undermining the very system of co-regulation of the media that is at the heart of ensuring compliance with ethical standards of journalism.
- 5.4. The result of this is that the public remains largely in the dark as to what is, in fact, the truth of the allegations and counter-allegations, leading to a general distrust of the media as a whole.
- 5.5. Another serious issue that has been brought to SANEF's attention is the fact that media owners sometimes illegitimately interfere in editorial decision-making in a manner that undermines the provisions of clause 2 of Chapter 1 of the Press Council's Press Code of Ethics and Conduct for South African Print and Online Media³⁰. An example of this (although the matter was dealt with in the Labour Court) was the unfair dismissal of Cape Times' editor Alida Dasnois for her production of a wrap-around tribute to Nelson Mandela to commemorate his death - and leading with a story critical of Sekunjalo Investments (also owned by the owner of the Independent Group)³¹. In this regard, SANEF is concerned that similar provisions do not even appear in the Broadcasting Codes enforced by the BCCSA or ICASA's CCC. Such editorial interference clearly undermines the credibility of the media because it diminishes the distinction between managerial / owner and editorial decision-making which is central to the media's credibility.

6. BEHAVIOUR OF JOURNALISTS THAT UNDERMINES THE CREDIBILITY OF THE MEDIA AS A WHOLE

- 6.1. There is no doubt that journalists' own conduct has, on occasion, contributed to the undermining of the credibility of the media.

²⁹ <https://www.iol.co.za/news/south-africa/western-cape/stratcom-2018-exposed-14551588>

³⁰ The Clause reads as follows:

2. Independence and Conflicts of Interest

The media shall:

- 2.1 not allow commercial, political, personal or other non-professional considerations to influence reporting, and avoid conflicts of interest as well as practices that could lead readers to doubt the media's independence and professionalism;
- 2.2 not accept any benefit which may influence coverage;
- 2.3 indicate clearly when an outside organization has contributed to the cost of newsgathering; and
- 2.4 keep editorial material clearly distinct from advertising and sponsored events.

³¹ <https://www.news24.com/SouthAfrica/News/i-would-not-do-things-differently-former-cape-times-editor-20160509>

6.2. Examples of this include:

6.2.1. journalists openly aligning with a particular political party or a particular faction of a political party in a manner that undermines the impartiality and credibility of their reporting;

6.2.2. journalists openly taking an oppositional stance to a particular political party or a particular faction of a political party in a manner that undermines the impartiality and credibility of their reporting; and

6.2.3. journalists openly disparaging each other's work in a manner that goes beyond justifiable and/ or legitimate professional criticism.

6.3. SANEF is not in a position to provide extensive examples of the above because these matters have often not been tested in court or in another formal process such as a Press Ombud hearing. However, we do think it important to note the ruling of the High Court in *Brown v EFF and Others*³² as it does reflect our concerns. In that case, the High Court declined to order the EFF to pay a fine because of "the role Ms Brown herself played in triggering the chain of events and the resulting discord which followed...[t]he strident and political tone adopted by Ms Brown in her responses on social media to the EFF, only fueled the flames of discord..."³³.

6.4. We would welcome any suggestions by the Panel of the role that SANEF itself can play with regard to journalists' conduct in this regard.

7. PROPOSED RECOMMENDATIONS FOR CONSIDERATION BY THE PANEL

7.1. Reflection on the best practice displayed in the reporting on the Gupta Leaks and other stories

7.1.1. SANEF believes that the Gupta Leaks stories are examples of outstanding investigative journalism. We believe that lessons should be distilled that can be replicated across the industry. We are also mindful of the fact that the Gupta Leaks stories were preceded by earlier thoughtful, painstaking work done by a number of journalists on issues of state capture. Other examples of excellent journalism include stories on the arms deal, Marikana, early reporting on HIV and TB, the Nkandla scandal and Eskom and load-shedding. In this regard we think it important to quote Advocate Hermione Cronje, head of the Investigating Directorate in the Office of the National Director of Public Prosecutions who gave the keynote address at the 2019 Nat Nakasa Awards in which she said: "***It is to you [the media] that we owe these commissions of enquiry [Zondo, Mokgoro, PIC and Nugent Commissions], through your unrelenting focus on discovering and***

³² Brown v Economic Freedom Fighters and Others Case No: 14686/2019.

