



MEDIA OMBUDSMAN NAMIBIA

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MEDIA OMBUDSMAN LAUNCH - 13 November 2009



INTRODUCING THE MEDIA OMBUDSMAN

“I make bold as to say that democracy is not possible without a robust, fearless, independent and probing media. As a watchdog, the media must strive to encourage the ethic of hard work, honesty and integrity in the conduct of public affairs by those who hold public office as this will cascade down to the rest of our social fabric fabric”

Justice Petrus Damaseb, Judge President of Namibia (26 June 2007)

In Namibia and other democratic countries, newspapers, radio, TV and other media bear a heavy responsibility to keep the public informed. It is a vital function. The Namibian Constitution encourages people to participate actively in public life, but they can only do so if they know what is going on. Precisely because the media play such an important role in creating a healthy democracy, media freedom is a crucial right, and is guaranteed in the country’s constitution.

In playing this role, journalists are expected to behave professionally and with integrity. Through the Editors’ Forum of Namibia (EFN), the country’s media practitioners have now agreed on a Code of Ethics that is in line with international standards.

The code binds the media to observe the basic principles of good journalistic practice: accuracy, fairness, independence, protection of sources, consideration for the right to privacy and others.

The EFN has also created a mechanism to hear and decide on complaints against the media. The office of the Media Ombudsman has been set up, together with a Media Complaints Committee and Appeals Chairperson. This is a self-regulatory system: in line with international best practice, the Namibian media take accountability seriously.

People who use the complaints procedure cannot approach the courts afterwards. Experience has shown that a self-regulation system is more accessible, quicker and cheaper than the courts in dealing with complaints. As it involves editors being judged by their peers, it also has a particularly strong authority.

The office of Namibia’s Media Ombudsman is now open for business. The public is encouraged to make use of the complaints procedures to ensure that Namibia remains a stable democracy!

Mr Clement Daniels,
Media Ombudsman



CODE OF ETHICS FOR THE NAMIBIAN MEDIA

“To argue that a member of the public who feels aggrieved by the practices of the media should be content only with seeking redress in the courts is, with respect, unfair. As we all know, litigation is a costly and long drawn out affair. Sometimes all an offended person wants is recognition that he or she has been wronged, with an appropriate apology...”

Honourable Judge President, Justice Petrus Damaseb

Honourable Judge President, Justice Petrus Damaseb officially launched the Editors Forum of Namibia (EFN) on 26 June 2007. At this launch Justice Damaseb urged the EFN to establish some form of professional self-regulation to ensure speedy and adequate remedies to aggrieved members of the public.

In July 2009 the EFN adopted a Code of Ethics for the Namibian Media and complaints procedures, by which aggrieved members of the public may make complaints against the media. This important step was praised by Honourable Joël Kaapanda, the Minister of Information and Communication Technology, as a step in the right direction and he expressed that the Namibian Government is desirous of Namibia’s media to be self-regulatory. The Minister went further and said:

“An effective press council can ensure that the reader is not harmed by unscrupulous or shoddy journalistic practices. The council can give the reader a platform from which to air his or her grievances against biased, inaccurate or inadequate reporting on matters of legitimate public interest,”_

Joël Kaapanda, Minister of Information and Communication Technology

The Code of Ethics fully complies with and is subject to the Constitution of Namibia. In its Preamble it states that:

“All members of the media have a duty to maintain the highest professional and ethical standards. This Code sets the benchmark for these standards. It both protects the rights of the individual and upholds the public’s right to know.”

The Editors, publishers, broadcasters and their staff shall uphold the Bill of Rights and Fundamental Freedoms as contained in Chapter III of the Namibian Constitution in the exercise of their duties and function.

The Code of Ethics is also based on and complies with a number of regional and continental treaties adopted and supported by the Southern Africa Development Community (SADC) and the African Union (AU). The SADC Protocol on Information, Sport and Culture provides in Article 20 that “state parties shall take necessary measures to ensure the freedom and independence of the media.”

Independence of the media has been defined in paragraph 2 of the Windhoek Declaration on promoting an independent and pluralistic media as, “independent from governmental, political or economic control.”

Recognizing the need to ensure the right to freedom of expression in Africa, the African Commission adopted the Declaration of Principles on Freedom of Expression in Africa. This important Declaration provides that “any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.” The Declaration goes further and provides that:

Any regulatory body established to hear complaints about media content, including media councils, shall be protected against political, economic or any other undue interference. Its powers shall be administrative in nature and it shall not seek to usurp the role of the courts.

Effective self-regulation is the best system for promoting high standards in the media.

(African Commission Declaration Principle 9(2) and (3))





A QUICK GUIDE TO THE COMPLAINTS PROCEDURE

Who are the relevant people and bodies who will deal with complaints?

1) The Media Ombudsman is appointed by the Editor's Forum of Namibia (EFN) to deal with complaints against the media. He or she must be a Namibian citizen who has integrity and detailed knowledge of the media, as well as an efficient administrator.

