

COMMENT OR QUERIES ON SANEF SUBMISSION

18 November 2019

AD PARA 1.2: What is SANEF’s view as to the means whereby “public trust” and “media credibility” are rebuilt, regained and enhanced?

First, we believe that professional editorial codes need to be strengthened, developed and updated and that the Panel ought specifically to call for this to be done.

We are a strong supporter of the “Press Code of Ethics and Conduct for South African Print and Online Media” developed by the Press Council and by the Interactive Advertising Bureau of South Africa ((IABSA) – a body whose members’ flight advertising on their websites and includes a number of print and broadcast websites. We also strongly support the Broadcasting Complaints Commission of South Africa’s (BCCSA)¹ “Code of Conduct for Free to Air Broadcasting Services Licensees”² and “Code of Conduct for Subscription Broadcasting Services Licensees”³. Finally, we support ICASA’s “Code of Conduct for Broadcasters” which is enforced by ICASA on the advice of its Complaints and Compliance Standing Committee (the CCC)⁴ (copies of all Codes are provided herewith).

We suggest that the Inquiry ought to research the judgments of the BCCSA and of the CCC (all of which are available on their websites) to review what news-related provisions of these Codes are being transgressed by broadcasters with a view to highlighting gaps in broadcasters’ newsrooms’ practices.

SANEF also notes that the BCCSA and ICASA codes could be strengthened in three key ways.

- We believe that the Press Code is more comprehensive than the BCCSA and ICASA Codes on news and current affairs-related ethical standards. Consequently, we are of the view that the BCCSA and ICASA Codes would benefit from taking on a number of the principles and even provisions of the Press Code. We believe that the Panel should examine the BCCSA and ICASA Codes and further interview the BCCSA and National Association of Broadcasters (NAB) and the members of the CCC to look at specific ways of strengthening and updating the BCCSA and ICASA Codes with regard to ethical standards and practices.
- In our view the Press Code needs to be further strengthened in respect of its provisions regarding online media. For instance, we are of the view that the Press Code ought to deal specifically with the so-called “clickbait” phenomenon where “sexy” headlines do not reflect the actual content of the story. SANEF has dealt with this in its previous submission.

¹ <https://www.bccsa.co.za/>

² https://bccsa.co.za/wp-content/uploads/2015/12/BCCSA_Broadcasting_Code_NEW.pdf

³ https://bccsa.co.za/wp-content/uploads/2015/12/CODE_FOR_SUBSCRIPTION_BROADCASTERS.pdf

⁴ Notice 958 in Government Gazette 32381 dated 6 July 2009.

- In discussions with our members another issue has come to our attention which is linked to science journalism. The issue is linked to the journalist principle of “right of reply”. George Claasen, public editor of News24 and Media24’s Community Press, and a SANEF member, puts forward the argument that it is important not to give “right of reply” to quacks, climate change denialists etc. He argues that if there is a clear body of scientific knowledge, there is no need to give a right of reply to dissidents. SANEF supports this principle and believes that the Press Code should be amended to reflect this.⁵
- SANEF also notes the potential benefits of developing a single co-regulatory code that deals with all content platforms – print, online and broadcast - which would be applicable to the members of the NAB and of the Press Council and the IABSA. We are of the view that such a unified Code (which would require a uniform approach to resolving complaints) would prevent the possibility of different jurisprudential approaches being taken by different adjudicatory bodies in respect of similar issues, for example, on news-related ethical practices. This too was discussed in SANEF’s previous submission. We note the fact that Namibia has adopted a single code for print, online and broadcast media members of the Namibian Editors’ Forum.⁶

Second, we believe that disinformation and misinformation on social media needs to be decisively dealt with and we call on the Panel to identify this phenomenon as a threat to media credibility and to the public interest more generally. Please note SANEF’s understanding of “misinformation” is information that is posted that is incorrect - however “disinformation” takes things one step further - disinformation is false information that is posted with the specific purpose of distorting facts to push a particular agenda.

We believe that falsehoods on social media platforms impact on the credibility of the news media because journalists rely on social media platforms as a source. Further, members of the public often don’t distinguish between social media platforms and the established media which means that their distrust of social media platforms impacts on their trust in the media overall.

We note the important work that has been done by Media Monitoring Africa (MMA) and the Independent Electoral Commission (with support from SANEF) to begin to eliminate false information on social media platforms during the 2019 elections period. We note the operation of MMA and the IEC’s Real411 portal to counteract “fake news” during the 2019 election.⁷

⁵ <https://www.news24.com/Columnists/GeorgeClaassen/science-denialism-is-a-litmus-test-for-quality-journalism-20190625>

⁶ <https://www.namibian.com.na/public/uploads/documents/5922bc565ea0f/code%20of%20ethics%20online.pdf>

⁷ <https://www.real411.org/learn>

SANEF is also aware of the fact that MMA launched a portal, during October 2019, which exists outside election periods i.e. on an ongoing basis, to counteract disinformation. We are of the view that the Panel ought to be inviting MMA to report on its work in this regard and we are of the view that the Panel ought to recommend that social and other media platforms such as: Google, Twitter and Facebook, work with civil society organisations to counter fake news and in so doing, to bolster media credibility.

Third, we believe that misinformation and disinformation in advertising also feeds into the undermining of media credibility generally.

SANEF believes that false advertising contributes to the overall erosion in the trust in the media. SANEF believes that audiences don't necessarily distinguish between editorial and advertorial. We note the important work that is being done by the new Advertising Regulatory Board (ARB)⁸ and by ICASA's CCC to counteract false claims in advertising in terms of section 55 of the Electronic Communications Act, 2005. We encourage the Panel to meet with the ARB to discuss its operations and possible ways to strengthen its regulatory powers with a view to making recommendations in this regard.

Fourth, we believe that all complaints mechanisms should be widely and effectively promoted, advertised and marketed including the Press ombudsman, the BCCSA, ICASA's CCC, the Real411 portal and the ARB.

We submit that the Panel ought to encourage all media self and co-regulatory bodies (including many of those listed above) to develop a single portal or process to facilitate the laying of media-related complaints by the public which can, thereafter, be directed to the most appropriate body (e.g. the Press Council for print and online matters or the BCCSA or ICASA's CCC for broadcasting-specific matters, or the ARB or ICASA's CCC in respect of advertising content) for adjudication. We think it could be useful to explore a single "clearing house" with a single email address or sms/WhatsApp/toll-free number or website portal where members of the public could complain about misinformation / disinformation across the established media, social media and advertising platforms.

Fifth, we believe complaints mechanisms need to be made more accessible, and easy to use. We call on the Panel to recommend that the combined complaints portal and/or the existing complaints mechanisms be available in a number of official languages. At the moment, these are available only in English with the notable exception of the Press and Online Code.

By recommending that the complaints mechanisms of the Press Council, BCCSA, ICASA's CCC, the ARB etc. are accessible in a range of languages, the Panel would be foregrounding the need for the media to respond to the concerns of non-English speakers, particularly those in marginalized groupings for example, rural communities.

⁸ See <http://arb.org.za/>

Sixth, we believe that the Panel could play a powerful role in influencing media company owners to respect the editorial independence of editorial decision-making processes. We suggest that the Panel interviews editors and ex-editors to look at concrete ways to prevent such interference. We note the findings of:

- Advocate Terry Motau’s “Report on Primedia’s Inquiry into the allegations of censorship and editorial interference by Ms. Karema Brown”⁹ (a copy of which is provided herewith). We note the following key recommendations of this report:
 - Primedia should induct its employees and staff about its policies and employment procedures.
 - It should develop a comprehensive statement of editorial policy that includes the principles of the BCCSA and Press Council Codes.
 - It should improve the channels for audience complaints.
 - It should consider reviving the position of an internal ombud/ complaints officer.
 - It should develop a set of guidelines for handling complaints.
 - It should create an internal mechanism to resolve conflicts over editorial and ethical standards between staff.
 - Further, the report reiterates the principle that, “no shareholder, director or members of staff not working in news/editorial will be allowed to interfere in any editorial issue or give instructions on what to say, not to say and report.... We must allow our heads of news, editors, stations and programme managers to do their jobs without fear or favour”.