<http://saflii.org/za/cases/ZAGPJHC/2019/166.html>

³³ At paragraph [100] read with paragraph [103] of the judgment.

exposing what happened³⁴. We believe that lessons should be distilled from this “best-practice” journalism too.

7.1.2. We would urge the Panel to investigate these lessons and identify key practices that contributed to excellent journalism in the public interest, for example:

- 7.1.2.1. cross-competitor collaboration as was the case in the Gupta Leaks stories;
- 7.1.2.2. style-guides regarding language/words used to promote independence, impartiality, credibility and to avoid suspicions of bias or prejudice; and
- 7.1.2.3. sourcing news sources in ways that ensure diversity, that qualifications and expertise of the source is appropriate for the story and that the source is able to provide factually accurate information or commentary.

7.2. Proposed Amendments To The Press Code For Consideration By The Panel

7.2.1. **Click-Bait:**

SANEF submits to the Inquiry that it ought, in its findings, to recommend an amendment to clause 10 of Chapter 1 of the Code of Ethics and Conduct for South African Print and Online Media (the Code) to refer specifically to the “click bait” phenomenon on online media to make it clear that the prohibition against misleading headlines in clause 10.1 of the Code prohibits the use of click-bait online.

7.2.2. **Resources for Fact-Checking, Verification and Editorial Functions:**

- 7.2.2.1. A subscriber member of the Press Council has to comply with the Code. SANEF believes that too often, the burden of compliance falls upon the journalist and/or editor responsible where such journalist and/or editor simply has no resources for fact and back-ground checking or a sub-editor available. In these circumstances we believe that it is the media house who in fact undermines the Code by making it extremely difficult for their journalists and editors to comply therewith.
- 7.2.2.2. SANEF submits that the Panel ought to investigate this suggestion fully with a view to issuing a report that recommends an amendment to the Code specifically to require media houses to provide reasonable editorial staff precisely to ensure that journalists and editors have the necessary verification, fact- and back-ground checking and sub-editing resources necessary to provide the most accurate information possible to the public.

³⁴ https://sanef.org.za/wp-content/uploads/2019/07/SANEF-Nat-Nakasa-Awards-speech_Hermione-edited.pdf.

7.2.2.3. The Panel should also investigate possible partnerships with fact-checking organisations such as Africa Check.

7.3. Encouraging The Use Of The Formal Complaints Mechanisms To Promote Media Credibility

7.3.1. The Press Council and the BCCSA are complaints-driven bodies. (This is except in very specific circumstances mentioned below.) Generally, they cannot exercise an independent watchdog role without a complaint having first been lodged.

7.3.2. Consequently, the phenomenon of political parties, media houses, journalists, commentators and members of the public criticising the media for alleged misconduct without testing these in the enforcement structures and procedures of these co-regulatory bodies amounts to an unjustifiable diminution of media credibility in the eyes of the broader public. This has serious consequences for the media's ability to carry out its watchdog role in ensuring an informed citizenry and, ultimately, undermines a key pillar of democracy itself.

7.3.3. SANEF submits that the Panel ought to investigate options for promoting the use of formal complaints mechanisms with a view to encouraging media compliance with codes of conduct and ethics in print, on air and online. In particular, the Panel ought to articulate that baseless criticism of particular alleged ethical breaches or misconduct on the part of the media, particularly where this is not accompanied by detailed analysis or a formal complaint to the relevant enforcement body, or a court, ought to be presumed to be baseless. This would obviously exclude legitimate criticism in the form of opinion pieces, academic analysis and the like.

7.3.4. As SANEF we believe such a recommendation by the Panel would enable the media to defend itself more effectively against faceless attacks by political parties, members of the public and even rival media houses that unjustifiably undermines public confidence in the media.

