

INDEPENDENT PANEL REPORT

Inquiry into Media Ethics and Credibility

by:

**Judge (retired) Kathleen Satchwell
Nikiwe Bikitsha
Rich Mkhondo**

**Commissioned by
The South African National Editors Forum**

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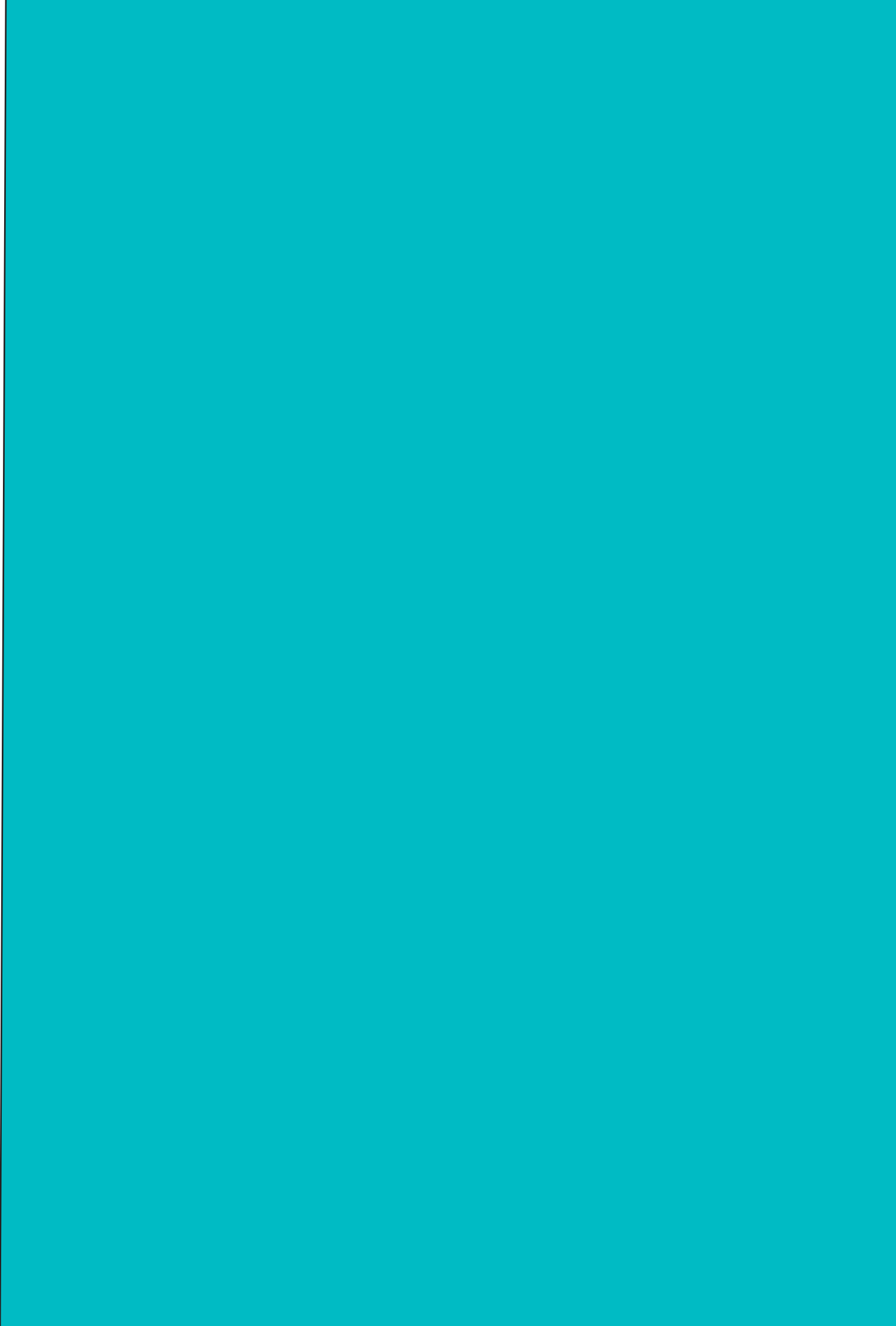
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EXECUTIVE SUMMARY

INTRODUCTION

- ES1. In the age when humanity is crying for facts, truth-telling, fair reporting and accountability, sometimes ethical journalism seems to be on the ropes. While there is a growing movement to strengthen the craft of journalism and recognition of how journalists committed to accuracy are doing good work and connecting with news consumers, there are times when ethical journalism appears rather bleak.
- ES2. That is why SANEF commissioned an inquiry into the ethical issues facing South African journalism, to be conducted by a panel headed by Judge Kathleen Satchwell, also including veteran journalist and author Rich Mkhondo, and award-winning journalist and former Fulbright Hubert H. Humphrey Fellow Nikiwe Bikitsha.
- ES3. As the text of the Inquiry Report was being finalised, the country was reading reports of the prospect of a second wave of the Covid-19 pandemic, and of controversy over proposed retrenchments at the public broadcaster, on which most South Africans still rely as their first source of news in African languages. Both circumstances provoked vigorous public reflection on the challenges facing South African news journalism and, in a very timely fashion, underlined the Panel's findings.
- ES4. This Inquiry was commissioned following the events and controversy surrounding the publication and subsequent retraction of a series of stories by the *Sunday Times* between 2011 and 2016, and the questions raised thereby about reporting, newsroom processes and the stances adopted by a single media house. Although the Panel's hearings and perusal of submissions revealed some issues specific to the *Sunday Times*, what also emerged was a shared set of systemic problems imperilling ethical conduct across the whole media landscape.
- ES5. These include: revenue challenges impacting on sustainability; the related diminution of resources for professional development and training and for the effective exercise of editorial and sub-editing checks and balances; the social media-fuelled pressure to break stories ever faster amidst competing mis- and disinformation narratives; societal pressures – including harassment and official disdain and manipulation – on reporters; and lacunae in the scope and powers of regulatory bodies.

Panel methods and processes

- ES6. Between July 2019 and March 2020 this three-person Panel engaged in one way or another with 167 individuals and entities, perused close to 200 documents and sought ad hoc research inputs including a comprehensive longitudinal study of the work of the South African Press Council. Consultations occurred with newsroom practitioners, owners, academics, consumers and concerned individuals and institutions.
- ES7. The Panel, unlike national commissions of inquiry, functioned without secretariat, investigators or evidence leader. It relied on very limited financial resources and no statutory powers, and must, at this stage, express its gratitude for the assistance it received from SANEF and from many individuals in journalism and media consumers who are acknowledged in the Appendices of the full Report.
- ES8. Pursuant to the Terms of Reference, the Panel sought clarity on “those challenges confronting the media industry generally and journalists in particular which hinder the appropriate, honest, accountable and effective reporting necessary for advancing and strengthening Constitutional democracy in South Africa.”
- ES9. The Panel is hopeful that the inputs made to us and the issues to which we have been alerted lay sufficient groundwork for SANEF to debate and explore solutions in its ongoing proceedings and at its anticipated conference on media ethics.
- ES10. The issues discussed in the Report are complex and wide-ranging. The Panel is aware that in the circumstances described above it has not been possible to do full justice to them. That implies no disrespect to the media or its workers at all levels as essential pillars of democracy. Rather, we hope that the overview offered will provide a reminder of the issues for consideration and a springboard for continuing future work

History and context of the South African media

- ES11. Ethics cannot be considered in a vacuum. Accordingly, the Panel gave consideration to the historical as well as current context of the South African media. The Panel traced the history of hegemonic control, censorship and manipulation in the interest of implementing the apartheid project, resisted only by a few brave independent publications and the conscientised media activists of the liberation struggle era.
- ES12. The resulting legacy could not be – and is not – easy to undo. Oligopoly and lack of diversity persist, narrowing the public space for access to information and debate in a socio-political and economic landscape where English and Afrikaans dominate all platforms, pay-walls encroach, data is expensive and online access limited. Further constraints come in the form of the perceived imperatives of digital news production and dissemination and the fragmenting impact of the entry, via social media, of multiple unaccountable new voices.
- ES13. To the traditional media roles of informing, educating and entertaining and, as the ‘Fourth Estate’, speaking truth to and asserting checks on power, have been added new responsibilities: countering the self-reinforcing echo chambers of social media; fighting

mis- and disinformation; and counterbalancing the hegemony of powerful international information platforms such as Facebook and Google.

- ES14. These are heavy duties. Yet for the proper functioning of a modern participatory democracy, the South African media must be free, proactive, professional, inquiring and accessible. Only then can the media effectively include all citizens in the public discourse and support them in discovering information and forming opinions. Yet the Global Disinformation Index suggests that 41% of South Africans distrust the media and 70% are concerned about the problem of distinguishing valid from 'fake' news.
- ES15. It is clear to the Panel that the media do not currently have the adequate resources, well-functioning internal processes and strong, supportive national institutional framework necessary for effective functioning in a democracy. This underlines the continuing necessity of presenting a reasoned case to the nation for journalism as a public good.