2) The Appeals Chairperson deals with any appeals that may be made against a decision by the Ombudsman. He or she must be a retired judge or magistrate with knowledge of the Namibian media landscape, and is also appointed by the EFN.

3) The Media Complaints Committee consists of a maximum of 12 people appointed by the EFN to assist the Ombudsman in deciding on a complaint. They serve a term of two years, but can be nominated for further terms. Three of them come from the broadcast media, three from print and six from the general public. If the Ombudsman holds a hearing into a complaint, he will be joined by one public member of the committee and one person from the relevant media sector to form a panel.

Who can lay a complaint against the media?

Anybody who feels aggrieved by something that was published or broadcast, as long as they have a direct interest in the issue. Complainants have to waive their right to go to court about the matter afterwards.

Can a complaint be laid against any member of the media?

It can be laid against any newspaper, radio or television station in Namibia. It is not the individual journalist who will be called to account, but the media house itself, usually through the editor.

What kinds of things can lead to a complaint?

Any breach of the Code of Ethics for the Namibian Media. This would include cases of inaccuracy, unfairness, invasion of privacy and many others. Please have a look at the code for full details, on pages 16 to 20 of this booklet.

How should a complaint be laid?

By writing to the Media Ombudsman, no later than 14 days after the story was published or broadcast. The Ombudsman may accept a later complaint if there is a good reason. A complaint can be laid in person, by telephone or in writing. The complainant may be required to submit a copy of the offending item: if it was broadcast on television or radio, the respondent is obliged to help the Ombudsman get a copy.



A member of the public finds or hears an upsetting article about her in the media.



The aggrieved member of the public writes a complaint to the Media Ombudsman.



The Media Ombudsman tries to resolve the complaint informally between the parties.



If the complaint remains unresolved, the Media Ombudsman refers the complaint to the Media Complaints Committee to hear and decide on the complaint.



If the Media Complaints Committee rules that complainant was right, the media house will have to publish or broadcast an apology and the other media houses will report on the ruling as well.

Can the Ombudsman refuse to consider a complaint?

He or she can do so if:

- the complaint is anonymous;
- he or she considers it frivolous or malicious;
- the complainant rejects an offer of settlement from the news that the Ombudsman regards as reasonable; or
- it is directed at a news organisation outside Namibia.

What will the Media Ombudsman do with the complaint?

He or she will first try to mediate between the complainant and the media house, to find a mutually acceptable solution. This could involve the publication of a reply, an apology, retraction, follow-up article or similar.

And if this fails?

The Ombudsman will make a ruling. He or she may do so simply on the basis of the documents, or convene a panel, together with a public and a media representative of the Media Complaints Committee, to conduct a hearing.

How are hearings conducted?

They are fairly informal affairs, but it is possible for evidence to be led on oath. Either side can be required to submit additional information. Both sides are entitled to bring a lawyer.

Are the hearings open to the public?

Yes, unless the identity of a child, a victim of rape or sexual abuse or of extortion is an issue.

What happens to the news organisation if the Ombudsman rules in favour of the complainant?

The newspaper or broadcaster can be:

- cautioned or reprimanded;
- told to publish an apology, correction, retraction or explanation, together with the reasons behind the ruling;
- told to publish a reply by the complainant.

The decision will have to be published in the way the Ombudsman decides, generally with the same prominence as the original report.

No fines are imposed.

What happens if either side is unhappy with the ruling?

They can appeal to the Media Appeals Chairperson, who will have the final say.

Where can I find the full rules of procedure?

On pages 20 to 22 of this booklet.

COMPLAINTS COMMITTEE

The Media Complaints Committee assists the Ombudsman in deciding on whether or not a media house has contravened the Code of Ethics for the Media. This committee is nominated by the public and appointed by the Editors' Forum of Namibia. It consists of an equal number of public and media panellists.

The current Media Complaints Committee consists of the following persons:



Mr Bankie Foster
Bankie



Rev Maria Kapere



Ms Monica Koep



Dr Shekutaamba
Nambala



Mr. André Henning



Mr. Bob Kandetu



Mr. Alexactus Kaure



Mr. Jonathan Sam



CONSTITUTION OF THE EDITORS' FORUM OF NAMIBIA

1. PREAMBLE

1.1 Namibia's senior print and electronic media editors and media educators have formed an association to be known as the Editors' Forum of Namibia ("EFN") and this association and the members thereof commit themselves to a programme of action to defend and promote media freedom, diversity and independence.

1.2 This document comprises the Constitution of EFN. EFN is an affiliate of the Southern Africa Editors' Forum (SAEF).

1.3 EFN is founded on the belief and understanding that:

1.3.1 Public and media scrutiny of the exercise of political and economic power is essential for the promotion of the values of democracy, development and human rights.