We call on the panel to consider calling for the recommendations and principles outlined in this report to become standard industry practice.

- Mr Joe Thloloe’s “Report of Commission of Inquiry into Interference in the Decision-Making in the Newsroom of the SABC”¹⁰. We note the following key recommendations of this report:
 - That the designation of the Group Chief Executive Officer (GCEO) or Chief Operating Officer (COO) is not appropriate for the SABC.
 - That the Group Executive (GE) News should be designated as Chair of an Editorial Policy and Ethics committee. S/he would chair the committee that would include all the Group Executives of information programming including radio, television, sports, education etc. The committee would be the highest point of upward referral by editorial line managers. The committee would

⁹ Motau, T (2019). Report on Primedia’s Inquiry into the Allegations of Censorship and Editorial Interference by Ms. Karema Brown. Unpublished Report.

¹⁰ Thloloe, J & Tawana, S (2019). Report of the Commission of Inquiry into Interference in the Decision-Making in the Newsroom of the SABC. Report published in 25 February 2019.

[file:///C:/Users/kates/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/Report-of-Commission-of-the-SABC-NEWS-INQUIRY-FINAL%20\(1\).pdf](file:///C:/Users/kates/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/Report-of-Commission-of-the-SABC-NEWS-INQUIRY-FINAL%20(1).pdf) (accessed 2 November 2019)

uphold the editorial policies and the highest editorial and ethics standards. Structurally the chair would report to the GCEO.

- The creation of a News and Current Affairs Advisory Committee consisting of at least three people e.g. a retired editor, a person who is/ or was teaching journalism ethics at a tertiary institution and a retired judge. The purpose would be to advise journalists, editors and producers on editorial issues with final decisions resting with line management.
 - All newsroom staff, from the most junior to the most senior, to attend at least one workshop a year on editorial policies, editorial ethics, the most recent rulings of the BCCSA, ICASA and the Press Council and the reports of the News and Current Affairs Advisory Committee.
- In regard to the above report, we think it would be useful for the Inquiry to obtain the views of the SABC Board, SABC management, MMA and the SOS: Support Public Broadcasting Coalition. SANEF is aware that the SOS Coalition has views on what aspects of these were helpful and in the public interest - and which ought to be amended slightly in order to be more useful. Please find the SOS Vision document attached. We believe that section 9 - "SABC editorial policies and editor-in chief" - is of particular relevance.¹¹
 - Finally, we note the ongoing editorial interference in the publications owned by Iqbal Surve's Independent group. We note the detailed information put forward by ex-editors of the Independent, Alide Dasnois and Chris Whitfield in their book *Paper Tiger*. We suggest that the Panel obtains copies of this book.

Seventh, we believe it is essential that the diversity of the media needs to be deepened so that all citizens see their voices, stories and their issues covered. We believe that if people do not see themselves in the media, they do not see the relevance of the media as a reference point for news and information. We believe that this is critical to the long-term trust and credibility of the media. While we recognise the limited ability of the Panel directly to bring about a diverse media environment, we are of the view that it would be in the public interest for the Panel to make a recommendation to a body such as the Government Communications and Information System (GSIS) and/or the Media Development and Diversity Agency (MDDA) to undertake a mapping exercise of diversity in the media sector nationally.

Two South African academics – Profs Jane Duncan and Julie Reid – developed a media diversity measuring tool that focuses on audiences rather than on issues of media ownership and control (although we still believe this remains critically important). Their tool emphasizes the principle of "universal access" and "accessibility" of media products, important principles in developing world countries, such as South Africa. By "access" Duncan and Reid refer to the

¹¹ SOS (2019) SOS: Support Public Broadcasting Coalition – Vision for broadcasting in South Africa, February 2019. Unpublished document.

physical availability of content, and by “accessibility” they focus on important issues such as the affordability of content and accessibility in terms of language.

The tool then calls for living standards or socio-economic measurements to be used to divide audiences into different categories. It calls for policymakers to analyse the bundles of media available to these different groupings, starting with the poorest where the majority of citizens are located. For each bundle, the tool calls for policy makers to do a content analysis regarding the availability of television, radio, print and online media and the diversity of content in terms of genres such as news and current affairs, sport and education.

As SANEF we believe that this analysis could be a starting point as to what is to be done to ensure that all citizens get access to a diversity of affordable content that reflects their lives.¹²

We note that there are updates to this research that will be explored in a book that will be released in December 2019 edited by Prof Julie Reid, *New Concepts for Media Diversity: A View from South Africa* published by Unisa Press. We suggest that this book will be an important resource for the Panel.

In our view the Inquiry should investigate whether it would be appropriate for it to recommend that GCIS (or another appropriate body) undertakes a mapping exercise, making use of the above media diversity measuring tool.

Eighth, again we understand that the Panel will have limited impact here, but we believe that it would be useful to encourage and recommend to a number of government role players the need to support the media sector financially. We believe that the financial crisis that dogs the media sector, and directly impacts on the credibility and ethics of the media, cannot be fixed by the media alone. The media is part of a broader ecosystem that includes government, business and civil society.

We believe that government has a critical role to play in **four** key areas which ought to be explored by the Panel. These include:

- **Strengthening the SABC’s finances** to play its public broadcaster role thus ensuring a diversity of content in a diversity of languages, catering for all South African citizens. We note the serious impact of government’s delays on making the government guarantee available to put the SABC back on a sound financial footing after the devastating era of Hlaudi Motsoeneng. We welcome the fact that the guarantee is now in place. We believe strongly that the provision of sufficient public funding by way of a guarantee and through other means is essential. Without public funding, the SABC will not be able to deliver on its public mandate. In this regard, the Inquiry

¹² Duncan, J. & Reid, J. (2013). Toward a measurement tool for the monitoring of media diversity and pluralism in South Africa: A public-centred approach, *Communicatio: South African Journal for Communication Theory and Research*, 39(4): 483-500, DOI: 10.1080/02500167.2013.864448. Available at: <http://dx.doi.org/10.1080/02500167.2013.864448>

ought to consider the work done by the SOS Support Public Broadcasting Coalition on appropriate models for funding the SABC (a copy of which report is provided herewith).¹³ Also, SANEF notes that Prof Harry Dugmore is doing research on this critical issue that will be released in April 2020. The working title of the research is – *Developing Strategies to Support and Sustain the Economic Viability and Financial Health of the News Industry in South Africa*. A key chapter is dedicated to the financing of the SABC. SANEF believes that this will be important document for the panel to access and that copies of the research should be sourced, including early draft copies.

- That the **Media Development and Diversity Agency (MDDA)’s finances are strengthened** to better support community print, radio and TV more effectively. In this regard, it is important to note that broadcasters can choose to off-set any MDDA payment against the amounts owing to the Universal Service and Access Agency of South Africa (USAASA) in terms of the Electronic Communications Act. In our view, it would be important that where broadcasters chose not to pay such monies to the MDDA but to USAASA, the Panel ought to consider recommending that the USAASA, earmarks all such monies received by it from broadcasting licensees, to support the development of broadcasting media diversity only as opposed to other communications services, such the roll out of telecommunications. We note that a detailed chapter has been written on the MDDA in Prof Reid’s book mentioned above. The chapter is written by Prof. Tanja Bosch entitled, *Lofty ideals but a Failing Mission: The Media Development and Diversity Agency*. We suggest that the recommendations made in this chapter are considered by the Panel.
- That **government plays a key role in supporting all media (but particularly community media) through targeted advertising** and we call on the Panel to comment on the agreed 30 percent of government’s ad spend that has been earmarked for the community media sector, but never in fact allocated.
- That the Panel encourages government to **explore ways to tax the South African operations of the so-called FANGS (Facebook, Amazon, Netflix and Google)** and that at least part of this tax funding is channeled into supporting media diversity, whether through funding media pluralism (for example through the MDDA) or through funding content diversity (for example such as through funding a local content fund whether through the National Film and Video Foundation (NFVF) or otherwise). We note that one of the chapters in Prof Harry Dugmore’s forthcoming research, mentioned above, is focused on strategies to tax and/or to incentivize the FANGS to support local media. We respectfully suggest that the Panel source this research and his recommendations on a way forward.