7.4. Encouraging All Print and Online Media to Belong to a Co-Regulatory Body with a Code of Conduct

7.4.1. Media co-regulation is the corner stone of democratic media practice for the print and online media. Broadcasters that are not regulated by the BCCSA are subject to statutory regulations by ICASA's Complaints and Compliance Committee which enforces ICASA's prescribed Code of Conduct for Broadcasters.

7.4.2. Sadly, media co-regulation has been significantly undermined by the renunciation of membership of the Press Council by publications (online and in print) in the Independent Group stable. Further, and more worryingly, the renunciation of membership might well encourage state interventions in the form of a statutory body such as the proposed Media

Appeals Tribunal which would not be in the public interest as these would undermine internationally-accepted media freedom principles.

7.4.3.SANEF submits that the Panel ought to investigate this suggestion fully with a view to issuing a report that encourages all media organisations to belong to a co-regulatory body that enforces a code of ethics and conduct. The establishment of a purely in-house mechanism such an in-house ombud clearly lacks the appearance of impartiality required to convince the public that a complaint will be dealt with in an unbiased manner. In particular, the Panel ought to articulate that a failure to be a member of such a co-regulatory body ought to result in the presumption that a media house lacks a legitimate complaints and enforcement mechanism.

7.5. Encouraging the Press Council to Exercise its Mandate Proactively to Investigate Breaches of the Code

7.5.1.Unlike the BCCSA, the Press Council is empowered, by its Constitution, proactively to investigate breaches of the Code, as directed in clause 1.9 of the Press Council Complaints Procedure, something that has rarely been done in the past.

7.5.2.Section 1.9 of the Press Council Complaints Procedure provides that ***“[w]here, within 30 working days after the of the date of publication there has been no complaint, but the Public Advocate is of the view that a prima facie contravention of the Press Code has been committed and it is in public interest, he or she may file a complaint with the Ombud for adjudication in terms of section 3”***³⁵.

7.5.3.SANEF submits that the Panel ought to investigate this suggestion fully with a view to issuing a report that encourages the Press Council to ensure that the Public Advocate does indeed exercise his or her powers to bring a Code violation before the Ombud without a complaint having been formally lodged.

7.6. Encouraging Industry Co-Regulatory Bodies to Improve Accessibility to Complaints Mechanisms

7.6.1.SANEF is concerned that the main co-regulatory Media Codes of Conduct (for the print and online media, enforced by the Press Council and the Codes of Conduct for free-to-air and subscription Broadcasters, enforced by the BCCSA) are available only in English. Similarly, the procedures documents, giving information regarding how to lay complaints with the Press Council or the BCCSA are also only in English. However, SANEF is aware that the Press Council is in the process of translating its Code into at least one other language.

³⁵ <http://www.presscouncil.org.za/complaints/complaints-procedure/>

7.6.2.SANEF is also concerned that the rulings of these bodies are also available only in English and that the public is not well informed about the complaints procedures available.

7.6.3.SANEF submits that the Panel ought to investigate these access issues fully with a view to issuing a report that encourages the Press Council and the BCCSA to:

7.6.3.1. publish their Codes in all official languages;

7.6.3.2. publish their Annual Reports in all official languages;

7.6.3.3. translate any adjudication or ruling into any official language upon request;

7.6.3.4. publish the contact details of the Press Council on the front page of a print publication and on the home page of any online publication; and

7.6.3.5. publish the contact details of the BCCSA on the home page of any broadcasting member's website.

7.7. Encouraging Industry Co-Regulatory Bodies to Consider a Converged Code of Ethics and Conduct Applicable Across Different Media Platforms

7.7.1.As the Panel is aware, the main Media Codes of Conduct are those for the print and online media, enforced by the Press Council and the Codes of Conduct for free-to-air and subscription Broadcasters, enforced by the BCCSA.

7.7.2.SANEF is of the view that as many broadcasters also have significant online media activities, including news feeds, audio-visual material, Twitter feeds, Facebook accounts, YouTube channels etc, the likelihood of overlapping Code provisions becomes real.