Constraints on the effective functioning of the media

- ES16. Transformation of the South African media has been haphazard and incomplete: the nation's majority population remains severely underrepresented in media ownership and control, in the voices and languages heard on media platforms, and also in the capacity to access those platforms as news consumers. Ownership is even more concentrated; publications have closed; adaption to the imperative for change has been slow and half-hearted. The fragmentation of South African society is mirrored in social media driven media fragmentation and exacerbated by the real circumstances – and the miasma of rumours – created by state capture.
- ES17. All this is occurring in a global and national situation of severe financial constraints on the media. The worldwide shrinkage of print media and adspend on all platforms except online is reinforced by a national economy whose already parlous state has been worsened by Covid-19. The Boards of media organisations are increasingly commercialised, with news outlets treated as merely another investment vehicle at the mercy of shareholder demand for profits. This impels management involvement, and sometimes interference, in decisions about programming, staffing and content.
- ES18. Demand for more and faster newsroom output from fewer resources – including fewer, less experienced journalists and sub-editors, and the absence or reduction of time for sub-editorial scrutiny and editorial vigilance – makes slippages in standards almost inevitable. The pressure to produce an ever-increasing quota of stories per work period has meant shortcuts necessarily occur, limiting care and attention to detail in research, interviewing, corroborative and fact checks and writing and rewriting.
- ES19. Political uncertainties and the rise of factionalism and populism have created a climate conducive to interference in the media from all levels of government and state and other political and factional role-players. This includes manipulation, legislative and institutional blocks on access to information and outright attempts to buy or bully reporters and editors. There are also disturbing utterances from political figures designed to paint the press as an untrustworthy 'enemy' of society.

- ES20. Media organisations and their employees are vulnerable to these pressures on a number of levels. There is little effective workplace organisation among journalists, and individuals are often in a situation of low pay and employment precarity. Limited resources intensify newsroom reliance on 'freebies', creating the impression that all journalists and not merely a corrupt few are riding a gravy train. Limited resources additionally constrain investigative news reporting; currently far more visible in donor-supported independent media organisations than in the mainstream media seen by most South Africans.
- ES21. This is underpinned by a drastic reduction in training, coaching, professional development opportunities and reporter support. Despite the existence of comprehensive, nationally-accredited newsroom training curricula, formal training on anything other than the technical skills of online publishing barely functions. The numbers of senior, specialist and more experienced editors and journalists who might mentor have been cut, and a reduced staff complement has less access to administrative, archival, transport and other supports for reporting and verification.
- ES22. Some publications refuse to voluntarily engage with and submit to regulatory codes of practice and ethics. Ineffective communication about, and lacunae in, the regimes of regulatory bodies coupled with apparently negligible or non-existent consequences for breaches in media ethics, all foster public perceptions that the media are not held accountable for lapses in ethical standards. The updating of regulatory codes is of importance. The panel also concluded that creating more effective mechanisms for adherence to and enforcement of standards and practices is necessary.

Financial problems and dilemmas

- ES23. Worldwide, news media are under financial pressure from technological change and shifting consumer habits that threaten the future existence of individual news providers and the diversity of news. In South Africa, the current financial predicament and possible fate of the media industry cannot be viewed independently from the general South African environment: a relatively poorly-performing economy stretched by the need to respond to nearly a decade of state capture.
- ES24. A print industry carrying high fixed and operational costs cannot compete effectively with other, lower-cost platforms. Further consolidation of the print industry, and the consequent closure of titles, seems unavoidable. In the long term, broadcasters may lose revenue to digital disruption, which will affect their news operations; in the short to medium-term their position is somewhat more stable. The continuing dominance of the television 'Big 3' is already starting to face challenges from the providers of VOD and podcasts.
- ES25. The loss of adspend and other news revenue is particularly damaging when the majority goes offshore to the 'FANGs' (Facebook, Amazon, Netflix and Google) and is no longer available for South African media survival and development. It combines with a decline in print circulation, and the emergence of paywalled online content to narrow what is available to the majority of low-income South African news consumers.
- ES26. On all news platforms, there is constant tension between the need for investment to produce quality news content, and the commercial pressure to cut costs, as well as a search for new business models that can combine multiple revenue streams and operation across platforms.

- ES27. These developments impact particularly harshly on access to informed, comprehensive, relevant news of the low-income communities comprising the majority of South Africa's citizens. They already lack prominence in the news and rely on minimal news sources in the languages they speak. The concerns of poor people in remote areas are hardly covered at all.
- ES28. By pooling information on a co-operative basis and through original reporting, the South African Press Association (SAPA) used to provide something of a counterbalance through wider (though predominantly Anglophone) national coverage. Its closure revealed the intensifying commodification of news in the ensuing battle between big press groups hoping their own stories could earn syndication revenue by filling the vacuum.
- ES29. Community newspapers told the Panel of bare survival, beset by the same pressures the big print groups face, but with fewer resources. At local level they compete with the more financially healthy freesheet 'knock 'n drops', which are often collections of advertising supplements wrapped by a few pages of local reports, often dominated by supplied copy and highly vulnerable to pressures to publish ever more advertorial. The Panel also heard how the dire financial straits of community broadcasters – cold-shouldered by advertisers, reliant on pioneering individuals and often with highly stressed governance, administrative and accounting structures – had already produced extreme instances of vulnerability to ethically questionable pressures and incentives.
- ES30. In a context where social media creates opportunities for any individual to issue content, the Panel observed how the ensuing free-for-all has democratised the creation and consumption of news by breaking public dependence on centralised and established purveyors (a challenge to mainstream media viability) and, more concerningly, opened the door for the proliferation of damaging mis- and disinformation (a challenge to media credibility).
- ES31. The Panel also heard from many informants that the MDDA, initiated to counterbalance many of these pressures, was itself struggling to meet its mandate and failing to deal openly and effectively with those community operations who need its help.
- ES32. Meanwhile, digital-only publications flourish: donor-funded; as membership organisations; and also in the form of a tightly paywalled business press targeting the wealthier sections of the of the population.
- ES33. While in the past government interference may have seemed to represent the major threat to the news media, the Panel sees current threats as more closely related to the manner in which publishers attempt to adjust to these realities of the digital age, including shareholder pressure to intensify the very cost-cutting measures that have, thus far, eroded the quality of news reporting.

The Sunday Times

- ES34. The Inquiry could not and did not seek to establish the truth or otherwise of any reportage by the *Sunday Times* nor any wrongdoing on the part of any person, whether the subject matter of any reportage or any journalist or media entity. Nor do the conclusions reached by the Panel represent a finding that such misconduct either did or did not take place. The purpose of this portion of the Inquiry was purely to investigate any lapses in media ethics.

- ES35. The panel found that precisely the same errors and weaknesses identified by the review conducted by Fray, Harber, Kruger and Milo in 2011 of *Sunday Times* news processes had persisted, not been corrected, and contributed in no small part to the problematic reporting and editing processes that marred the renditions, Cato Manor and SARS series of stories. These were exacerbated by the elite and unaccountable status afforded to the title's Investigations Unit and pressure for the regular, high-speed delivery of sensational 'splash' stories from the unit, rather than patience with slow, detail-oriented work.
- ES36. The 'apology' by the *Sunday Times* conceded headline errors, errors of emphasis and a failure to see the wider political picture. The newspaper made no allegation of ethical failures on the part of journalists. The *Sunday Times* claimed that the newspaper had been the subject of political manipulation but explicitly stated that the journalists involved were not complicit in the agenda of such unnamed manipulators.
- ES37. The Panel notes that no-one has suggested that the journalists should have ignored these stories, which were very much matters in the public interest; other media practitioners have identified and acknowledged multiple structural reasons for media and journalistic failures
- ES38. The *Sunday Times* apologies conceded misleading headlines, which the Panel notes are normally the responsibility of sub-editors. The *Sunday Times* apologies found that there had been uncorroborated allegations presented as facts as also overstating the contents of reports, such as that of KPMG. The *Sunday Times* stated that some stories had omitted or given inappropriate placement to relevant information that changed the import of stories.
- ES39. The Press Ombud made findings in matters relating to van Loggerenberg, Pillay and Gordhan in respect of stories pertaining to the SARS 'rogue unit' to the effect that there had been a failure on the part of the journalists and the paper to allow for a realistic opportunity to respond to the stories about to be published. Further, the Press Ombud found that the reference to a KPMG report, without identifying it as a preliminary document, resulted in a contravention on the prohibition on misleading, inaccurate and unfair publication.
- ES40. The Panel found that the rush to produce multiple stories and 'splashes', and to print, partially precluded journalists and the paper giving subjects sufficient time to respond. The Panel found that, in the process, contextualisation and counter-narratives were ignored, with no discussion of the wider political agenda as it emerged and which was partially contextualised in other media.
- ES41. Of greatest concern to the Panel is that the apologies of the *Sunday Times* raise more questions than were answered. The nature of the apology by the *Sunday Times* remains unclear to the Panel. No indication is given of what, if any, material or allegation was retracted, or on what basis.
- ES42. The crux of the *Sunday Times* apologies was that there was "a parallel political project aimed at undermining our democratic values and destroying state institutions", and that there was "a hidden hand of manipulation and political machination" in respect of both the SARS and Cato Manor series. However, no indication was given by the *Sunday Times* in the apology as to the identity of the puppet masters behind this political manipulation, the nature of manipulation, the purpose thereof, the manner in which it took place and how it was visited upon the investigative unit of the *Sunday Times* or upon the newspaper itself. This lack of clarity increased uncertainty about the nature of the apology or the purpose thereof. Since details of what portions of stories were or were not retracted and the extent of such retractions,

readers are left ignorant as to whether or not the manipulation of the newspaper resulted in pure fiction or simply exaggerated narratives.