¹³ SOS (2019) SOS: Support Public Broadcasting Report – SABC Funding Roundtable. July 2019. Unpublished report.

Nine, although we believe that criticism including robust criticism of the media is welcome, we are opposed to the recent trends of attacks on the media that go far beyond legitimate criticism. These take two broad forms:

- the **ongoing baiting, trolling, harassment and abuse of journalists**. We believe this relentless trolling and harassment of the media has an overall destructive and negative impact on the media and its ability to report without fear or favour in the public interest. As the Inquiry will be aware, Sanef recently lost its case against the EFF, in which we requested the Equality Court to rule that journalists were being subject to hate speech in terms of the Equality Act (a copy of this judgment is provided herewith).¹⁴ We are now considering other legal routes to try to prevent this kind of trolling, including the Prevention of Harassment Act, 2011 and the Intimidation Act, 1982 (although we note that the Constitutional Court recently ruled key provisions thereof unconstitutional)¹⁵. We have noted the judgment of *Brown v EFF*¹⁶ (a copy of which is provided herewith) in which the High Court found that the EFF had violated the Electoral Code's provisions regarding the intimidation and harassment of journalists. However, we are concerned at the lack of efficient, effective legal mechanisms (outside of an election period) to combat the intimidation and harassment of journalists. We would ask the Inquiry to apply its mind to this issue and to develop suggestions for what can be done to counter this scourge. SANEF's view is that one of the recommendations that that the Panel should consider making is that Government should expand the legislative protection afforded to journalists under the Electoral Code to be applicable at all times and not just during elections. Strengthening legislative protection for journalists in this way would be in line with various United Nations resolutions relating to the safety of journalists as exemplified by UN General Assembly Resolution 72/175 which was adopted on 19 December 2017 (a copy of which is provided herewith). SANEF notes that Media Monitoring Africa (MMA) has started to explore various legal routes to address this problem. We suggest that the Panel discuss these matters with MMA.
 - To try to hold political parties to account SANEF has developed a "Proposed principles of Engagement" document. SANEF held a roundtable on 28 September 2019 to discuss the issue of safety of journalists. The outcome of the meeting was the principles document. The plan is now for SANEF to meet with individual political parties to encourage them to sign onto the document (a copy of the document is provided herewith). The section on the proposed principles is included as a final section.¹⁷ We would like the Inquiry to apply its mind to the potential usefulness of the document and SANEF's proposed process (to meet with

¹⁴ <https://sanef.org.za/wp-content/uploads/2019/10/Sanef-vs-Eff-Judgment-.pdf>

¹⁵ <http://www.saflii.org/za/cases/ZACC/2019/40.html>

¹⁶ *Karema Brown vs EFF* judgement heard in the High Court, Gauteng, Local Division, Johannesburg, 6 June 2019.

¹⁷ SANEF (2019) Speaking notes – Legal framework regarding the protection of journalists, SANEF roundtable, 28 September 2019. Unpublished document.

political parties) in combating ongoing harassment and abuse both online and in the real world.

- the **banning of certain publications and media houses from the attendance of press conferences** and other events of political parties. We note, for instance, the EFF's banning of the investigative units, amaBhungane and Scorpio from all EFF press conferences and debates – due to critical reporting - and the chilling effect this has on the Constitutional principle of freedom of expression including freedom of the media and the right of citizens to receive and impart information.¹⁸ We call on the Panel to investigate the possibility of putting forward a recommendation that Parliament takes action against political parties represented in the National Assembly and against Members of Parliament personally, who engage in activity that undermines the Constitutional right to freedom of expression through banning media houses from press conferences and party events.

AD 1.8: What editorial lapses, other than those for which the Sunday Times apologized for, does SANEF note – in particular.

Although the SABC is not included in the terms of reference of the Inquiry, we still feel it is important to note the significant editorial lapses at the SABC, particularly as regards the ban on showing video footage of violent protests before the 2016 Local government elections. This decision was eventually set aside by ICASA's Complaints and Compliance Committee (CCC).¹⁹ The details of the ban and the implications are captured in SABC8 journalist, Foete Krige's book – *The SABC8*²⁰. We suggest that the Panel source copies of this book.

Another example of an ethical breach, is the cancellation without warning, discussion or valid reasons of the SAFM programme "The Editors" which had been a popular platform for debating current affairs issues and included senior editors and journalists from across the media industry. Motsoeneng's reasons for cancelling same with immediate effect was that the programme gave publicity to other media houses. We believe that this was an illegitimate reason for cancelling the programme (please watch the YouTube video of Krivani Pillay's testimony to the Zondo Commission).²¹

Also, we note the lapses that have occurred at the Independent newspapers. One of the key lapses that SANEF noted and released a statement on in 2018, was the Independent's labelling of certain prominent journalists and editors as "Stratcom" agents. These allegations were included on the front pages of a number of Independent-owned newspapers – and online.²² At issue was the unsuccessful listing of Sagarmatha Technologies on the JSE by the owners of

¹⁸ See <https://www.dailymaverick.co.za/opinionista/2019-09-17-why-eff-ban-on-media-organisations-unconstitutionally-infringes-on-the-right-to-freedom-of-expression/>

¹⁹ <https://www.icasa.org.za/complaints-and-compliance-committee/media-monitoring-project-vs-sabc-195-2016>

²⁰ Krige, F. (2019) *The SABC 8*. Johannesburg: Penguin Random House South Africa

²¹ <https://ewn.co.za/2019/09/05/watch-live-krivani-pillay-gives-evidence-on-sabc-editorial-interference>

²² <https://www.iol.co.za/news/south-africa/western-cape/stratcom-2018-exposed-14551588>

Independent Media. The faces and names of South African journalists who had reported critically on this transaction were published alongside those of Vic McPherson and other masterminds of the apartheid state's Stratcom operation whose main aim was to sow division and spread lies in the anti-apartheid movement. SANEF stated that to equate this unlawful and corrupt institution with the work of critical journalists, playing their watchdog role in investigating private sector irregularities, was defamatory and was "a sad day for South African journalism"²³ .

In a review of the book *Paper Tiger* by Alida Danois and Chris Whitfield in Daily Maverick, Rebecca Davis quotes two previous editors within the Independent Stable in terms of the reasons why they left. They cite the lack of editorial independence they experienced²⁴:

Moshoeshoe Monare tendered his resignation as Sunday Independent editor "when it was very clear that my independence as an editor was compromised". Fellow editor Philani Mgwaba left after "editors began to receive instructions from Iqbal's underlings and acolytes to publish opinion pieces that shamelessly flattered and promoted him and/or defended him from legitimate questions that were being raised about his curious business interests".

We believe it is important that all these ethical breaches – including those mentioned above at the SABC and Independent - should be carefully examined.

Further, we see the issues linked to paid-for or "brown envelope" journalism as a significant editorial breach. See final sections of this submission for further details.

AD 3.1 and AD 3.8.2: Please identify the nature, author, source, motive of the attacks on the credibility of the media and harassment and abuse of journalists in South Africa – as many instances as possible, other than those set out below.