1.3.2 Namibian laws relating to the operation of media should be consistent with the Constitution of the Republic of Namibia, the relevant provisions of Universal Declaration of Human Rights, the media principles contained in the Declaration of Windhoek (1991) and all other regional and international instruments, in their protection of freedom of expression and media freedom.

1.3.3 Media practitioners and media owners have a duty to work to the highest professional standards and ethics.

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

2. ESTABLISHMENT

The EFN shall be a non-profit, non-governmental and voluntary organisation.

3. LEGAL PERSONALITY AND STATUS

3.1 NEF shall be a juristic person with perpetual succession notwithstanding changes in the composition of its membership or office bearers and capable of acquiring and disposing of rights (including the right to moveable

and immovable property), of incurring obligations, of entering into legal transactions and of suing and being sued in its own name, and for all purposes to have an identity and existence distinct from its members or office bearers.

3.2 The members or office bearers of EFN shall have no rights in the property or other assets of the organisation solely by virtue of their being members or office bearers, and the organisation's income and property shall not be distributable to its members or office bearers, except as reasonable compensation for services rendered.

4. THE OBJECTIVES OF THE EFN

4.1 The principal objectives of EFN shall be:

4.1.1 To promote the common interests of its members, which shall include, but shall not be limited to, the beliefs described in the Preamble to this Constitution and in the ancillary objectives listed in Article 4.2 of this Constitution.

4.1.2 The principal objectives of EFN shall be promoted by any means authorised by the Constitution, but will specifically exclude:

4.1.2.1 any trading or other profit making activities;

4.1.2.2 the provision to any of its members of financial assistance or any premises or continuance services or facilities required by its members for the purpose of carrying on any business, profession or occupation.

4.2 The ancillary objectives of the EFN shall be to:

4.2.1 nurture and deepen media freedom as a democratic value at all levels of the Namibian society;

4.2.2 encourage members to adhere to the Code of Ethics as set out in Schedule I of the Constitution;

4.2.3 establish a self-regulatory process in respect of grievances and complaints by members of the public against members of media.

4.2.4 foster solidarity among journalists and to promote cooperation in all matters of common concern between the print and other media;

4.2.5 address and redress imbalances prevalent in media organisations in Namibia, including those based on race, colour, sex, gender, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status and to encourage the equitable spread of media ownership;

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

4.2.7 help aspiring and practicing journalists to acquire or develop new skills and professional depths through media education programmes;

4.2.8 promote and uphold principles, rules and regulations guaranteeing professional freedom and independence in broadcast media and all media funded by public authorities;

4.2.9 encourage government to ensure transparency and openness in administration and to demand and promote laws ensuring maximum freedom of information;

4.2.10 encourage both public and private media enterprises to ensure transparency of ownership and funding and to respond to public criticism and complaints;

4.2.11 defend media freedom and related rights through all possible means, utilising every available media and other institution;

4.3 EFN shall endeavour to apply for exemption of payment of income tax and to remove any taxes that could impinge on the right to receive and impart information as provided for in the Namibian Constitution.

5. POWERS OF THE EFN

5.1 With a view to achieving the aforementioned objectives as set out in clause 4 above, EFN shall be empowered to:

5.1.1 encourage programmes for corrective action and a transformation of culture within news organisations;

5.1.2 compile and circulate regular progress reports and establish a database;

5.1.3 investigate and recommend industry guidelines and targets;

5.1.4 conduct media education and training programs;

5.1.5 make education and training integral to corrective action;

5.1.6 encourage liaison between industry and teaching institutions and promote industry commitment to these institutions;

5.1.7 research and report on media education and training needs and teaching activities in the region in regard to quality and relevance of trainers, materials, infrastructure and students;

5.1.8 monitor the process of accreditation of journalists and journalism programmes in line with the rights, charter and constitutional principles of the Republic of Namibia and work with other public and private institutions set up for this purpose;

5.1.9 hold conferences, meetings and seminars as the need may arise on issues relating to the objectives set out in Clause 4 above;

5.1.10 publish media of various kinds in the furtherance of the objectives;

5.1.11 engage in research into various issues affecting the media, in partnership with organisations with similar objectives and interests;

5.1.12 monitor legislative and judicial activities, and take steps to intervene or to attempt to bring about changes where it is deemed by EFN to be in the interests of furthering its objectives. In this regard EFN shall be empowered to provide practical assistance in litigation on matters affecting the objectives as set out above;

5.1.13 co-operate with national, regional and international organisations who have objectives similar to those set out in Clause 4 above, or with any organisation with whom co-operation could further the objectives of EFN; and

5.1.14 do all things incidental to the above-mentioned powers that are desirable and necessary in order to achieve the objectives of EFN.

6. MEMBERSHIP

6.1 ACQUISITION OF MEMBERSHIP

6.1.1 Membership of EFN shall be open to any person in Namibia who is a senior editorial executive in the print or other media, including newspapers, magazines, other publications, radio and television, on-line news media, community media and to people of similar status in tertiary media education.