- ES43. The sources upon which the reporters relied were – at the time – considered authoritative findings on a matter of considerable public interest: namely, investigations, reviews and commissions chaired by or comprising an attorney, a senior advocate, a former senior security official, a senior High Court judge and a reputable firm of international accountants and auditors.

- ES44. It is in this context that the *Sunday Times* states it believes that its journalists should have exercised greater “caution and care and joined the dots”. However, it is difficult to see how the individual journalists could have been expected to uncover this parallel political project unknown to anyone save those involved in its conception and execution, nor how individual journalists could have been expected to know that there were even dots to be joined, when the sources upon which the reporters relied were – at the time – considered reliable.

- ES45. The panel is concerned because these vague apologies, minimal corrections and minor retractions effectively negate their value and import. It is a case of saying: “So sorry, but someone else is to blame, but I cannot tell you who or for what.”

- ES46. Among the greatest failures of the *Sunday Times* in fulfilling its obligations as a dispenser of information is also its failure to offer analysis and commentary in its presentation of the series of articles/stories on SARS and on the Cato Manor SAPS killings. Where were the political editors, analysis, journalists, columnists who could or should have been offering context and insight on what the investigative unit was reporting and the sub-editors headlining?

- ES47. The involvement of some lobbyists and threats made to Avusa were acknowledged to the Panel by the *Sunday Times* and further detail thereof emerged in discussions. It is disturbing that both the management of the holding company and the newspaper were effectively directed to take certain action in respect of reportage but failed to acknowledge to their readership that such pressure had been placed and the nature thereof.

- ES48. The Panel is concerned that the journalists involved all claimed that they were excluded from discussions about their own stories and reputations. Of even greater concern is that a right of reply was given to some of the prominent news subjects but not to the journalists, implying a lack of respect for journalists, their commitment to their work, and their reputations.

- ES49. This relates to a question that emerged in several other contexts during the Panel’s hearings and deliberations: the power and right of management to intervene in what an editor chooses to publish. Management it was conceded by some informants to the Panel, might have the right to discuss with editors content strategies that may yield higher readership or advertising revenue, and to set an overall policy direction for a title or platform. However, informants were vehement that a ‘Chinese Wall’ should prevail between such discussions and the final, purely editorial, decisions on story contents. Yet the panel notes that no existing code of conduct or ethics contains guidelines on such issues, or to protect that specific aspect of editorial independence.

- ES50. Hindsight, it is said, is 20:20 vision. All actors and observers in this saga are now aware of various allegations of and even evidence of ‘state capture’ and the political and business manoeuvring which went on in pursuit thereof. In retrospect, many persons and entities may have been unaware or uncritical of the narratives which were presented at that time. Not only

were the *Sunday Times* journalists and editors apparently unaware of the now acknowledged but unexplained ‘political manipulation’ on which the apology of the newspaper was based, but the judges of the Taco Kuiper award panel were also impressed by these stories.

- ES51. The Panel has no information to enable it to determine that any one or more of the persons associated with the *Sunday Times* investigative unit was complicit in the unnamed manipulation.
- ES52. The subjects of the stories with whom the Panel has engaged have had personal distress and harm visited upon them by the work of these journalists and this newspaper. The Panel agrees with those news subjects named who say that the errors of the journalists were so egregious that they amounted to ethical malpractice. The Panel has particular regard to the identification of Mr Pete Richer as a member of the SARS ‘rogue unit’ and engaged in various nefarious activities when this was patently not so and where Mr Richer was never asked for comment or given the opportunity to explain.
- ES53. Finally, the veracity of the stories constituting the ‘rogue unit’ and ‘death squad’ narrative was never tested in the Press Council. The only approaches and rulings were procedural in nature. The main subjects of these stories, apart from van Loggerenberg, chose another route: of private discussion, lobbying and threats, to all of which the *Sunday Times* succumbed. This is undesirable. Complaints have not been formulated and aired and adjudicated; the public has not seen the media being held accountable for errors; neither journalists nor print and online publications have been able to respond and defend themselves; and politico-financial considerations have triumphed over the truth of journalism. Nothing has actually been resolved.
- ES54. It was the ruling by the Press Ombud on a procedural issue which, according to the *Sunday Times*, caused the newspaper to reassess its approach. This suggests to the Panel that the current mode of co-regulation is functioning in an effective manner.
- ES55. However, the Panel remains concerned that the tactics and equivocations of the *Sunday Times* discussed above may have given encouragement to other entities that have withdrawn from the self-regulation of the Ombud process. These actions may also have eroded public confidence in the mechanisms set up to encourage accountability, and reporters’ confidence in their employers’ support when they embark on complicated, difficult or challenging investigations or those which might offend the powerful.

The new environment and the changing role of the journalist

- ES56. In today’s converged media environment, journalists face new challenges but their essential mission of staying loyal, first and foremost, to the truth and to the needs of their audience remains constant.
- ES57. In this context, South Africa does have nationally-benchmarked workplace programmes for intern and new entrant training that include not only practical skills but ethical and legal awareness – including a written examination in media law. There are also established higher education programmes in journalism, media studies and other related subjects. However, media house budget constraints, together with a very protracted process of transfer between

the previous Seta qualifications and the new QCTO qualification have both drastically eroded employer investment in in-house journalist induction or training to bridge between a generic journalism education and the practical needs and challenges of a specific newsroom. Very little survives at the time of completing this report, with the bulk of media house training investment now allocated to the technical skill aspects of publishing on digital platforms.

- ES58. This has been accompanied by a reduction in the newsroom resources available for mentoring, copy-editing, fact-checking, editorial debriefing and the multiple other layers of oversight formerly available to catch errors and problems in a story.

- ES59. This has contributed to a situation where the Panel heard from many informants about a lack of basic working skills and broad contextual and ethical understanding among young journalists. These novices find themselves in highly pressured, sometimes harsh and precarious newsroom environments, and also the object of verbal (and sometimes physical) attacks in public forums and hostility on the streets. Highly suggestive of the harshness of organisational culture was the number of Panel informants requiring anonymity for the content of their submissions.

- ES60. The Panel heard many useful proposals to remedy aspects of this situation, even in the absence of additional newsroom staff. Two that seemed to offer positive potential were a proposal for collaboration between newsrooms and the several organisations now operating as independent research and fact-checking services, and a proposal to restore effective labour organisation among media workers.

- ES61. Additionally, the casualising employment practices of many media houses have made many more journalists, including many highly experienced specialists and seniors, unwilling freelancers. This precarity creates vulnerability, but also sets up ethical tensions between roles in public relations and journalism, or roles as journalist and social media or public event ‘personality’, which may overlap or follow one another in quick succession, creating a ‘revolving door’. Such situations also confuse media consumers about what the role of a journalist is, and as yet no guidelines exist to govern these multiple roles.

- ES62. In a similar context, the Panel also encountered frequent discussion about the personal political alignments of journalists, and of media organisations. The consensus the Panel heard was that such alignments must be declared upfront to permit readers to make an informed decision about the matter published under such a declaration, and that it certainly did not absolve either a media organisation or a journalist from abiding by recognised standards of fairness and balance.

- ES63. The journalistic endeavour of news continues to be vital in the South African polity. Where there has been excellence, that work has had implications for the entire South African community and the fate of the nation. Where there have been, and remain, faults, structures and mindsets can be changed and improved.

- ES64. The Panel acknowledges, as one submission noted, that the new digital media climate offers important opportunities for better reporting through improved research tools, wider reach for vital information the public needs and much more, all of which we embrace. But during this transition time, the Panel heard how media house owners are dealing with the crash in print advertising and readership largely through a continual, relentless process of cutting staff, resources and time. This, in turn, is impacting on reporters’ and editors’ ability (and motivation) to generate careful, truthful stories.

- ES65. Specific measures to disseminate and inculcate legal and ethical awareness in newsrooms are vital. But a deeper solution demands that the industry at its highest management levels reconsiders how better to balance the very real tensions between new technological and business challenges and shareholder pressures and the continuing professional imperative to operate ethically. Everything this Panel has heard affirms that survival of a credible and trusted media requires the implementation of professional ethical standards across the whole media ecosystem.