SANEF believes that harassment and abuse of journalists happens at multiple levels - and that the regularity and ferocity has increased dramatically since 2016 where SANEF was forced to take the political movement, Black First Land First, to court because of physical attacks of journalists and editors at their homes. The attacks have taken place at the following levels:

- At the level of **communities**, criminal elements have taken advantage of the presence of journalists covering stories and their physical vulnerability:
 - SANEF noted that Newzroom Afrika journalist, Mveli Masilela had been attacked by community members in Vosman near Emalaheni in Mpumalanga. He was investigating the death of a 16-year old boy who had fallen into an open mine pit. Community members attacked him, took away his camera and car keys and forced him to delete his footage (July 2019).²⁵

²³ <https://sanef.org.za/sanef-is-deeply-concerned-and-disgusted-by-more-stratcom-smears-of-journalists/>

²⁴ <https://www.dailymaverick.co.za/article/2019-11-05-paper-tiger-when-media-transformation-is-a-farce/>

²⁵ <https://sanef.org.za/sanef-condemns-harassment-of-journalists/>

- An SABC news crew was robbed of their broadcast equipment in Alexandra township whilst covering a story and this came after an attack that had taken place the week before (April 2019).²⁶
 - Cameraman, Tshepo Dhlamini and producer, Harrietta Mbuzwana from eNCA's investigative current affairs programme Checkpoint were working on a story, again in Alexandra township. As they were finishing their shoot, they were approached by 3 men with a gun. The men held up the crew and stole their equipment excluding the camera (May 2019).²⁷
 - Two SABC journalists, Thabo Katsanda and Thabiso Radebe, were attacked by a group of armed youth (aged between 14 and 20 years old), at Moemaneng in Marquard in the Free State. They were forced to drive over a barricade of stones, rocks and burning tyres to get away (May 2019).²⁸
- At the level of **private non-media companies**, Sanef condemned the undermining of journalists by companies such as facilities and security company, BOSASA and welcomed the investigation by the Zondo Commission into allegations that, journalists were paid to write positive stories. SANEF stated that it condemned the practices of BOSASA in actively manipulating and distorting media coverage and intimidating those who were exposing their corrupt relationship with various government departments (January 2019).²⁹
 - At the level of the **police and the Hawks**:
 - The house of investigative journalist and author Jacques Pauw was raided by the Hawks. Pauw is the author of the book "The President's Keepers" which exposed state capture (March 2018).³⁰
 - Sunday Tribune journalist, Karinda Jagmohan was assaulted by police while covering protests outside a police station, following the shooting of 9-year old outside Chatsworth in a hijacking. Jagmohan stated that she was shoved, screamed and sworn at for filming a police member tackling a protester to the ground. Despite her telling the police she was a journalist, she was dragged by three policemen to the police station. The police wanted to search her bags and delete the footage. They detained her and fellow journalists from the SABC

²⁶ <https://sanef.org.za/sanef-concerned-by-robbery-of-sabc-news-crew-in-alexandra-township/>

²⁷ <https://sanef.org.za/journalists-under-fire-enca-journalists-attacked-by-criminals-and-a-body-of-a-journalist-found-in-free-state/>

²⁸ <https://sanef.org.za/sanef-condemns-attack-on-sabc-journalists-in-the-free-state/>

²⁹ <https://sanef.org.za/sanef-strongly-condemns-the-undermining-of-journalism-by-companies-such-as-bosasa/>

³⁰ <https://sanef.org.za/sanef-condemns-the-harrasment-of-jacques-pauw-1-march-2018/>

and then prevented all the journalists from returning to the protests (May 2018).³¹

- Journalists were injured after police opened fire with rubber bullets during a service delivery protest in Eersterust, Pretoria. “Pretoria News” reporter, Sakhile Ndlazi was hit on the back of his head with a rubber bullet, “Citizen” photographer Jacques Nelles was shot in the back with a rubber bullet while running for cover. Meanwhile, The Citizen’s Virginia Keppler broke her leg and ankle while running for cover (June 2018).³²
- Journalist Marianne Thamm, from the Daily Maverick was intimidated and illegally “pushed” by the Hawks via the SAPS in Kwazulu-Natal, to release her sources on a key story about the appointment of a senior police officer to a post of acting head of the KZN Hawks’ Organised Crime Unit despite serious corruption allegations against him (July 2019).³³
- Two journalists were attacked and manhandled by the Metro police in Durban while covering a protest in support of suspended eThekweni Mayor, Zandile Gumede whom the ANC placed on special leave amid charges of fraud and corruption. Police fired stun grenades to disperse the protestors. Independent Newspaper Group’s political Journalist, Sihle Mavuso was assaulted and arrested by metro police during the protest. An eNCA journalist, Siphamandla Goge, was also manhandled and roughed up by Metro police officers. (July 2019).³⁴
- At the level of **private security** – “Rekord”, community media journalist Reitumetse Mahope was manhandled by private security guards while taking pictures during a protest at the Huis Davidzt retirement home in Pretoria. Residents were complaining about not having official contracts and not being registered with the Unemployment Insurance Fund (UIF). Video footage showed that Mahope was outside the premises taking pictures of protestors when the private security guards suddenly turned on him and pushed and shoved him with shields and batons. His phone was knocked out of his hands and damaged in the ensuing scuffle (March 2019).³⁵
- At the level of the **courts**:
 - A senior magistrate in Pietermaritzburg, Ashin Singh, has been accused of a pattern of abuse against “Witness” newspaper journalists. It is alleged that Singh is unhappy with how the “Witness” portrays him in cases. The

³¹ <https://sanef.org.za/sanef-shocked-by-polices-verbal-and-physical-abuse-and-detention-of-journalists-in-chatsworth-31-may-2018/>

³² <https://sanef.org.za/sanef-condemns-police-brutality-in-eersterust-pretoria-15-june-2018/>

³³ <https://sanef.org.za/sanefs-responds-to-hawks-statement-and-welcomes-primedias-investigation-into-editorial-interference/>

³⁴ <https://sanef.org.za/sanef-condemns-harassment-and-arrest-of-journalists-in-durban/>

³⁵ <https://sanef.org.za/sanef-shocked-by-the-actions-of-private-security-guards-on-pretoria-journalist/>

newspaper enlisted their legal counsel to lodge a complaint against Singh with the Magistrates Commission relating to his abusive behavior towards journalists, Sharika Regchand and Kerushun Pillay and news editor, Ingrid Harrison. Singh has threatened to throw Regchand out of cases he is presiding over, as well as abused Pillay and Harrison. In one important incident Regchand was, amongst other things, instructed by Singh to be forcibly relocated from the front, to the public gallery at the back of a courtroom. Further, he accosted her as she walked out of court. He swore at her and made lewd accusations and threatening comments about her family. The newspaper has lodged an official complaint (August 2018).³⁶

- This is just one incident. There have been ongoing problems with the magistrates' courts and journalists access to these courts.
- At the level of **statutory bodies** – The National Lotteries Commission (NLC) in a statement said that it had requested the State Security Agency to investigate journalists on the issue of breaches to its information systems following media reports on corruption at the Commission. The statement said that the NLC computers were hacked and that hacked information was then used as a source for media reports. Further, they stated that journalists were being paid to write “fake news” about the mispending of the NLC with the intention of bringing down the organization. These claims came soon after a story was published in “GroundUp” by freelance journalist Raymond Joseph and community newspaper owner and publisher, Anton van Zyl. The journalists exposed alleged multimillion-rand corruption involving NLC grants, as well as the awarding of a Lottery-funded contract to a company of which the brother of a senior NLC official was the sole director. The statements came against the backdrop of an ongoing investigation by a group of journalists into multimillion-rand grants to a variety of Lottery-funded projects (December 2018). SANEF released a joint statement with the NLC in December 2018. At this point the NLC confirmed its commitment to media freedom.³⁷ However, this seems to have been an empty promise - the harassment against investigative journalist, Raymond Joseph continued unabated. SANEF then released a further statement.³⁸
- At the level of **government**:
 - SANEF met with Finance Minister, Tito Mboweni after he posted two bizarre tweets threatening war against the media. Without context Mboweni tweeted: “Wars start in different ways. Spears and shields, gun powder, bullets

³⁶ <https://sanef.org.za/sanef-strongly-condemns-senior-magistrates-abuse-of-witness-journalists/>

³⁷ <https://sanef.org.za/joint-statement-by-sanef-and-national-lotteries-commission-following-statements-on-state-security-agency-investigating-journalists/>

³⁸ <https://sanef.org.za/sanef-calls-on-national-lotteries-commission-not-to-spread-disinformation-about-reporters/>

and now through media: printed and electronic (eg trade wars by a super president), and then Social media!! Well, the SA Editors must be Editors!! If needs be, we will be forced into the fight, War!". In a second tweet he added that, "there will be collateral damage". SANEF met with Mboweni. Mboweni acknowledged there was a problem with the severity and tone of his tweets (November 2018) ³⁹.