6.1.2 For the purposes of this Constitution, "senior editorial executive" shall be defined as a person with executive or managerial responsibilities over the editorial content of a media product.

6.1.3 Membership shall be conferred by the Executive Committee of the EFN in accordance with criteria established, and only after recommendation by the EFN sub-Committee on Membership, Discipline and Corrective Action, subject to the following: prospective members shall be proposed and seconded by fully paid up member of the EFN;

6.1.4 Membership shall be voluntary and members shall belong to EFN in their individual capacity.

6.1.5 The members will pay annual membership fees. The amount to be paid will be determined by the Executive Committee of EFN from time to time.

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

6.2 SUSPENSION AND TERMINATION OF MEMBERSHIP

6.2.1 The EFN sub-Committee on Membership, Discipline and Corrective action may suspend any member pending an investigation into an alleged breach of the aims and objectives of the EFN.

6.2.2 A suspended member shall have the right of a fair hearing within a reasonable time before further action is instituted.

6.2.3 The EFN sub-Committee on Membership, Discipline and Corrective action may expel any member after an impartial investigation has found, on a balance of probabilities, that the member has breached the aims and objectives of the EFN.

6.2.4 Any such expelled party shall have the right to appeal the decision. Such appeal shall be decided by a majority of the members of the Executive Committee of the EFN and the outcome shall be final.

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

6.9 Any member may resign at any time in writing.

7. STRUCTURES

7.1 ANNUAL GENERAL MEETING

7.1.1 The supreme policy-making authority of EFN shall be the Annual General Meeting that shall consist of all paid-up members.

7.1.2 The EFN shall hold an annual general meeting of all its members at least once in every year at a place that shall be determined by the Executive Committee.

7.1.3 All members shall be given at least three weeks notice of every Annual General Meeting.

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

7.1.4.1 to receive annual reports from the Executive Committee;

7.1.4.2 to approve and adopt the financial statements;

7.1.4.3 to appoint auditors;



7.1.4.4 bi-annually, to elect members to the Executive; and

7.1.4.5 to transact any other relevant business.

7.1.5 The Chairperson of the Executive Committee may summon an extra-ordinary general meeting such meeting is requested by not less than 20% of the members of EFN; provided that members of EFN shall be furnished with not less than three weeks notice in writing of the meeting, and the business to be dealt with thereat.

7.1.6 The quorum for an Annual General Meeting or extra-ordinary general meeting shall be 50% of the total number of paid-up members.

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

7.1.8 Voting shall take place by show of hands, unless 20% of the members present who is entitled to vote requests a secret ballot in which case the Chairperson shall order a poll by secret ballot.

7.1.9 Each member shall have one vote and decisions, other than as otherwise provided for in this Constitution, shall be taken by way of simple majority. In the case where there is a deadlock in votes, the Chairperson shall have the final and casting vote.

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

7.2 THE EXECUTIVE COMMITTEE

7.2.1 The overall management of EFN shall be vested in the Executive Committee of EFN (hereinafter called "the Executive") which shall consist of a Chairperson, a Vice Chairperson, a General Secretary, a Treasurer, and two other members whose election must conform with the ideals of the SADC Protocol on Gender and must be as inclusive, as far as possible of all media disciplines.

7.2.2 Except for the first members of the Executive, all other members of the Executive Committee shall be elected at an Annual General Meeting of EFN and shall hold office for a maximum of two consecutive terms of office of 2 years.

7.2.3 The Executive shall meet at least once per quarter and the quorum for any meeting of the Executive shall be one half of its members.

7.2.4 Meetings of the Executive shall be summoned by the Chairperson at his or her own instance or if at least three members of the Executive request such a meeting in writing.

7.2.5 The Executive may appoint individuals or committees to advise it and the EFN. Such individuals or committees may be invited to attend meetings of the EFN or the Executive but shall not have the right to vote at such meetings.

7.2.6 The Executive shall appoint an Executive Director (hereinafter called "the Director"), on such terms and conditions which the Executive may determine from time to time, who shall have responsibility for the day to day running of the EFN and who shall be an ex officio member of the Executive.

7.2.7 The Executive and Director shall not distribute any of EFN's assets or income other than in order to achieve the objectives for which it has been established.

7.2.8 The Executive shall have the power to dismiss or discipline any employees of the EFN, and may delegate this power to the Director.

7.2.9 The Executive shall open and operate a bank account in the name of EFN and all financial transactions shall be conducted through the said banking account. Signatories for the account shall be the Director and/or the Chairperson together with either the Treasurer and/or the General Secretary.

7.2.10 The Executive shall cause proper accounting records to be kept as are necessary fairly to present the state of affairs and business of EFN and to explain the transactions and the financial position of the business of EFN. The accounting records shall be kept at the main



place of business of EFN or at such other place or places as the Executive thinks fit to allow examination by members and co-operating partners. The accounting records shall annually be audited by an external firm of auditors appointed by the Annual General Meeting.