Complaints about the South African media

- ES66. The Panel was able to use data on complaints submitted to the PCSA and the BCCSA to map public opinions about media failings. The majority of these complaints related to the failure to follow up stories; truth, accuracy and fairness; the right of reply; the handling of protected comment; and the use of misleading page furniture (headings and captions).
- ES67. The Panel also explored the dilemmas around the right of reply where that right is demanded for outlier opinions with no support from established factual knowledge or peer-reviewed scientific research, hearing from many informants that in those circumstances the demand for a right of reply should have no ethical standing.

Regulation of the South African media

- ES68. Through its establishment and maintenance of the current system of regulation, the media industry has actively responded to demands placed on the media to assist in the South African democratic constitutional project. The media industry itself has developed, financed, and continuously improved upon the system of regulation. Responsiveness to and compliance with the regulatory regime is evidenced, as is clear from the statistics and reports of all regulatory bodies this Panel has viewed.
- ES69. However, two concerns persist that require future attention. Firstly, broadcasting does have a statutorily compulsory regulatory mechanism under the aegis of ICASA, administered through the CCC, whereas print and online media only have the voluntary Press Council, of which a print or online publication or news organisation cannot be forced into membership. Secondly, the voluntary nature of use by the public of the BCCSA or the CCC or the Press Council leads to a situation where complaints are often made through social media, resulting in wild and untested allegations, diminishing the overall trust of the public in the media's credibility and trust.

Concluding comments on media regulation and freedom

- ES70. The Panel considered arguments for asserting and maintaining media freedom from both internal (management) and external (state) intervention. Absent any requirements for the claim of professional status – qualification, training, membership of a professional body with supervisory or disciplinary functions – as found with other recognised professions ranging from educators to accountants, healthcare providers to engineers, it may be beneficial to those practising the craft of journalism to individually subscribe to those Codes of Practice and Ethics issued by the various media regulatory entities as a means of identifying those media practitioners who do subscribe and adhere to and champion certain ethical practices and standards of practice.
- ES71. All panellists wish to state that they have learnt in the course of this Inquiry that the current system of self- or co-regulation of the print and online media and by the broadcasting industry appears to be working well and to the benefit of the South African democracy.
- ES72. It is the view of the Panel that the failure of the *Sunday Times* to use Press Council systems at the final stages of that title's debacle does not mean the current voluntary system of self- and co- regulation of the media is not working. On the contrary, the evidence in this particular instance indicates the authority and impact of the Press Council system and of the office of the Press Ombud: it was the ruling by the Press Ombud that brought the *Sunday Times* to realise and accept that it needed to take steps and deal with the situation. The Press Ombud obviously carries enormous weight and authority within the media industry for that ruling to have had the impact it did.
- ES73. The work of the Press Council, the Public Advocate and the Ombud has been carefully examined by this Inquiry in the course of the research and analysis commissioned by the Panel. The multiplicity and variety of approaches made by members of the public all point to knowledge of, and trust in, the process. That the media industry responds to these complaints, engages with the process, and observes the rulings of the Press Ombud, is indicative of the good faith of the media industry itself, while changes made in response to, for example PFC comments, evidence responsiveness and flexibility.
- ES74. The system is not perfect in many respects, but then no system is. That attorneys and medical practitioners and accountants and engineers are registered and required to belong to professional councils has not prevented theft of monies from trust funds; false claims submitted to medical aid schemes; auditing irregularities, and short-cuts in the design of bridges. But there is compliance by the media industry to the demands of the Press Council and rulings by the Press Ombud. The system has integrity and is obeyed.
- ES75. It is undesirable to attempt to identify and enforce some form of individual regulation of each person who purports to be a journalist – after all a system other than that which is currently operative could well not identify and professionalise those who operate as media outlaws while any such action may risk a chilling effect on grassroots citizen journalism.
- ES76. What is needed is not more control by the state or anyone else of the media but more media and more news consumers. For this, there needs to be a media-literate audience, whose needs are catered for in their own languages, in a medium that is accessible and affordable and where a multiplicity of views is tendered so that viewers, listeners and readers can make up their own minds on a variety of issues relevant to their lives.

- ES77. The detail of the Panel's deliberations takes up close to 350 pages; this brief overview notes only the most salient points. However, the Recommendations that immediately follow this summary do engage with that detail, proposing practical activities that will begin the painstaking process of strengthening that which already functions well, and remedying the gaps and sticking points the Inquiry has identified.

RECOMMENDATIONS OF THE INQUIRY PANEL

SECTION A: MEDIA FREEDOM

To ensure the survival and growth of South Africa's constitutional democracy, and having regard to the benefits of an organised front by media practitioners in tackling instances of misinformation, disinformation and media manipulation; given further that encroachment on journalistic independence by owners is insidious given the direct power and authority they wield over employment and can have a chilling effect on the freedom journalists enjoy, which provides for independent scrutiny of the forces that shape society, SANEF should:

- A1. Collaborate with other media entities – media houses as well as media practitioner and human rights organisations – to consciously and consistently publicise the importance of an independent, diverse and vital media industry and resist any discourse that undermines the status and independence of the media and to maximise the resources and information channels available for media work – for example, to assist journalists in verifying election claims during the 2021 municipal poll.
- A2. Encourage constitutional entities, government institutions and individual policy-makers to publicly affirm their commitment to an independent media that robustly engages with all aspects of South African society; to commit to activities that encourage trust in and support the credibility of such media; and to abjure all actions and comment that undermine it.
- A3. Participate proactively in the ongoing national and international debates about the need for independence between management and editorial functions, develop guidelines and clearly and publicly engage in initiatives to convince media owners and the public of the necessity for such editorial independence from management interference, which is incompatible with media freedom; and work to ensure that all relevant codes of practice prohibit improper interference by management in editorial decisions regarding news.
- A4. Enter discussions with like-minded bodies on the creation or revival of a unified organisation to defend and represent the interests of all journalists, not limited – as SANEF currently is – by a mandate to serve managers and senior editors only. Such an association could share experiences and insights, serve as a negotiating bloc, protect labour rights, provide supplementary training, lobby on media freedom issues and more.
- A5. Continue to debate the status of media practitioners, giving consideration to the advantages and disadvantages of asserting journalism as a 'profession', considering not only status but the implications for press freedom.
- A6. Require individual rather than media house subscription and adherence to the ethical principles and standards of practice set out in relevant codes such as, but not limited to, those of the BCCSA or the PCSA.

- A7. Draw up a Media Freedom Declaration based on constitutional principles and encourage relevant civil society and government role-players to make an individual, public commitment to media freedom by appending their signatures thereto, as a parallel activity to media re-commitment to an Ethical Charter on Press Freedom Day (*q.v.* Recommendation 26)
- A8. Take a proactive part in fostering ongoing and robust public debate and education about the fundamental role of the media in the South African democracy, including the need for requiring standards of journalism that deal with partisan opinion and debate, diversity of opinion, accuracy, integrity, independence and expertise; the right of media houses to reflect chosen worldviews and present a partisan approach to news and opinion; the difference between the work of journalists and that of social media bloggers and influencers; and involving media, training institutions, policy makers, political groupings, government and Chapter Nine Institutions

SECTION B: MEDIA DIVERSITY

In the interests of fostering an informed citizenry that can demand accountability from those exercising power as a vital aspect of democracy, SANEF should:

- B9. Lobby for and support initiatives from capable entities to undertake a national media diversity mapping exercise using processes and instruments focusing on audience access to media, given that extant studies have to date largely explored ownership and control.
- B10. Promote knowledge of, training in, and use of all South African languages by media practitioners on all platforms.
- B11. Lobby for the provision of comprehensive, informed news content in African languages that is accessible to all South Africans.
- B12. Support initiatives to study international and national best practice in extending diversity in both public and private media and strategies for implementation in local conditions.
- B13. Build on the findings of such studies to encourage media organisations, policy makers, government and the private sector to promote and encourage greater diversity in media ownership, towards the fullest alignment with the 1991 Windhoek Declaration for the Development of a Free Independent and Pluralistic Press.
- B14. Work with the Special Rapporteur of the Africa Commission on Human and Peoples Rights in publicising and educating government, policymakers, the corporate sector, media organisations and practitioners on the Declaration on Principles of Freedom of Expression and Access to Information, and develop the use of the Declaration to encourage its dissemination among media consumers in the entire region.