- Communications Minister Faith Muthambi was found to have illegally intervened on a number of issues at the SABC including the permanent appointment of Mr. Hlaudi Motsoeneng to the position of COO.⁴⁰
- SANEF met with the Minister of Communications, Stella Ndabeni-Abrahams after the Minister was filmed blocking journalists from the SABC, and other media. Journalists were covering the ANC manifesto launch in the Eastern Cape in the lead up to the 2019 elections. The Minister ordered journalists to cover what they came for and not give coverage to "people that are out of order" The SANEF delegation stressed to the Minister the severity of her action as undermining media freedom (February 2019). ⁴¹
- Most recently there has been the very serious allegations against the Minister of Mineral Resources and Energy, Gwede Mantashe. Mantashe claimed that he bribed two journalists on the Sunday World newspaper to quash a story about his personal life - then he retracted the statement saying that he in fact had not bribed journalists. SANEF wrote numerous statements about the matter and met with the Minister.
 - The Minister has agreed to subject himself to the processes of the Inquiry. We would like him to testify under oath. We believe that bribery of journalists is one of the most serious breaches of the Press Council code.⁴²
- At the level of the **ruling party**:
 - The ANC Women's League president attacked Sunday Times journalist Qaanitah Hunter in a media statement after a cover story by Hunter and Jeff Wicks on plans by former president Jacob Zuma to oust President Cyril Ramaphosa. Various ANC structures, including the ANC Women's League released statements condemning the article and labelling it as false, damaging

³⁹ <https://sanef.org.za/sanef-condemns-minister-tito-mbowenis-threats-against-journalists/>

⁴⁰ <http://www.governmentpublications.lib.uct.ac.za/news/final-report-ad-hoc-committee-sabc-board-inquiry-fitness-sabc-board>

⁴¹ <https://sanef.org.za/sanef-is-shocked-by-the-actions-of-communications-minister-stella-ndabeni-abrahams/>

⁴² <https://sanef.org.za/the-president-and-parliamentary-ethics-committee-must-hold-minister-mantashe-to-account-for-journalism-bribery-claims/>

and aimed to discredit the ANC in the run up to the 2019 elections. ANC Women's League Secretary General's, Meokgo Matuba cellphone was then used to send a picture of a gun to Hunter's mobile. This was after Hunter called Matuba with questions about the Zuma meeting (September 2018).⁴³

- There was a violent disruption of journalist Pieter-Louis Myburgh's "Gangster State" book launch at Exclusive Books in Sandton. Video footage showed that protestors wearing t-shirts displaying the logos of the ANC and SANCO, destroyed copies of Myburgh's book. They loudly chanted "Ace, Ace" and prevented the event from taking place. Pages of the books were torn. The ANC issued a condemnation of the incident. SANEF was also deeply disturbed by the call by the ANC Free State Youth League to host a "burning" ceremony referring to the same book (April 2019).⁴⁴
- The ANC Deputy Secretary General, Jessie Duarte verbally attacked eNCA political reporter, Samkele Maseko. Duarte accused Maseko of asking questions that were "attacking the ANC", "battering the ANC," "intimidating everybody" and threatened to report his conduct to the Press Ombudsman. Duarte also accused him of being a bully and arrogant. SANEF was concerned that Duarte suggested that Maseko had no right to defend media freedom because he did not "fight for" media freedom (April 2019).⁴⁵
- At the level of **opposition parties**:
 - Economic Freedom Fighters (EFF) leader Julius Malema sent inflammatory tweets on social media about eNCA and its journalists, accusing eNCA of advocating an "anti-black agenda" and supporting white supremacy. Journalists at the channel received threats as a result of the tweets (March 2018).⁴⁶
 - Netwerk24 photographer, Adrian de Kock was manhandled and slapped by EFF Deputy President Floyd Shivambu in the parliamentary precinct in Cape Town. Shivambu demanded that De Kock delete a picture he took of him, and together with others he violently tried to remove the camera from around De Kock's neck. Shivambu later walked away, leaving two individuals behind as they continued to harass De Kock (March 2018).⁴⁷

⁴³ <https://sanef.org.za/sanef-strongly-condemns-anc-womens-league-threats-against-sunday-times-journalist/>

⁴⁴ <https://sanef.org.za/sanef-condemns-the-violent-disruption-of-journalist-book-launch-and-the-increased-attempts-to-refer-to-journalists-as-stratcom/>

⁴⁵ <https://sanef.org.za/sanef-is-concerned-by-verbal-attack-by-anc-deputy-secretary-general-jessie-duarte-against-enca-political-reporter-samkele-maseko/>

⁴⁶ <https://sanef.org.za/sanef-condemns-malemas-remarks-about-enca/>

⁴⁷ <https://sanef.org.za/sanef-is-shocked-by-attack-on-journalist/>

- EFF's Julius Malema provoked further antipathy against the media by labelling journalist, Thandeka Gqubule and co-editor of the Mail & Guardian's precursor, the Weekly Mail, Anton Harber Stratcom spies (April 2018).⁴⁸
 - Malema made statements outside the venue where Pravin Gordhan was testifying at the Zondo Commission - and singled out a number of senior journalists accusing them of showing bias towards the Public Enterprises Minister and President Cyril Ramaphosa. In addressing EFF members Malema alleged journalists "know about Gordhan and his daughter's private business affairs" but fail to ask questions. Malema first threatened journalists asking his supporters to "attend to them decisively". Later he softened his stance saying, "engage with them from a civilized point of view". Malema stated that the EFF will not be engaging with certain media houses and journalists until these journalists ask Gordhan the "questions we want them to" (November 2018).⁴⁹
 - The EFF and its supporters have continuously attacked journalists on social media. In highly gendered attacks, journalists have been called "whores", "witches", "bitches" and "cunts", as well as racists and Nazis. There have been calls for journalists to be raped, killed and for their home addresses to be published online. (November 2018/ December 2018). In another incident, a senior editor was accosted by three men who shouted her surname and mocked her while she was out shopping (November 2018).⁵⁰
 - SANEF has noted the harassment of investigative journalist, Pauli van Wyk in the wake of her hard-hitting stories on the EFF and VBS Bank. Malema communicated to his more than 2.4m followers on Twitter, calling for his followers to "go for the kill" and to "hit hard". He didn't elaborate but the timing pointed to a threat levelled at van Wyk (May 2019).⁵¹
- In the wake of these attacks and the fact that the EFF refused to meet, SANEF was forced to take the matter to court in December 2018. The matter was finally heard in the Equality Court in early August. SANEF lost the case on jurisdiction issues. As

⁴⁸ <https://www.news24.com/SouthAfrica/News/anton-harber-thandeka-gqubule-drag-eff-to-court-over-stratcom-comments-20181207>

⁴⁹ <https://sanef.org.za/sanef-concerned-by-eff-leader-julius-malemas-attack-on-journalists/>

⁵⁰ <https://sanef.org.za/sanef-council-resolutions-on-eff-threats-to-the-media-the-sabcs-financial-crisis-sanefs-inquiry-into-media-ethics-and-the-importance-of-media-complaints-bodies/>

⁵¹ <https://sanef.org.za/sanef-takes-action-as-journalists-continue-to-come-under-fire/>

discussed above SANEF is now considering other legal avenues including using the Harassment and Intimidation Acts.⁵²

AD 3.7: What are the particular funding challenges facing community media?