7.2.11 The Secretary General shall open a minute book in which minutes of the annual general meetings, extra-ordinary meetings and meetings of the Executive shall be minuted and recorded.

7.3 THE DIRECTOR

7.3.1 The Director shall be responsible for the implementation of policy and the administration of the EFN as directed by the Executive.

7.3.2 The Director shall report on the activities and financial and other affairs of the EFN at the annual general meeting.

7.4 SUB-COMMITTEES

7.4.1 The Executive may act and decide on the following issues or establish the following standing sub-committees:

- 7.4.1.1 Membership, Discipline and Corrective Action;
- 7.4.1.2 Education, Training, Ethics and Professionalism; and
- 7.4.1.3 Media monitoring, Legal issues and Research.

7.4.2 The Annual General Meeting and the Executive may appoint such other sub-committees to perform specific tasks on their behalf as required.

7.5 MEDIA COMPLAINTS PROCESS

7.5.1 There shall be a Media Ombudsman, a Media Complaints Committee and a Media Appeals Chairperson established for the purposes of receiving and adjudicating on complaints by members of the public against the media.

7.5.2 The appointment of the Ombudsman, members of the Media Complaints Committee and Media Appeals Chairperson, and the procedure of adjudicating the complaints are set out in Schedule II of this Constitution.

8. AMENDMENT OF THE CONSTITUTION

Any clause of the Constitution may be amended by a resolution passed by a two thirds majority of voting members present in person at an annual general meeting or special extra-ordinary meeting provided that at least three weeks notice of the meeting, specifying the proposed constitutional changes, is given to all members.

9. FINANCIAL YEAR END

EFN's financial year shall be from 1 January to 31 December of each year.

10. DISSOLUTION

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

10.2 If a resolution is duly passed for the dissolution of EFN, or if for any reason EFN ceases to exist, its assets, after payments of its debts, shall devolve upon such institution decided upon by the Executive, provided that the institution shall also be a not-for-profit organisation having similar objectives as the EFN.

SCHEDULE I CODE OF ETHICS FOR THE NAMIBIAN MEDIA

PREAMBLE

All members of the media have a duty to maintain the highest professional and ethical standards. This Code sets the benchmark for these standards. It both protects the rights of the individual and upholds the public's right to know.

The editors, publishers, broadcasters and their staff shall uphold the Bill of Rights and Fundamental Freedoms as contained in Chapter III of the Namibian Constitution in the exercise of their duties and function.

The Code is the cornerstone of the system of self-regulation to which the industry has made a binding commitment. Editors, publishers and broadcasters must ensure that the Code is observed rigorously not only by their staff but also anyone who contributes to their publications or broadcasts.

It is essential for the workings of this Code that both its letter and spirit is honoured by editors and journalists.

The Code should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, or so broadly that it prevents publication or broadcasting in the public interest.

It is the responsibility of editors, publishers and broadcasters to co-operate with the Media Ombudsman to ensure the speedy resolution of complaints.

Any publisher or broadcaster that is found guilty of contravening this Code, by the Media Ombudsman, must print or broadcast the adjudication which follows in full and with due prominence.

Ethical Principles

1. ACCURATE REPORTING

1.1 Every journalist shall strive to report news and events accurately, fairly and with balance.

1.2 Every journalist is encouraged to engage in investigative journalism for the public good.

1.3 Every journalist shall use all reasonable means within his/her power to ascertain prior to publication or broadcast, the reliability of the contents of any article written or recorded by him/her for publication or broadcast. Due regard should be given to the possible negative effect to the subject of the article or broadcast.

1.4 A newspaper or broadcaster must report fairly, accurately and with due prominence the outcome of an action for defamation to which it has been a party.

2. CORRECTIONS

Where it subsequently appears to an editor that a report was incorrect in a material respect, it shall be rectified

without reservation or delay. The rectification should be presented with such a degree of prominence and timing as may be adequate and fair so as to readily attract attention.

3. RIGHT OF REPLY

3.1 An aggrieved party has the right of reply. Provision should be made for an aggrieved party to reply to an article to protect him / her against verified factually incorrect statements that tarnish their reputation, dignity and privacy.

3.2 Newspapers, broadcasters or journalists are entitled to respond to such a reply in so far as to apologise and / or express regret for the error or stand by the story, provided however that the aggrieved party be given sufficient opportunity to counter the response of the newspaper, broadcaster or journalist.

4. CONFLICT OF INTEREST

4.1 Newspapers, broadcasters or journalists must at all times avoid conflict of interest in whatever form in their reporting.

4.2 Personal gain motive should not override media freedom, social responsibility and editorial freedom.

5. SOURCES

Every journalist shall observe confidentiality regarding any source of information and has a moral obligation to protect sources unless the source authorises the disclosure of his / her identity.