SECTION C: ETHICS AND STANDARDS

In the interest of ensuring that all media consumers know how to critically assess the reporting of news and opinion and the conduct of journalists, providing a platform for deeper conversations around ethics and integrity, improving management, editorial and reporting/publishing practices; and rewarding journalists who set a high ethical standard, SANEF should:

- C15. Encourage and initiate, as an organisation and in collaboration with other concerned bodies, prominent public affirmations – including through advertising campaigns – of the importance and content of ethical principles and standards of journalistic and media organisation practice.
- C16. Work towards introducing a register of income or interests for media practitioners – such as those implemented for members of Parliament or the judiciary – or the implementation of regular lifestyle audits, to actively counter allegations of media bias or corruption, and as a more rigorous supplement to the declaration forms sometimes used in published declarations of interest or story sponsorship.
- C17. Reopen consideration of sanctions – fines or suspension from media organisations – for journalists who commit ethical breaches, since current Press Council requirements avail very limited restorative justice to aggrieved or harmed members of the public. The print and online media industry could discuss alignment with BCCSA practice in this area.
- C18. Open debate to establish SANEF policy on the disclosure of income and interests and/or lifestyle audits for journalists to the extent that such may be seen to bear on their independence and integrity.
- C19. Open debate on the need for a digital media ethics code and the content and applicability thereof, with special consideration of the ‘clickbait’ phenomenon.
- C20. Encourage media organisations to use advisors with formally recognised expertise on a retainer or consultancy basis to assist in developing and over-viewing niche or specialist (eg science, law, budgets) stories, and to work with fact-checking organisations where a fact-checker is no longer a part of the sub-editing team.
- C21. Ensure that conversations are ongoing on current and proposed new codes of ethics and standards, including identifying lacunae, regular updating and revision and the best ways to facilitate and broaden public input into these processes. This includes, the Press Code of the PCSA, the IABSA code, the BCCSA code, the NAB code and the ICASA Code of Conduct for Broadcasters, and all other relevant codes, and there is significant scope for cross-pollination between these bodies’ codes. Topics for debate could include the potential benefits of a single co-regulatory code dealing with all content. Notwithstanding that some media sectors are regulated by statute and others not, there may be value in exploring the advisability of coordinated and even uniform jurisprudential approaches to media practice.
- C22. Consider collaboration in many of these initiatives with the international Ethical Journalism Network (EJN): a coalition of more than 60 groups of journalists, editors, press owners and media support groups created in 2011. Continue and intensify its current work to give wide publicity to the content of relevant codes of ethics and

standards. In this context, consider ways in which membership of the Press Council, the NAB and other media organisations can be used as statements of quality and credibility and be publicised.

- C23. Ensure that SANEF members as editors enforce a clear and prominent distinction between advertising, advertorial and editorial content; and work as an organisation with the Advertising Regulatory Board (ARB) and the CCC of ICASA to counteract the role of journalists in purveying false claims in advertising in terms of section 55 of the Electronic Communications Act, 2005.
- C24. Initiate debate within SANEF on the impact on the credibility and status of journalists of their assuming a range of other roles, including ‘personalities’, talk show hosts, and presenters and writers of advertising inserts and on the implications of the ‘revolving door’ between public relations and journalism, with the objective of developing guidelines. This must be done in the spirit of transparency to eliminate concerns around independence and conflicts of interest, but not with the aim of restricting livelihoods.
- C25. Combine a vigorous defence of the constitutional right of individual journalists and media houses to hold political and other opinions with an insistence that where such stances exist, the publication, station, platform or journalist openly identify them or risk committing an ethical breach.
- C26. Collaborate with like-minded organisations on a large-scale public campaign, involving all stakeholders including lawmakers and policymakers, all levels and spheres of government, industry, commerce and the education sector, to rebuild public trust in the media. This could include signing a new Ethical Charter on a significant date such as Press Freedom Day as well as other symbolic acts.
- C27. Engage with sponsors on the introduction of new awards, or the addition to existing awards, of recognition for ethical conduct and highest standards of media practice. Submissions could be based on case studies of how journalists have navigated through ethical conflicts.
- C28. Draw up an ethical reporting checklist to be applied as part of the judging process to all stories nominated for awards, and negotiate with all journalism awards bodies for its implementation by judging panels.
- C29. Continue seeking support for the research begun during this Inquiry into the transgressions against, judgments, opinions and advisories of the various media regulatory bodies to highlight breaches and feed conclusions into continuing professional development programmes.
- C30. Participate in or initiate establishing guidelines to resolve the tension between the hallowed ‘right of reply’ principle and the demand for a hearing from outlier opinions contrary to verified facts, particularly in the areas of science and medicine.
- C31. Encourage media owners, managers and editorial staff to develop (where these do not exist) and revise (where they do), comprehensive statements of editorial policy that include commitment to the principles of the relevant media ethics codes; to

publish these internally and on their platforms; and to implement compliance and resolve related conflicts in the newsrooms they control.

- C32. Press for the establishment in all media houses of the position of an internal ombud/complaints officer, for the existence and processes of such an office to be published, and for the ombud to have such sufficient authority in management structures that their recommendations are heeded.
- C33. Alternatively, lobby for every entity that publishes news to introduce an Editorial Advisory Board to ensure that decisions on editorial integrity are not determined by one individual alone and that journalists are not subject to the vagaries or personal predilections of a superior without the opportunity to seek recourse from a board comprising both editorial and newsroom journalists. This Board could receive complaints from members of the public, staff and whistleblowers about issues impacting on the credibility of titles and practitioners controlled by that media entity.
- C34. Work towards an industry-wide agreement on standard practice around editorial policies and standards, complaints procedures for members of the public and the resolution of editorial disputes for newsroom staff.

SECTION D: FINANCIAL RESOURCES

Recognising that media practice is both shaped and constrained to a large extent by available resources, SANEF should:

- D35. Support research into the financial viability and sustainability of all forms of news media, examining international approaches to funding independent media, including but not limited to taxation incentives/ exemptions, allocation of public funds, pursuit of royalties, levies on online advertising revenue routed offshore by online platforms, or other such methods.
- D36. Lobby for public purse support for all continuing professional development discussed in the training recommendations, so that it is available to members of all newsrooms including those too small to be part of taxation-related training levy structures.
- D37. Ensure that any such public purse funding is free from conditionalities, underlining that news in a democracy is a public good.

Recognising that the media sector is an important component underpinning constitutional democracy, these next recommendations address the public fiscus, through the Department of Communications and Treasury, which should:

- D38. Engage with the media industry at large to seek financial solutions to strengthen various sectors of the media industry by means including but not limited to providing sufficient funding for the SABC to enable the public broadcaster to fulfil its mandate to the people of South Africa, having regard to those models suggested by the SOS Support Public Broadcasting Coalition on funding the SABC; carefully

examining the financial and human capacity of the Media Development and Diversity Agency (MDDA) to support community print, radio and television.

- D39. Identify funding sources that can support adequate news organisation investment in producing more in-depth news programming across subject matters, to counterbalance commercial pressures for more lightweight and inexpensive content.
- D40. Earmark whatever monies from the media industry in terms of the Electronic Communications Act have been received by Universal Service and Access Agency of South Africa (USAASA) from broadcasting licensees to support the development of broadcast media diversity; and via government and national, regional and local administrative bodies, speedily implement the already agreed allocation and disbursement of the 30% advertising spending levy for the benefit of the community media sector.
- D41. Inquire into means of taxing the South African operations of the so-called FANGs (Facebook, Amazon, Netflix and Google) so that a portion of said tax revenue is channelled into supporting media diversity, whether through funding media pluralism (for example through the MDDA) or through funding content diversity (for example by funding a local content fund, whether through the National Film and Video Foundation [NFVF] or otherwise).

And the Department of Communications, which should:

- D42. Inquire into the financial and human capacity of the MDDA to implement its mandate and critically examine those issues which have impeded fulfilment of that mandate over past years and take appropriate remedial steps.

SECTION E: SAFETY AND SECURITY OF JOURNALISTS

Recognising that safety and security also include the workplace and psychological health, that media freedom and fearless ethical behaviour are constrained in a societal climate of verbal and actual aggression against journalists that seeks to silence them and additionally acknowledging that the organisational culture of newsrooms is in many instances pervaded by mistrust, bullying and fear of speaking out, SANEF should:

- E43. As an organisation of editors and newsroom managers, support its members in developing strategies, mechanisms and resources to restore or strengthen collegiality, respect and trust, including but not limited to: ensuring that reporters promoted to newsroom management roles can access support in acquiring humane, effective leadership skills; applying appropriate consequences for achievements and not merely for shortcomings; empowering writers through skilled briefing and debriefing; and standing with their newsroom staffers in requesting the time and resources necessary to do good work.
- E44. Facilitate ongoing interactions between media houses and entities, policy makers, activists and political groups and registered political parties to secure agreement on processes and principles of engagement with journalists and media entities that contribute to civilised engagement and full reportage on democratic activities.

- E45. Collaborate with all relevant media entities to form a united front against all forms of censorship including the ban by certain political groupings on the presence of or engagement with identified journalists or media entities.
- E46. Engage with those local and international organisations concerned with and involved in ensuring the safety of all media practitioners to explore measures to protect journalists from harassment, intimidation, trolling, online baiting, abuse, including engagement with policy makers and the Legislature based on the relevant provisions of the Electoral Code, the Prevention of Harassment Act of 2011, the Intimidation Act of 1982 and other relevant national legislation, as well as international protocols such as UN resolutions.

Further, all media entities should:

- E47. Refuse to provide publicity to, report on or attend briefings by any group that excludes specified journalists or titles from its events or encourages attacks on or harassment of media workers.