7.7.3.Further, being faced with a number of Codes with overlapping provisions is likely to lead to public confusion over which body to go to with a complaint – thereby discouraging the laying of complaints with any enforcement body. Again, SANEF is of the view that this is not in the public interest as an unwillingness or inability to lay a formal complaint to be adjudicated upon also undermines the credibility of the media in the eyes of the public.

7.7.4.SANEF submits that the Panel ought to investigate this suggestion fully with a view to issuing a report that encourages all media co-regulatory bodies to come together to discuss their respective Codes and jurisdictions to consider the appropriateness of a single cross-platform converged Code (which meets the requirements of, for example, the broadcasting legislation) even if parts thereof are adjudicated by different co-regulatory enforcement bodies. The aim would be to provide a well-publicised Code and

a single portal for the public to lodge complaints regarding the media, even if broadcasting-related complaints continue to be adjudicated by the BCCSA.³⁶

7.8. Encourage Co-Regulatory Bodies to Issue Annual Reports on Trends with Regards to Media Ethics and Conduct Violations

7.8.1. All co-regulatory bodies publish annual reports and their judgments and rulings are available online.

7.8.2. However, these bodies do not appear to summarise the trends that are distilled from their own jurisprudence to give the public and the media an idea about what the ethical and conduct lapse trends are over time.

7.8.3. SANEF submits that the Panel ought to investigate this suggestion fully with a view to issuing a report that encourages all media co-regulatory bodies to develop a reporting mechanism in their respective annual reports that alerts the public and the media to trends not only in the complaints received but in the adjudications handed down.

7.9. Encourage in-house Editorial Policies that Protect the Independence of Editorial Staff Decision-making Against Interference from Executive Management

7.9.1. SANEF reiterates its concern about executive management's interference in editorial decision-making.

7.9.2. SANEF submits that the Panel ought to investigate this suggestion fully with a view to issuing a report that encourages:

7.9.2.1. the NAB/BCCSA to update the broadcasting Codes specifically to prohibit interference by Executive Management in editorial decisions regarding news; and

7.9.2.2. all media organisations to develop in-house editorial policies to address, among other things, this concern and which can be relied upon by editorial staff.

7.10. Encourage Ongoing Professional Development and Training of Journalists and Editorial Staff

7.10.1. SANEF submits that the Panel ought to investigate this suggestion fully with a view to issuing a report that encourages all media houses to ensure adequate and ongoing professional training and development of journalistic and editorial staff.

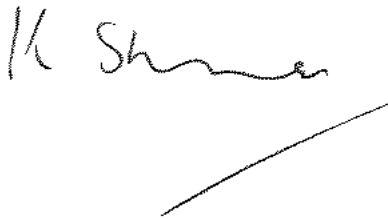
³⁶ For more information see the link below. Please note that his research is critical of the proposal. https://www.mediaanddemocracy.com/uploads/1/6/5/7/16577624/mpdp_considering_a_cpmas_for_south_africa.pdf

7.10.2. In particular, SANEF suggests that the Panel question media houses about the efficacy of the Skills Development Act's processes regarding media training and whether or not amendments ought to be suggested to Parliament and/or the Ministry of Labour to ensure that companies' Skills Development Levies are in fact being properly used to provide staff with such training and development.

8. CONCLUSION

8.1. SANEF thanks the Panel for the opportunity of making these written and oral submissions and looks forward to being of assistance to the Panel in developing suggestions for improving South African media ethics and credibility in the public interest. Where appropriate SANEF in fact would like to play an active role in taking the recommendations forward in a manner that ensures the recommendations are implemented to the benefit of the media and the public.

8.2. Please do not hesitate to contact SANEF's Executive Director, Kate Skinner on director@sanef.org.za should you require any further information or have any other queries.

A handwritten signature in black ink, appearing to read 'K Skinner', with a long horizontal line drawn below it.

Submitted by the South African National Editors' Forum on behalf of SANEF Chairperson,
Mahlatse Mahlase

17 July 2019