6. GENERAL REPORTING

6.1 The media should strive to represent social reality in all its diversity, complexity and plurality, and shall strive to redress imbalances in society when reporting on women, children, minorities, and the under-privileged and disabled persons.

6.2 The media should not without due care and sensitivity, present facts, opinions, photographs, graphics or scenes that depict or relate to brutality, sadism, salacity, violence, atrocity, drug abuse and obscenity except in the public interest

6.3 In reporting or causing to be printed or broadcasted accounts of crimes or criminal cases, a journalist shall not:

6.3.1 Identify victims of sex crimes (this shall not apply when an adult gives consent to be identified); or

6.3.2 Identify any young person accused of a criminal offence who to his/her knowledge is under 18; or

6.3.3 Identify any person as being a relative of a person accused or convicted of a crime for the sole purpose of informing the reader or viewer of the relationship between the person so named, and the person charged, unless the public interest would be served by the publication or broadcast of such information.

6.4 A journalist shall not commit plagiarism.

6.5 A journalist shall not promote ethnic or religious discord or violence.

6.6 Journalists must avoid publishing or broadcasting details of a person's race, religion, sexual orientation, physical or mental illness or disability unless these are directly relevant to the story and in the public interests.

6.7 Even where the law does not prohibit it, journalists must not use for their own profit information they receive in advance of its general publication or broadcast, nor should they pass on such information for the profit of others.

6.8 While a journalist is entitled to have his own political and other opinions, the newspaper or broadcaster must recognise and give due consideration to the opinions of others in the community.

7. PUBLIC INTEREST

7.1 The "public interest" includes, but are not limited to:

7.1.1 Detecting or exposing crime or a serious misdemeanour.

7.1.2 Protecting public health, safety and the environment.

7.1.3 Preventing the public from being misled by some statement or action of an individual or organisation.

7.1.4 Exposing misuse of public funds or other forms of corruption by public bodies.

7.1.5 Revealing potential conflicts of interest by those in positions of power and influence.

7.1.6 Exposing hypocritical behaviour by those holding high office.

7.2 In each case where the public interest is invoked, the Media Ombudsman will require a full explanation by the Editor demonstrating how the public interest was served.

7.3 In cases involving children, editors must demonstrate an exceptional degree of vigilance to serve the best interest of the child.

8. PRIVACY

8.1 The Constitution recognises the Right to Privacy as a fundamental human right of all persons.

8.2 Insofar as both news and comment are concerned, the media shall exercise exceptional care and consideration in matters involving the private lives and concerns of individuals, bearing in mind that the rights to privacy may be overridden by a legitimate public interest.

9. HARASSMENT

Journalists including photo-journalists must neither obtain nor seek to obtain information or pictures through intimidation or harassment of any person.

10. INTRUSION INTO GRIEF OR SHOCK

In cases involving personal grief or shock, enquiries should be carried out and approaches made with sympathy and discretion. Publication or broadcast must be handled sensitively at such times. This should however not be interpreted as restricting the right to report on judicial proceedings.

11. MISREPRESENTATION

11.1 Journalists, photographers and camera persons must not generally obtain or seek to obtain information through misrepresentation or deception.



11.2 Documents, photographs or video material should be removed only with the consent of the owner.

11.3 Misrepresentation or deception can be justified only in the public interest and only when material cannot be obtained by any other means.

12. DIGNITY

12.1 Every journalist shall safeguard the dignity of his or her profession.

12.2 Every journalist shall respect the right to dignity and equality of all persons.

13. PAYMENT FOR ARTICLES

13.1 Payment or offers of payment for stories or information must not be made directly or through agents to witnesses or potential witnesses in current criminal proceedings, except where the material concerned ought to be published or broadcast in the public interest and there is an overriding need to make or promise to make a payment for this to be done.

13.2 Payments or offers of payment for video material, stories, pictures or information, must not be made directly or through agents to convicted or confessed criminals or their associates, who may include family, friends and colleagues, except where the material concerned ought to be published in the public interest and payment is necessary for this to be done.

13.3 Journalists should not accept excessive gifts or freebies where it could compromise professional accountability.

14. BROADCASTERS

In addition to the foregoing general provisions, the following apply specifically to broadcasters.

14.1 Violence, sex, offensive language

14.1.1 Broadcasters have a particular responsibility to take care when it comes to showing scenes of violence, brutality, sadism, salacity, atrocity, drug abuse and obscenity.

14.1.2 Programming shall not glamorize violence. No incitement to violence shall be broadcast.

14.1.3 It is understood that serious discussions of some topics may sometimes require the inclusion of material that would otherwise be seen as unacceptable.

14.2 Children

14.2.1 Broadcasters shall not broadcast material unsuitable for children at times when significant numbers of children may be expected to be part of the audience.

14.2.2 Broadcasters shall exercise particular caution in the depiction of violence in children's programming.

14.2.3 Programming for children shall with due care deal with themes which could invite children to imitate dangerous acts.