SECTION F: CONTINUING PROFESSIONAL DEVELOPMENT

In the interests of building and supporting an informed, competent and conscientious cohort of media professionals, SANEF should:

- F48. Support and encourage all media organisations to provide adequate, well-resourced, QCTO-compliant induction training and continuing professional development – not only for all editorial staff working on all platforms, but for board members and other media house decision-makers. Such provision should be regularly assessed for compliance with the requirements of the Skills Development Act and for relevance to a rapidly changing media environment.
- F49. Ensure through the SANEF Education and Training sub-committee and liaison with the QCTO and relevant Setas that existing newsroom training has adequate provision to capacitate staff for specialist stories where general reporters are required to undertake these and general sub-editors, script editors or content editors are required to edit them.
- F50. Ensure that newsroom training and practice deals with the limitations of social media as a sole source of news information.
- F51. Encourage the provision and completion of regular refresher courses in a) relevant areas of expertise for journalists assigned to specialist ‘beats’, and b) in media ethics and standards of practice for all journalists, as is the practice for members of professions.
- F52. Explore how SANEF members and partners can contribute to developing media literacy programmes at school level.

SECTION G: THE SUNDAY TIMES

Given that events at the *Sunday Times* provided the impetus for this inquiry, that it is an extremely prominent media title, and that the bulk of submissions to, and evidence before, the Panel raised serious questions about the title's responses thereto and their impact on media credibility more broadly, the Panel believes the *Sunday Times* should:

- G53. Issue a full and unreserved apology to those persons incorrectly implicated in any wrongdoing in any of the Rendition, Cato Manor or SARS series of stories in which the paper acknowledges that they failed in the most basic tenets of journalistic practice including failing to give any or adequate opportunity to the affected parties to respond to the stories to be published pre-publication and failing to seek credible and sourced validation of the allegations made against individuals; and that such failures caused great emotional and financial harm to the individuals concerned, their families and their careers. Full and complete retraction of incorrect or false or malicious allegations or commentary is to be made.
- G54. Make full disclosure of the nature and extent of the 'parallel political project' which the *Sunday Times* avers took place and that led to the 'abuse', providing details of the persons involved and their actions as well as the wrongdoings or failures of all journalists, editors, editorial and administrative staff involved.
- G55. Establish a Chair in Ethics in Journalism at one of South Africa's formerly black universities, making payment for the full foundation thereof to the relevant university. The Chair should not be named after the *Sunday Times* or any holding company but after an investigative journalist of high moral and professional calibre whose media work has contributed to the development and/or maintenance of constitutional democracy in South Africa.
- G56. Submit the work and culture of its newsroom to scrutiny and assessment by an independent panel every five years from date of the apology of October 2018. Such review should be made public to all other media bodies, with the findings thereof reported with suitable prominence in the *Sunday Times*.

SECTION H: REGULATORY BODIES

By reason of their composition and knowledge of the issues arising from complaints made to them, all media regulatory bodies should:

- H57. Collectively and individually take a more active role in encouraging and ensuring quality control of news production and journalistic content.
- H58. Seek additional financial and personnel resources so their Secretariats are enabled to coordinate with all media bodies, conduct membership drives, publicise the content of their Codes of Conduct, encourage subscription thereto, monitor compliance therewith and inform the public and media consumers of the benefits of news production provided by journalists subscribing to a code of professional ethics.

- H59. Ensure their complaints mechanisms are accessible, and easy to use. There should be wide discussion with media consumers to assess the need for improvements to complaints and adjudications mechanisms.
- H60. Ensure the widest possible public participation in the regulatory system by giving consideration to providing for more members of the public than from the media industry in both regulatory bodies and their appeals panels.
- H61. Widen access to the adjudicatory system by limiting the basis upon which complaints can be determined ineligible for hearing and broadening the criteria for entertaining third-party complaints
- H62. Review and revise the regime of sanctions allowed for in various codes by, inter alia, allocating differing sanctions to a hierarchy of infractions and incorporating greater discretion regarding the amount of monetary fines imposed. Remedial actions should not be limited – as in the case of the PCSA – to an apology only, but should be reviewed to enable individualised and commensurate responses to complaints and rulings. The regulatory regime may be facilitated by requiring each media organisation to establish an internal ombud as discussed in Section C above.
- H63. Expand the powers, financial resources, structures and administrative capacity of regulatory bodies to enable them to initiate a complaint to investigate whether or not there has been wrongdoing and a breach of ethics. Such powers would enhance the credibility of the regulatory system in a context where many persons do not follow the current complaints procedures and some persons elect to use social media to complain about journalism, and where it is not possible to compel persons to make complaints through the formal process.
- H64. Investigate establishing an anonymous, multi-lingual ‘hot line’ for complaints about the media.
- H65. Make information about their complaints mechanisms and processes available in all South Africa’s official languages, to respond to concerns of potential complainants whose first or most fluent language is not English.

SANEF should:

- H66. Continue and extend its collaboration with regulatory bodies in disseminating details of all complaints against, interventions concerning and rulings on media activity in order that the public and media consumers are assured that the media industry is self- and co-regulated in accordance with an internationally accepted set of professional standards and ethics and that trust in the conduct of media subscribers to such ethics and standards is justified.
- H67. Engage with its media industry partners to consider developing a single portal or process within and between the media co-regulatory bodies to facilitate the laying of complaints by the public. These complaints can, thereafter, be directed to the most appropriate body for intervention and adjudication.

The media industry should:

- H68. Give full and explicit support to all media regulatory bodies relevant to the work of their titles and programmes, including providing sufficient funds to ensure these bodies have the capacity to thoroughly and speedily resolve disputes and complaints.
- H69. Account to the regulatory body to which they subscribe to detail the remedies adopted as result of rulings made by that body; fully publicise all such remedial actions in their own titles and on all their platforms.

LIST OF ABBREVIATIONS AND ACRONYMS USED IN THIS REPORT

(Note: does not include abbreviations and acronyms in supplementary memoranda)

Act-SA	The Association of Community Television South Africa
ADJ	Association of Democratic Journalists
AIP	Association of Independent Publishers
ANC	African National Congress
ANCWL	African National Congress Women's League
ARB	The Advertising Regulatory Board
BCCSA	Broadcasting Complaints Commission of South Africa
BEE	Black Economic Empowerment
BLF	Black First Land First
CBC	Canadian Broadcasting Corporation
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CODESA	Convention for a Democratic South Africa
COO	Chief Operating Officer
Covid-19	Illness caused by the SARSCoV-2 virus
DA	Democratic Alliance
DTT	Digital Terrestrial Television
EFF	Economic Freedom Fighters
FANGs	Facebook; Amazon; Netflix; Google
FBJ	Forum of Black Journalists
FCJ	Forum of Community Journalists
FM	The <i>Financial Mail</i>
F&PM Seta	Fibre Processing and Manufacturing Seta
GCIS	Government Communication and Information Systems
GBV	Gender-based violence

IABSA	Interactive Advertising Bureau of South Africa
IBA	Independent Broadcasting Authority
ICASA	Independent Communications Authority of South Africa
IEC	Independent Electoral Authority
IFCN	Independent Fact Checking Network
IPID	Independent Police Investigative Directorate
IPO	Initial public offering
JSE	Johannesburg Stock Exchange
MAPP Seta	Media Advertising Printing and Publishing Seta
MDDA	Media Development and Diversity Agency
MICT Seta	Media Information and Communication Technologies Seta
MMA	Media Monitoring Africa
MPDP	Media Policy and Democracy Project
MWASA	Media Workers Association of South Africa
NAB	National Association of Broadcasters
NGO	Non-governmental organisation
NLC	National Lotteries Commission
NPA	National Prosecuting Authority
NPU	Newspaper Press Union
NQF	National Qualifications Framework
OSCE	Organisation for Security and Co-operation in Europe
OTT	Over-the-top [content]
PCSA	Press Council of South Africa ('the Press Council')
PFCSA	Press Freedom Commission of South Africa
PIC	Public Investment Commission
PMSA	Print Media South Africa
PRCA	Public Relations Communication Association (UK)
PRASA	Passenger Rail Authority of South Africa
PSC	Palestine Solidarity Campaign
QCTO	Quality Council for Trades and Occupations

SABC	South African Broadcasting Corporation
SADTU	South African Democratic Teachers Union
SAHRC	South African Human Rights Commission
SAJBD	South African Jewish Board of Deputies
SANEF	South African National Editors' Forum
SAPA	South African Press Agency
SAPS	South African Police Service
SARS	South African Revenue Service
SAUJ	South African Union of Journalists
Seta	Sector Education and Training Authority
SLAPP	Strategic lawsuit against public participation
SOE	State-owned enterprise
Stratcom	Apartheid-era police unit tasked with producing and disseminating disinformation ('strategic communications')
TNP	Television News Productions
ToR	Terms of Reference
TRC	Truth and Reconciliation Commission
Unitra	University of the Transkei
UNESCO	United Nations Economic Social and Cultural Organisation
VBS	Vhembe Building Society
WMD	Weapons of Mass Destruction

MAIN POINTS OF THE CHAPTER

This chapter sets out the background to and context for the Inquiry. It describes:

- **the range of responses to the idea of a media ethics inquiry;**
- **the process of eliciting consultative inputs, responses and submissions;**
- **the concerns raised by multiple requests for anonymity from respondents;**
- **the ethical precautions taken by the panel in handling submissions;**
- **the additional research activities undertaken in support of the Panel's work;**
- **the limitations imposed by resource constraints and terms of reference; and**
- **the boundaries between this Inquiry's work and that of other commissions and adjudicating bodies and the courts.**

CHAPTER ONE: INTRODUCTION

THE BACKGROUND TO THE INQUIRY

- 1.1 The South African National Editors' Forum (SANEF) is a body representing the editors and senior journalists of newspapers, online and broadcasting platforms in the Republic of South Africa, as well as senior educators and trainers in media training and academic institutions. SANEF champions media freedom and the safety of journalists and fights for media diversity and the highest standards of ethics and quality in the media.
- 1.2 Over the period 2011 to 2016, the *Sunday Times* published a series of articles in respect of which that newspaper subsequently made certain retractions and tendered certain apologies citing a degree of 'manipulation' by unnamed forces. These retractions and the reasons therefor precipitated the announcement by SANEF in October 2018 that it would establish an Inquiry "into issues of editorial integrity to investigate what went wrong with some of our journalism in recent years and how we can strengthen it so that trust and alliances between us – the media – and the public can be built."
- 1.3 The Terms of Reference (set out in full in Chapter Two) include that this Panel is to inquire "into those challenges confronting the media industry generally and journalists in particular which hinder the appropriate, honest, accountable and effective reporting necessary for advancing and strengthening Constitutional democracy in South Africa." Central to this Inquiry has been concern for the dynamic between the media and 'ethics' and 'credibility'.
- 1.4 The Terms of Reference and the identity of the appointed panellists were announced in June 2019.

RESPONSE TO ANNOUNCEMENT OF THE SANEF INQUIRY

- 1.5 Responses to the initiation of this process have been various, ranging from doubtful and equivocal to enthusiastic.
- 1.6 Some media practitioners have been sceptical. This was expressed in comments such as "Is there actually any need for concern?" and that events at the *Sunday Times* were a "hullabaloo", but SANEF "had to be seen to be doing something". Some suggested that the connotation of the word 'capture' had provoked what was simply a "lightning rod conversation" and there "will always be unhappiness and the fact of complaints does not mean that there is a crisis".

- 1.7 Others were more equivocal: public concern was thought to justify the Inquiry although there were not necessarily “real concerns”.
- 1.8 Finally, there were others who felt that initiation of the inquiry was a timeous intervention. They asserted that the “climate is right for an inquiry” because there were doubts about the credibility of the media and “the media has not been immune to the challenges facing the entire country”. They described an “identity crisis”, where, with a “loss of credibility and standing of the media in South Africa, it is pertinent to ask why the media is in the current position”. One such respondent noted, “It would be necessary to frame the inquiry as engaging with those factors which prevent the media reporting honestly and effectively in an emerging democracy, including manipulation by external forces.”
- 1.9 Uncertainty as to the purpose and content of the Inquiry was expressed by both media practitioners and the public. This is reflected in the numerous approaches made for resolution of issues which neither fall within the terms of reference of this Inquiry nor have the slightest connection with the media industry. The Panel has been asked to intervene in litigation and labour disputes; approach the Commission of Inquiry into Allegations of State Capture (the Zondo Commission) on behalf of parties; decide issues which are being considered by the Zondo Commission; and address malpractice and injustice in all areas of South African enterprise and discourse.
- 1.10 One of the more substantial, thoughtful and convincing rationales for the establishment of this Inquiry was offered by reference to horrifying statistics pertaining to areas of vulnerability, inequity and maltreatment in South Africa and the comment that when the media makes “a concentrated effort”, it can make a difference. It was suggested that this Inquiry is, and should be, “the response to a political moment” and answer the question, “Where do we fit globally and locally?” The Panel was referred to the extent of misinformation and ‘fake news’ emanating globally and the simultaneous concatenation in South Africa of sinister manipulation by the likes of Hlaudi Motsoeneng and the SABC, politicians and their factions, Bell Pottinger and their clients and the “strong men with loud voices” who aggravate a populist noise. All of these, it was said, indicate that the media in South Africa is not immune to a discourse which “deliberately undermines trust and credibility in the media”. Without free dissemination of transparent, ethical, accountable and trustworthy news, one cannot have a democracy. Journalism, the Panel was told, is as essential a component of a democratic state as the executive, the legislature, the judiciary, the South African Police Services (SAPS) and the Constitutional Court. One respondent opined that when the public can read diametrically opposed ‘truths’ in the press or hear contradictory ‘facts’ on the radio or listen to presenters refute one another with conviction, then the media industry is “in a state of free fall”.

APPROACHES, SUBMISSIONS AND HEARINGS

- 1.11 The Panel commenced work by approaching a number of senior or retired journalists and academics to give some guidance on the way forward for the Inquiry. All those whom we approached indicated their willingness to assist and the Panel met personally with several such advisors before the establishment of the Inquiry was made public. Thereafter, we pursued our discussions with many of these experienced practitioners.

- 1.12 The Panel contacted each university in South Africa which has a journalism or media studies department and we received advice and information from a number of academics upon whose research and publications we have drawn.
- 1.13 SANEF publicised the establishment of the Inquiry and an independent email address to which all approaches could be made and submissions sent. Over the period July 2019 to March 2020, the Inquiry engaged with those persons and entities as set out in Annexure A to this Report. It must be made clear that the Annexure lists all those approached by the Panel (whether or not they responded); all those who approached the Panel (whether or not there was any discussion of their concerns); persons who indicated that they wished their views to be considered but did not follow up with expression of this intention, as well as those who made full written submissions; and those with whom the Panel met and had discussions.
- 1.14 The Panel held meetings and discussions with individuals in Johannesburg, Cape Town and elsewhere. These were usually in person but also via Skype or Zoom.
- 1.15 Somewhat surprisingly, the majority of persons who made approaches to the Panel or who sent in written submissions or with whom the Panel met, insisted upon some degree of confidentiality: either total anonymity as to their involvement, or secrecy as to information supplied and views expressed. We always gave such undertaking where requested. For the purpose of this Report we do not divulge the identity of those who wished to remain anonymous. The Annexure does no more than indicate who was approached. That this Report is replete with quotations from unidentified and unnamed persons is our response to the confidentiality claimed. Of course, there are others who did not claim anonymity for themselves but merely confidentiality for the content of their views, and this too is respected.
- 1.16 However, the anxiety and even fear of recriminations which were expressed to the Panel are indicative of a most unfortunate state of affairs within the media industry, particularly as regards the relationship between management and journalists. Regrettably, it appears that the situation has not improved since the 2006 Sisulu Commission of Inquiry into Blacklisting and Morale at the SABC had occasion to comment that:
- “[S]everal witnesses testified only on conditions of anonymity. This, in itself, is a disturbing phenomenon. It suggests an atmosphere of fear and distrust which is scarcely conducive to the kind of open and rational debate expected with a public broadcaster.”
- 1.17 Where the views of informants or discussants are expressed, the Panel trusts that this has been done accurately and in line with the interviewees’ views. It is not difficult to accurately quote from a written submission but the Panel did not record and thereafter transcribe spoken discussions since this would have been financially exorbitant. The Panel has had to rely upon written notes taken contemporaneously and trusts that no one has been misinterpreted or misquoted.

RESEARCH

- 1.18 Frequently the Panel was presented with strongly worded generalisations without facts or specificity. Accurate data and concrete illustrations of generalised concern have not always

been available to the Panel. Understandably, the individuals on the Panel have not been in a position to check the accuracy of each averment or determine the statistics behind each allegation. The Report has therefore been cautious in relating and commenting on vaguely indicated concerns rather than specific complaints.

- 1.19 Research resources have necessarily been limited. Similarly, the Panel has not had the ability to access and distil the already extant volume of research material and commentary on the media industry and the challenges faced, particularly as regards South African practice, and the Panel has not been in a position to pursue a review of all investigation and commentary in this field.
- 1.20 However, as the Inquiry proceeded, the Panel was assisted by ad hoc researchers who provided material in a number of areas. These include a summary of the series of articles published by the *Sunday Times* in respect of which the apologies were issued (the so-called 'rogue unit' at the South African Revenue Services; the so-called 'death squad' within the South African Police Service operating in Kwa-Zulu Natal; and the so-called 'renditions' from the Republic to Zimbabwe); self-regulation of and by the media in South Africa and in other jurisdictions; compilation and overview of statistics of complaints to the Press Ombud as well as analysis of the content and import thereof; an overview of community media in South Africa; the applicability of the Constitution of the Republic of South Africa to the media; an overview of the media industry in South Africa; financial challenges facing the media in the media industry; the development of online journalism and implications for the traditional media product.
- 1.21 This material has been given to SANEF for publication on the SANEF website and therefore is not attached to this Report.