SANEF notes that the community media sector includes print and broadcasting (radio and television). The community print media sector is divided into independent publications and those owned and published by the big media houses including Caxton and Media24.

Independent publications have particular challenges. We note some of these challenges.

- In terms of **community print** SANEF notes, in line with the Association of Independent Publishers (AIP), that there has been a lack of consistent advertising for the 230 independent community print media publications in the sector. Publications have been forced to find other means of funding e.g. funding earned through roadshows e.g. “Stokvel Talk”.⁵³
- The Association of Independent Publishers (AIP) notes that independent media publications often have to rely on printers from rival publications. Independent publications have alleged that there have sometimes been delays in printing their publications thus reducing their newsworthiness (AIP, 2019).⁵⁴ Also, there are allegations that the small commercial media publications produced by the big media houses have undercut the advertising rates that independent publications can charge, thus undercutting the independent publications’ ability to survive (AIP 2019).⁵⁵
- In terms of **community broadcasting**, we note that community radio has grown exponentially in the last 25 years, however the growth in the number of stations has been accompanied by major challenges as regards sustainability (NAB 2019, *Future proofing of community radio report*)⁵⁶.
- SANEF notes that the battle for survival is often the biggest challenge for community radio stations. This is even more the case for community radio stations servicing poor, rural communities. This battle often detracts from stations delivering on their mandate including ensuring community involvement and programme quality.⁵⁷
- Community radio stations generate their income through selling advertising which means that other income streams are not sufficiently explored e.g. programme sponsorship, membership fees and donations from the community.⁵⁸

⁵² Judgement in the Equality Court, Case number 90405/18. SANEF and others vs the EFF and Julius Malema.

⁵³ Carol, Mohlala, Executive Director of AIP, Telephonic interview, 9 am, 2 September 2019.

⁵⁴ Carol Mohlala, Executive Director of AIP, Telephonic interview, 9am, 2 September 2019.

⁵⁵ Carol Mhlala, Executive Director of AIP, Telephonic interview, 9am, 2 September 2019.

⁵⁶ Future proofing of community radio, National Association of Broadcaster (NAB), 2019.

https://www.nab.org.za/uploads/files/NAB_Future_Proofing_Guide_for_Community_Radio.pdf

⁵⁷ State of the Broadcasting Industry report 2015-2018 (second edition), National Association of Broadcaster (NAB), published August 2019.

⁵⁸ State of the Broadcasting Industry report 2015-2018 (second edition), National Association of Broadcaster (NAB), published August 2019.

- More established and larger advertising agencies often do not view community radio stations as effective vehicles for advertising because:
 - Their audiences lack consumer buying power.
 - Their financial and administrative systems are often inadequate - a number of stations cannot produce regular audited financial statements.⁵⁹
- Many community radio stations are forced to rely on government sources to keep their operations afloat, such as the MDDA and government advertising. This funding however is limited.⁶⁰.
- SANEF believes that the MDDA needs to be strengthened to adequately support community media in South Africa. In the last 6 years the following issues have been flagged:
 - The MDDA has had serious governance and leadership crises including a near constant turnover of leadership (AIP, 2019).⁶¹
 - It has not received clean audits for a number of years and for a number of reasons. According to the AIP it has funded publications with no tax clearances and it has deposited funds into personal bank accounts. Also, the MDDA has awarded funding to projects with no clear terms of reference and no mechanisms in place to ensure that funding is accounted for (AIP, 2019).⁶²
 - According to the AIP in the last 3 years the MDDA has funded fewer than 10 community publications.
 - The MDDA has argued that the funding for community print media should come from the Big 4 print media companies. However, the AIP has argued strongly that this funding is not sufficient.
 - The Tiso Blackstar Group contributes one million rand annually - half is spent on AIP overheads, and the other half on skills and development for the community print media sector. Caxton contributes R150,000 annually. Media 24 allows AIP to use its offices and facilities which includes the hosting of training (which translates into approximately half a million rand annually). The Mail& Guardian funds an AIP app for community newspapers. The Independent group has promised funding but has not yet delivered on this promise (AIP, 2019).⁶³

⁵⁹ State of the Broadcasting Industry report 2015-2018 (second edition), National Association of Broadcaster (NAB), published August 2019.

⁶⁰ State of the Broadcasting Industry report 2015-2018 (second edition), National Association of Broadcaster (NAB), published August 2019.

⁶¹ Carol Mohlala, Executive Director of AIP, Telephonic interview, 9am, 2 September 2019.

⁶² Carol Mohlala, Executive Director of AIP, Telephonic interview, 9am, 2 September 2019.

⁶³ Carol Mohlala, Executive Director of AIP, Telephonic interview, 9am, 2 September 2019.

- AIP claims that the Portfolio Committee on Communications has played a poor oversight role as regards the MDDA which have allowed the problems mentioned above to persist (AIP, 2019).⁶⁴
- We reiterate that the MDDA’s finances ought to be strengthened to better support community print, radio and TV more effectively.
- Government has not delivered on its promises to:
 - Develop a strategy and a plan of action to support the sector (AIP, 2019).⁶⁵
 - Set aside 30% of government and Chapter 9 advertising.
 - GCIS has only employed one media buyer in the last 10 years who represents community media (AIP, 2019).⁶⁶
 - Treasury has issued a notice that municipalities should avoid advertising their events in newspapers, and rather do so on their websites. These events include budget speeches, municipal campaigns e.g. on cholera. However, about 80% of municipality websites are not functioning (AIP, 2019).⁶⁷
 - Government has also failed to develop a Community Broadcasting Support Scheme.
 - A draft scheme was circulated by Government in Notice 676 in Government Gazette 38947 dated 1 July 2015 - but this support scheme has never been finalised or implemented.⁶⁸
- We believe that it is important that the Panel looks at community media sustainability issues and how this impacts on media ethics. We note that we have not dealt with the community television sector. We do think it is important to explore this area.

AD 4.2: What renders Bell Pottinger an instance of media capture – its own area of operation/nature of business or the way it used the media. Give details.

- Bell Pottinger used the media through its particular focus and propagation of messages on the topic - “white monopoly capital”. In particular it used the Gupta owned media assets – the New Age publication and ANN7 – to “push” its messages. The phrase “white monopoly capital” or WMC was used in divisive ways to divert attention from critical state capture reporting. The WMC narratives gained traction because of the sharp, racialized, inequalities that continue to exist in South Africa.

⁶⁴ Carol Mohlala, Executive Director of AIP, Telephonic interview, 9am, 2 September 2019.

⁶⁵ Carol Mohlala, Executive Director of AIP, Telephonic interview, 9am, 2 September 2019.

⁶⁶ Carol Mohlala, Executive Director of AIP, Telephonic interview, 9am, 2 September 2019.

⁶⁷ Carol Mohlala, Executive Director of AIP, Telephonic interview, 9am, 2 September 2019.

⁶⁸ <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/150701communitybroadcastingsupportscheme-draft.pdf>

- The campaign has been dubbed the “first large-scale fake news propaganda war in South Africa” (State of the newsroom 2017 report).⁶⁹ The PR campaign started in 2016. More than 100 fake Twitter accounts were created which retweeted content. The campaign involved approximately 220,000 tweets.
- Three prominent editors (Ferial Haffejee, Peter Bruce, and Adriaan Basson) were targeted by the campaign in a barrage of highly offensive tweets that sought to portray them as biased and lacking in integrity. The campaign stated that they were paid by their “white bosses to criticize the Guptas”.
- In our view, the Bell Pottinger campaign illustrates a larger international trend of political formations using public companies and other consultants to develop so-called bot or troll armies with the express aim of amplifying disinformation on social media platforms to drown out legitimate media voices and to sway public opinion in a particular political direction. Internationally it is becoming clearer that foreign governments may even participate in such activities. As is clear from the investigations into Russian influence over both the 2016 US Presidential Election and the Brexit Referendum in the UK.
- The reason this is an important issue is that social media trends often set the traditional media agenda.