14.3 Watershed periods, audience advisories and parental controls

14.3.1 Free-to-air broadcasters shall observe a "watershed period" between 21h00 and 05h00. During this time, more adult content may be broadcast. Outside this time, content shall take the children in the audience into account.

14.3.2 Broadcasters shall ensure that promotional material for programmes intended for adult audiences does not breach the provisions around the watershed periods.

14.3.3 To assist audiences in choosing programmes, broadcasters shall provide advisory assistance, which may include guidelines as to age. This shall be done where broadcasts contain violence, sexual conduct and/or offensive language. Such advisories shall be made available in hard copy and electronic programme guides, before the beginning of the relevant programme or segment and wherever else necessary.

14.3.4 A subscription broadcaster must, wherever practicable, implement adequate parental control mechanisms to enable a subscriber to block a programme the subscriber deems unsuitable for family viewing.



15. AMENDMENTS

15.1 The Editors' Forum shall annually review this Code.

15.2 No amendment to this Code shall be binding unless approved by a two thirds majority of members of the Editors Forum present at a general or special meeting called for this purpose. Any amendments must be incorporated into the Code within three weeks of its approval.

SCHEDULE II COMPLAINTS PROCEDURES UNDER THIS CODE

1. INTRODUCTION

1.1 The Namibia Editors' Forum and the Media Ombudsman ("the Ombudsman") shall ensure that all complaints are considered and adjudicated upon within the shortest possible time after the publication or broadcast of the matter giving rise to the complaint.

1.2 Complaints shall be considered and adjudicated upon in a user-friendly manner.

1.3 The Ombudsman and the Media Appeals Chairperson ("the Appeals Chairperson") shall be appointed by the Editors' Forum, by a majority of members present at an ordinary or special meeting called for this purpose, from a list of candidates nominated by the public.

1.4 The Ombudsman shall be a Namibian citizen with a high level of integrity, knowledge of the Namibian media landscape and an efficient administrator.

1.5 The Appeals Chairperson shall be a retired judge or magistrate with knowledge of the Namibian media landscape.

1.6 The public shall nominate a panel of persons to serve on the Media Complaints Committee from both the general public and the media. The Editors' Forum, by a majority of members present at an ordinary or special meeting called for this purpose, shall appoint twelve persons, six from the general public and six from the media, from the candidates nominated by the public. Of the media representatives, three shall be from print and three from broadcasting. The

panel members so appointed shall serve a renewable term of two years on the Media Complaints Committee.

1.7 The Editors' Forum shall call for public nominations within three months should the Ombudsman, Appeals Chairperson or a panel member of the Media Complaints Committee resign, dies or become of unsound mind.

1.8 The Editors' Forum and the Ombudsman may approve and implement additional guidelines for the adjudication of complaints and appeals.

2. COMPLAINTS

2.1 "Complainant" shall mean and include any person who or body of persons which lodges a complaint, provided that such person or body of persons has a direct, personal interest in the matter complained of 19.

2.2 The "respondent" in respect of a complaint shall be the proprietor of the publication, radio or television station which may delegate its editor or, in his or her absence, an assistant editor or other suitable editorial representative of the member concerned, to act and appear in its stead in respect of any complaints dealt with by the Ombudsman.

2.3 A complaint shall be made as soon as possible, but not later than fourteen days after the date of the publication or broadcast giving rise to the complaint. The Ombudsman may on reasonable grounds accept late complaints if in his or her opinion there is good and satisfactory explanation for the delay.

2.4 The complaint shall be made to the Ombudsman either in person, by telephone or in writing. "Writing" shall include telegram, telex, e-mail and fax messages. Upon the receipt of a complaint by the Ombudsman, the Ombudsman shall be entitled to request from the complainant a copy of the material published or broadcast giving rise to the complaint, and the complainant shall be obliged to forward such a copy to the Ombudsman forthwith. If the matter relates to broadcast material, the respondent shall be obliged to assist the Ombudsman obtain the relevant material.

2.5 The Ombudsman shall not accept a complaint:

2.5.1 Which is anonymous or which, in his or her opinion, is fraudulent, frivolous, malicious or vexatious and which prima facie falls outside the ambit of the Code;

2.5.2 Unless the complainant in writing waives any right to claim civil relief of whatsoever nature directly or indirectly related to or arising out of the complaint;

2.5.3 Which is directed at a newspaper, radio or television station outside his or her jurisdiction.

2.6 Where the Ombudsman has accepted a complaint and the respondent offers to settle the matter complained of by way of publication, broadcast or otherwise, which in the opinion of the Ombudsman constitutes a reasonable and sufficient offer of settlement of such complaint, the Ombudsman may withdraw his or her acceptance of the complaint.

3. CONCILIATION AND ADJUDICATION PROCEDURE BY THE OMBUDSMAN

3.1 Upon acceptance of a complaint by the Ombudsman, he or she shall immediately notify the respondent in writing of the complaint, giving sufficient details to enable the respondent to investigate the matter and respond.

3.2 The Ombudsman shall forthwith endeavour to achieve a settlement between the parties.

3.3 The Ombudsman shall hold discussions with the parties on an informal basis with the object of achieving a speedy settlement. Legal representation is permitted.

3.4 If the complaint is not settled within 14 days of its notification to the respondent, the Ombudsman may, if it is reasonable not to hear the parties, decide the matter on the papers. Where the Ombudsman decides to hold a hearing, the Ombudsman shall appoint a public and a media member of the Media Complaints Committee to adjudicate the matter with him or her at the hearing. If the complaint is against a newspaper or magazine, the media representative selected for the panel shall be from print. If it is against a TV or radio broadcaster, the media representative shall be from broadcast. Decisions shall be by a majority vote. Legal representation shall be permitted at hearings.

3.5 Within 7 days of receipt of the decision, any one of the parties may appeal to the Appeals Chairperson and the grounds of appeal shall be fully set out.

3.6 The application and grounds of appeal must be filed at the Ombudsman's office.

3.7 The Ombudsman shall inform the other party of the appeal and shall advise the party that he or she may file a response to the appeal within 7 days of receipt thereof.

4. APPEAL PROCEDURE TO THE MEDIA APPEALS CHAIRPERSON

4.1 The Ombudsman shall place before the Appeals Chairperson all the documentation that he or she had before him or her and the Ombudsman shall also inform both parties of the date and venue of the appeal hearing.

4.2 The Appeals Chairperson shall determine a date, time and venue for adjudication of the appeal, which shall be heard as soon as possible after receipt by him or her of the documents referred to in Rule 4.1.

4.3 It shall not be obligatory for either party to appear personally before the Appeals Chairperson, but they are entitled to attend and to address the Appeals Chairperson which is, in any case, entitled to question them on the matter, provided that a respondent is not under a duty to disclose the identity of an informant.

4.4 The Appeals Chairperson may request the parties to appear personally. He/she shall advise parties that, in the circumstances, an adverse inference may be drawn from failure to comply with such request without good cause.

4.5 The parties shall be entitled to legal representation when appearing before the Appeals Chairperson.

4.6 If the Appeals Chairperson finds against a respondent who is present, the respondent shall be given an opportunity to address him / her in mitigation of any order that may be made.

4.7 The hearings of the appeal shall be open to the public unless the identity of a rape or sexual victim or a child or a victim of extortion is at issue.

5. VARIATION OF PROCEDURE

The Ombudsman or Appeals Chairperson may, if satisfied that no injustice will result, and upon such conditions as he or she may impose:

- 5.1. Extend any time period contemplated in these rules;
- 5.2. At any stage require any allegation of fact to be verified on oath;
- 5.3. Call upon the parties to a dispute to furnish such further information as he or she may consider necessary.

6. FINDINGS OF THE MEDIA COMPLAINTS COMMITTEE AND THE APPEALS CHAIRPERSON

6.1 The Media Complaints Committee or the Appeals Chairperson may uphold or dismiss a complaint or appeal, as the case may be.

6.2 If a finding is made against a member of the Editors' Forum or a publication that has voluntarily become subject to the Code of Ethics, the Media Complaints Committee or the Appeals Chairperson, as the case may be, may make any one or more of the following orders against the proprietor of the publication, radio or television station:

- 6.2.1 Caution or reprimand a respondent;
- 6.2.2 Direct that a correction, retraction or explanation and, where appropriate, an apology and/or the findings of the Media Complaints Committee be published or broadcast by the respondent in such manner as may be determined by the Media Complaints Committee or the Appeals Chairperson, as the case may be.
- 6.2.3 Order that a complainant's reply to a published or broadcast article, comment or letter be published or broadcast by the respondent;
- 6.2.4 Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of the Media Complaints Committee or the Appeals Chairperson.

6.3 In the reasons for the decision and/or sanction the

Media Complaints Committee or the Appeals Chairperson is entitled to criticise the conduct of the complainant in relation to the complaint, where such criticism is warranted in the view of Media Complaints Committee or the Appeals Chairperson.

6.4 The Ombudsman shall cause any findings, reasons for a finding and/or requirements of a tribunal to be sent to the complainant and to the respondent who shall comply with the Media Complaints Committee or the Appeals Chairperson orders or directives, if any.

6.5 The Ombudsman shall keep on record all findings and reasons for findings by the Media Complaints Committee or the Appeals Chairperson for a period of five years.

6.6 The records referred to in rule 6.5 shall be public documents except insofar as those documents, might identify a rape victim, a person who has been sexually assaulted or a child, or a victim of extortion.



The Editors' Forum of Namibia (EFN) supports the self-regulatory mechanism as administered by the Media Ombudsman.





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