AD 5.2: Since Tiso Blackstar chose not to litigate the Stratcom accusations as regards its journalists – should it be provided with other remedies than those available to other corporates or private persons who have been defamed? Why and what?

- The problem here, is that outside of the Press Council (which the Independent Group has removed itself from), there are simply no non-litigious routes available to media houses or indeed private persons (whether individuals or juristic).
- We are of the view that tackling this is a critical issue and would like the Panel’s advice.

AD 7.1: Can you give details – dates, story headlines, journalists – on these thoughtful works by journalists. (We stated in our last submission that there was lots to learn from journalism best practice examples.)

Table 1: Good examples of SA journalism and what made them good:

Journalist	Media	Headline/details	What made story good?
Pauli Van Wyk	Daily Maverick, Scorpio	“VBA bank heist: EFF’s family ties and moneyed connections” (21 Nov 2018)	The investigative expose linked Malema with proof, to the VBS scandal by personally benefiting from the systematic raiding of the bank. Thus verifying previous claims made, by other newspapers. Van Wyk said

⁶⁹ http://www.journalism.co.za/wp-content/uploads/2018/03/WITS-STATE-OF-THE-NEWSROOM_March_2018.pdf

			she received evidence from different sources which led to the investigative work. Van Wyk said she did extensive work to verify information from different sources.
Taco Kuiper 2018 co-winner award: Susan Comrie	amaBungane	Regiment Capital series (in 2018)	Comrie said she had gathered unique information no one else had, some of this information was then used at the State Capture Inquiry.
Winner of the Discovery Health Journalist of the year 2018 award: Pontsho Pilane.	Mail & Guardian Bhekisisa	-“Free to Bleed” (3 March 2017) -“ABC’s of Autism” (5 October 2017)	--For high quality health journalism that highlights important health matters, educating South African citizens about healthcare issues that affect them. - The “Free to Bleed” article laid bare the daily struggle countless women face across SA to get access to sanitary pads. -The “ABC’s of autism” article offered an intimate look inside the world of autistic children.
Winner of Sanef Nat Nakasa award 2019: Qaanitah Hunter	Sunday Times	Reporting on President Zuma and the “Maharani meeting” in Durban.	For courageous journalism, she faced a litany of attacks including death threats from supporters of former President Jacob Zuma, she fought back legal threats and blatant intimidation. Her courage was displayed in revealing her own anxieties, in writing and talking and sharing her fears about mental health, and warning us to find equilibrium in the demanding and volatile jobs we do when she advocated for open conversations about mental health in newsrooms which prompted many other journalists to come forward with their stories.

AD 7.2: Identify how “click bait’ contributes to misleading headlines and give examples in South Africa.

The “clickbait” phenomenon is defined as web content that is essentially aimed at generating online revenue, wherein sensational headlines are used to attract click-throughs however the link leads to content either of dubious value (hyper sensationalized content regarding celebrities for example) or which simply does not reflect the headline used to attract the reader to the story.

Some examples of clickbait include the following stories:

- The Ayanda Mabulu story – Mabulu was the man behind the Zuma-Gupta capture painting – headlines claimed he had been shot and killed. He was in fact healthy and had suffered no such attack.

- Death of DJ Black Coffee – Headlines claimed he had died in an European hotel room. However, he was healthy and had suffered no such attack.
- Judge Thokozile Mapisa’s car – Headlines claimed her car had been torched when it had not been.⁷⁰

AD 7.10.2: What information does SANEF have on the relevant SETA (name it) and its work.

SANEF has been working with two SETAs since 2010. Subsequent to the restructuring of professions formerly under the MAPPP SETA (Media Advertising, Publishing, Printing and Packaging), we first worked with the MICT SETA (Media, Information & Communication Technology). With them, we began the process of updating the national journalism qualification, initially developed with MAPPP more than a decade ago.

Given the changing nature of media technology, ICT is clearly the best future ‘home’ for journalism. However, at present many media-house employers remain affiliated for historic reasons with the FP&M (Fibre, Processing and Manufacturing) SETA. This SETA was established by the Department of Higher Education and Training (DHET) in April 2011 to cluster and strengthen value-chain linkages between 13 related sub-sectors including ‘print media’. ‘Print’ as a separate entity no longer adequately describes the multi-platform and converged nature of today’s journalism, but SANEF was nevertheless advised that to take the qualification forward, it made more sense in relation to options for funding support to continue this work with FP&M, which we have been doing. In August 2019, SANEF, with the African journalism, media and education consultancy, Fray Intermedia as implementing consultant, completed the full first stage of qualification update, putting in place successfully all parts of a new National Certificate in Journalism, under the Quality Council for Trades and Occupations (QCTO). Discussions with the FP&M SETA to add any necessary additional and part-qualifications to this foundation are currently ongoing.

In addition, SANEF was awarded a FP&M SETA discretionary grant to empower women in the media and support our efforts to increase the presence of women leaders. SANEF used the grant to support the 2018 Media Management Skills Programme promoted by SANEF and delivered by Frayintemedia.

It is important to note that the QCTO is now the regulatory body for all new qualifications formerly administered by the Setas alone, and QCTO is a body not of DHET but of the Department of Labour. The next few years will see a decisive shift of power over qualifications from DHET/Setas to the Department of Labour (DoL).

⁷⁰ <https://mybroadband.co.za/news/internet/173098-dont-fall-for-fake-news-websites-in-south-africa.html>

This does raise ethical issues for the journalism profession, although only in potential. DoL requirements tend to be more formal in terms of qualification benchmarks for admission to a profession than the more flexible structures that have grown organically around the study of the humanities in higher education. We have already been required by the regulations to build a formal, closed-book, national examination into our new qualification. (Award of the previous journalism certificate was based on a portfolio of work produced in a candidate's newsroom). At present, this examination covers matters such as constitutional protections and media law, which are universally applicable to all journalists, and its ethical implications are, if anything, wholly positive.

However, there is a growing body of international evidence that shifting journalism towards the status of a certificated profession with 'hard', rather than practice-based, criteria for 'admission', provides authoritarian states with tools for disciplining and excluding journalists unwilling to toe a party line, and can push journalists' organisations into policing their colleagues. We repeat, we have been under absolutely no pressure to make any moves in this direction – but the shift to QCTO control, and thus to significantly more formal qualification procedures, opens that door. Any future tightening of qualification and professional admission criteria for journalists will demand careful scrutiny.

Other Issues that Have Arisen Subsequent to Our Initial Submission

Disciplining of Journalists and Media Houses

SANEF has received numerous calls for journalists to be subjected to discipline and "rehabilitation" in respect of ethical lapses. However, those calls are not coupled with detailed proposals about which body would be appropriate or capable of performing such tasks in the public interest. Indeed, some have suggested that SANEF would be an appropriate vehicle for such disciplining and pronouncement (including blacklisting) of recalcitrant journalists.

As SANEF our view is as follows:

- Other professions: law, medicine, accountancy, engineering, all have industry bodies with Codes of Conduct and disciplinary processes that can, ultimately, result in a professional being stripped of his or her ability to practise that profession.
- Journalism does not. It is unique in this regard. The reason it does not is based on the *sui generis* role that the press plays as the Fourth Estate. It is the same reason that democratic media practice does not recognise, as legitimate, registration/licensing requirements for print and online media or for journalists⁷¹.
- The danger of gatekeeping, self-censorship and active censorship would simply be too great if a single body (even a non-statutory one) could determine who may or may not

⁷¹ Broadcasters are an obvious, internationally-recognised exception due to their use of a scarce physical resource, namely, the radio frequency spectrum which requires licensing to avoid signal interference.

have a media outlet or practise as a journalist. It is for this reason that the disciplining of journalists is done by a variety ~~of~~of non-linked, non-statutory bodies, namely:

- The **Media House**: as the employer of journalists, is primarily responsible for enforcing professional ethics and practices through the ability to sanction or even fire journalists for ethical breaches.
- The **Press Council/BCCSA/CCC**: as the statutory or co-regulatory bodies that deal with breaches of Codes of Conduct for the print, online and broadcast media, these bodies are able to sanction media houses for ethical breaches by journalists and others working for such media houses.
- The **Public**: ultimately, the media's credibility rests on the public's perception of the independence and quality of media houses and of the journalists employed by them. The public will turn away from media outlets that are repeatedly shown to be untruthful, unethical and unreliable as a source of news and information.

As SANEF, we do not see ourselves as being capable (in terms of legal and HR-related resources) to be able to discipline our members in this way other than through the mechanism of expulsion. In our view this may well prove counter-productive as persons outside of self-regulatory bodies become entirely unaccountable. Further, our Codes of Conduct, as SANEF, are, essentially, the Press Code and the BCCSA Codes and so we are anxious to avoid a duplication of roles when it comes to journalistic conduct in the media.

As SANEF we respectfully request the Inquiry to consider this issue in particular and to make suggestions as to how the ethical breaches by individual journalists ought to be dealt with and by whom, and how ethical standards of individual journalists could be improved. We would welcome all suggestions in this regard, including, the Inquiry's view on the existing processes that are set out above.

One suggestion put forward is as follows:

Suggestion: in house ethics/public editor role for SANEF made up not of an individual but of a panel of academics reporting to the head of Diversity and Ethics committee (ought to be separated) so that no single person is entrenched on the public editor committee. Responsible for flagging problematic behavior among members.

Attacks on SANEF

SANEF as an organisation has come under attack. We believe some of these attacks are legitimate – some illegitimate.

Attacks have included that:

- The organisation supports certain journalists and not others;
- The organization doesn't consistently call out unethical behavior in the industry – protecting some unethical journalists;
- The organisation is inconsistent in its approach to media freedom issues; and
- The organization is elitist.

A further problem that SANEF experiences, is that it is often called on to deal with labour-related issues and when it doesn't, arguing that this is outside its mandate, there is deep disappointment and anger. The structural problem in the media sector is that media unions are weak and divided across the industry and therefore there is little or no support for labour matters, including retrenchments etc. We have dealt with these problems in our first submission.

SANEF would like the Inquiry to look at ways to strengthen SANEF to play a central role in terms of bolstering ethics and credibility of the media.

One suggestion is that SANEF holds a workshop with its members to debate the organisation's vision and mission. Further, it has been suggested that the workshop needs to highlight the key media freedom principles and issues that SANEF has supported - and policy positions it has taken over the years. These policy positions need to be captured in a policy manual that should be constantly discussed and updated. The policy manual should then be included prominently on the SANEF website.

Brown Envelope Journalism

Up until recently "brown envelope" journalism has not been raised as a significant issue in South Africa. However, over the last few months, the matter has been raised on a number of occasions. These have included:

- BOSASA's claims in its testimony to the Zondo Commission that it paid journalists to write favourable stories (see above);
- Crime intelligence alleged at the Zondo Commission that they had settled vehicle payments and paid for tyre replacements for senior Tiso Blackstar journalist Munusamy. At the time she was not a journalist but then later returned to journalism.
- Minister of Mineral Resources and Energy Affairs, Gwede Mantashe, stated that he had bribed two journalists at the Sunday World. He then later retracted these statements (see above).

As SANEF we would like the Inquiry to investigate this matter in-depth including the particular matters above – and any other examples that come to light from submissions sent to the Inquiry.

We would like the Inquiry to consider the following questions:

- Is this a trend or is it a case of a few bad apples?
- What should be the sanctions for bribers?
- Should media houses involved be encouraged to publicise the reasons for the dismissal of journalists in these cases – and the names of the journalists highlighted - to caution other media houses from employing them?

We would like the Inquiry's views on these suggestions.

SANEF has considered the legal and regulatory responses that could potentially be deployed to address the issue of "brown envelope" journalism.

In respect of print and online media, the Press Code of Ethics and Conduct for South African Print and Online Media (“Press Code”) currently contains the following guidance on conflicts of interest and independence:

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.

In SANEF’s view the above provisions clearly prohibit members of the media that have subscribed to the Press Code from taking bribes (whether in cash or in kind) in order to report on, suppress or distort a story. Doing so infringes the Press Code and could give rise to a complaint to the Press Ombudsman.

Unfortunately, broadcasters who fall under the jurisdiction of the BCCSA are not subject to a similar prohibition. Neither the Code of Conduct for Subscription Broadcasting Licensees nor the Code of Conduct for Free to Air Licensees contains any provisions regarding conflicts of interest and independence. SANEF is of the view that the BCCSA’s Codes should be strengthened by adding a provision similar to clause 2 of the Press Code. (We note that in order for the BCCSA to amend its Codes of Conduct it will have to submit any proposed changes to ICASA, who will then have an opportunity to express their views on how the matter should be handled.)

SANEF commissioned research on international responses by other media regulatory bodies and associations in different parts of the world to ascertain what kind of regulatory provisions exist regarding brown envelope journalism. The research looked at Namibia, Tanzania, Kenya, Rwanda, Canada, New Zealand and the United Kingdom. With the exception of the United Kingdom, where the Editor’s Code of Practice adopted by the Independent Press Standards Organization is silent on the issue, all the surveyed jurisdictions have codes of conduct for the media which contain a prohibition on brown envelope journalism in similar terms to our Press Code.

The Ethical Guidelines adopted by the Canadian Association of Journalists contains one of the most comprehensive statements of permissible conduct in this regard.⁷² SANEF’s view is that the content of the Press Code as it currently stands is adequate, but we accept that there may be room for further clarification and detail being included in the Press Code. The Press Council also needs to do more to make the public aware that these issues are dealt with in the Press Code.

⁷²The Ethical Guidelines can be accessed here: <https://caj.ca/ethics-guidelines>

Most of the surveyed jurisdictions provide for sanctions that are similar to those available to the Press Ombudsman. The major difference is that in some jurisdictions, such as Kenya and Rwanda, journalists have to be licensed in order to operate. Their oversight bodies have the power to suspend or withdraw their accreditation if they are found guilty of ethical breaches.

SANEF does not support the accreditation of journalists as a pre-requisite to practicing the profession as we believe this constitutes an unjustifiable limitation on media freedom.

The other sanction that some oversight bodies have available to them is issuing fines. The BCCSA already has the power to issue fines for breaches of its Codes of Conduct, however, the Press Ombudsman has more limited powers when it comes to fines. Clause 8.2 of the Press Council's Complaints Procedure states that "monetary fines will not be imposed as a penalty for the content of the press". Clause 8.2 envisages that the Press Council will devise a formula for issuing of monetary fines which will be applicable in the case of failure to attend a hearing or repeated non-compliance with rulings. It appears that the Press Council has not yet devised the fines system.

SANEF is of the view that the Complaints Procedure should be amended to include monetary fines for breaches of the principle of independence as currently set out in clause 2 of the Press Code. This may serve as an additional deterrent to taking bribes and other forms of inducement.

Aside from the above-mentioned changes to the self-regulatory systems, SANEF has also been advised that taking or receiving a bribe in order to report on, suppress or distort a story could constitute a criminal offence in terms of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 ("Corruption Act"). The Act contains a general offence of corruption in section 3, which reads as follows:

3. Any person who, directly or indirectly-

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner –

(i) that amounts to the-

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to-

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything.

is guilty of the offence of corruption.

The definition of “gratification” under the Corruption Act is very broad and includes payment both in cash and in kind.

SANEF has been advised that the portions of section 3 which are highlighted above could potentially be relied upon to lay a charge against any person who bribes a journalist as well as the journalist who receives the bribe.

We would like the view of the Inquiry on this matter.

Conclusion

We thank the Inquiry for considering these representations and we would be happy to follow-up this written submission with an oral submission if that would assist.

This submission has been written and prepared by Kate Skinner, Executive Director of SANEF, on behalf of the SANEF Management Committee.

November 2019