LIMITATIONS OF THE INQUIRY

- 1.22 It may be thought that we have not delved with sufficient depth into all of the issues identified by SANEF in the Terms of Reference.
- 1.23 SANEF is a private body funded by membership subscriptions and donations from media practitioners within and without South Africa as well as grants for specific projects such as this Inquiry. There have necessarily been financial constraints upon the resources available to the work of this Inquiry, which have obviously limited the extent to which three part-time independent Panellists have been able to carry out the mandate as set out in the Terms of Reference.
- 1.24 This has not been a Commission of Inquiry operating along the lines with which the South African public is now familiar. There has been no secretariat performing administrative functions, no investigators pursuing informants and interviews, no evidence leader collating and presenting material and no representatives identifying issues of significance and suggesting courses of inquiry and action.
- 1.25 Importantly, the issues dealt with in this Report are generally reflective of the concerns of those persons who have informed and guided the engagement of the Panel. Thus, the Panel has focused on those issues which have been brought to our attention by the practitioners,

owners, academics, consumers and concerned individuals and institutions.

- 1.26 Approaches to the Panel reflect the current context of doubt and uncertainty as to the success of the South African democratic project, the sustainability of the traditional and emerging media industry as well as anxiety about the politico-judicial focus on 'state capture'.
- 1.27 It can be expected that much which has been brought to the attention of this Panel of Inquiry does not fall within its terms of reference or frequently overlaps with other Commissions of Inquiry.
- 1.28 It must be appreciated that this Inquiry is not a commission of inquiry established by government with statutory powers. It is a private enterprise created by a professional body. The Panel therefore exercises no powers of compulsion such as subpoena and is not empowered to insist on production of documents or cooperation of persons. As a consequence of this, we have not always been able to fully investigate issues which we were asked to consider.
- 1.29 Multiple approaches made to this Panel involved distress or acrimony that frequently neither involved any aspect of the media industry nor were within the purview of the Panel. It was necessary to explain to many potential informants that this Panel cannot become involved in discussions or investigations that are the subject of ongoing or prospective litigation. Our functions and powers do not include resolution of criminal, civil or employment disputes. Many of those to whom the Panel repeatedly explained that we could not intervene or did not exercise such functions were extremely dissatisfied with this response. The number of such complaints and the desperation involved perhaps reflects the absence of an industry body (union or membership forum) for providing such assistance.
- 1.30 The Panel has also had to continuously repeat that it cannot intrude upon the work of Statutory Commissions of Inquiry such as the Nugent Commission into the South African Revenue Service, the Zondo Commission into State Capture, the Mokgoro Commission into the National Prosecuting Authority, the Mpati Commission into the Public Investment Corporation, nor upon the work of the Public Protector or any other body. The Panel has had to stress repeatedly that the Inquiry must be punctilious in not usurping the role of those Commissions or attempting to second guess the findings of these other bodies. Those believing that they have relevant information for those bodies have been encouraged to make the necessary approaches to them.

CONCLUSION

- 1.31 Notwithstanding these limitations, we are hopeful that the reports made to us and the issues to which we have been alerted are sufficiently noteworthy to enable SANEF to engage in discussions and explore solutions in its future work and at its anticipated SANEF conference on media ethics.

MAIN POINTS OF THE CHAPTER

This chapter:

- **outlines the impetus for and scope and limitations of the Inquiry's Terms of Reference (ToR);**
- **contextualises these in terms of South African society and media and the Inquiry's own approach and resources; and**
- **locates the chapters that follow in relation to relevant aspects of the ToR.**

CHAPTER TWO: TERMS OF REFERENCE OF THE SANEF INQUIRY

INTRODUCTION: IMPETUS FOR THE INQUIRY

- 2.1 The Terms of Reference identify the catalyst for initiation of this project as “allegations of ethical breaches in journalistic practice including of state and corporate capture of journalists”.
- 2.2 Those allegations emanate from the retractions of entire stories or portions of stories by the *Sunday Times* to which SANEF made reference in its press statement of 16 October 2018. However, concerns about ethical breaches in journalistic practice have not been confined to those events. The SANEF press statement refers in some detail to concerns about “brown envelope journalism”, where it is alleged that there are journalists “receiving bribes from newsmakers to stop them from publishing certain stories”.
- 2.3 The immediate task of the Inquiry was to “determine the veracity and extent of such allegations” of ethical breaches and or lapses in journalistic practice as they pertained to the *Sunday Times* newsroom in particular and then also to have regard to “state and corporate capture”.

STRUCTURAL APPROACH

- 2.4 The Terms of Reference indicate that SANEF has more than a prurient and passing concern with allegations of individual misdemeanours. SANEF has chosen to look further at those structural and systemic issues that exist within the media industry.
- 2.5 This Inquiry is to look into “those challenges confronting the media industry generally and journalists in particular which hinder the appropriate, honest, accountable and effective reporting necessary for advancing and strengthening Constitutional democracy in South Africa and those obstacles to accountable and credible media practice in a democratic environment”.
- 2.6 Such challenges and obstacles as may exist are situated along two significant axes: firstly, insofar as they hinder appropriate, honest, accountable and effective reporting or accountable and credible media practice; secondly, insofar as such reporting or media practice is necessary for advancing and strengthening Constitutional democracy in South Africa or in a democratic environment.

- 2.7 Such Terms of Reference require this Panel to give careful thought to the criteria of appropriateness, honesty, accountability and credibility in media practice. The Panel has attempted to do this with regard to both international and local principles and exemplars of current practice. It is also required of the Panel to attempt insight into the role of the media in the South African democratic project. We look at the principles of the South African Constitution and what may be the demands upon the media to advance and strengthen this democracy.

OVERALL PURPOSES OF THE INQUIRY

- 2.8 The purposes of the Inquiry have been identified as to investigate allegations of ethical breaches and/or lapses and give consideration of the occasion, nature, identity, reasons and impetus for any such breaches. Thereafter, the Panel is to identify the obstacles to accountable and credible media practice in a democratic environment and to search for solutions to the current problems confronting professional and ethical journalistic practice.
- 2.9 The continuous thread which permeates the Terms of Reference is the “role of the media in advancing democracy in the Republic of South Africa as well as the future of this Constitutional democracy itself”.
- 2.10 SANEF has made it clear that its purpose is not to apportion blame or culpability. The objective is threefold: “to seek to strengthen adherence to ethical codes and practice within the industry, enhance public confidence in the practice of journalism in this country and secure the role of accountable, trustworthy, informative media, free from manipulation by partisan or secret interests in this developing democracy”. In summary, SANEF endeavours to strengthen ethical practice, enhance public confidence and secure the role of the media within the South African democracy.
- 2.11 This Inquiry has therefore had regard to standards and principles of ethical practice within the media industry; considered the manner in which credibility of the media is maintained; attempted to situate the media industry within the democratic order; and revisited the historical and the socio-economic-political context within which the South African media operates.

MEDIA IN THE CONTEXT OF THE SOUTH AFRICAN DEMOCRACY (Chapters 3, 11 and 12 of this Report)

- 2.12 SANEF has particular concern for the “grave consequences for the role of the media in advancing democracy in the Republic of South Africa as well as the future of this Constitutional democracy itself” which emanate from actual or alleged ethical breaches in media practice.
- 2.13 It is clear that undertaking a contextual understanding and appreciation of the South African media industry is required. Media practice cannot be separated from the legacy of colonialism and the apartheid regime. Any enquiry must have regard to the ongoing impact of South

Africa's tortured history, which encompasses all aspects of media practice. Historical socio-political-economic practices reverberate to this day.

- 2.14 Not only structural but also psychological processes play a considerable role in how the media and the practice of journalism are viewed by those who own, produce, pursue, utilise, manipulate, consume and rely upon print, broadcasting and digital media and journalism in so many aspects of daily as well as political, economic and social life.

ETHICAL MEDIA PRACTICE IN THE SOUTH AFRICAN DEMOCRACY (Chapters 4, 5, 6, 7, 8 and 9 of the Report)

- 2.15 The emphasis throughout these Terms of Reference is the central role that ethical practice in journalism plays in strengthening the South African democracy. The Inquiry is enjoined to have regard to the "implications [of ethical breaches] for the position of the media generally and its task of strengthening the democratic project in South Africa".
- 2.16 This Report offers an overview of both the promise and demands of the South African Constitution Act 109 of 1996, as well as relevant codes of practice, before summarising accepted international and local ethical media practice.
- 2.17 Not only are circumstances of the *Sunday Times* reportage and management response thereto examined, but the Report looks at the work of the Broadcasting Complaints Commission of South Africa and the Press Council and Ombud to identify areas of concern about the media which are expressed. The views of media practitioners themselves about their industry are given.

CHALLENGES CONFRONTING THE MEDIA INDUSTRY (Chapters 3, 4, 6, 9 and 10 of the Report)

- 2.18 Ethical concerns do not exist in a vacuum. They are understood by SANEF to be the outcome of, and interrelated with, those challenges which "hinder the appropriate, honest, accountable and effective reporting necessary for advancing and strengthening Constitutional democracy in South Africa".
- 2.19 There has been no shortage of informants to identify a multiplicity of challenges confronting the media industry and its practitioners. More difficult has been the search to identify solutions to those challenges.
- 2.20 The hazards presented by South Africa's unique socio-political and economic experience are discussed in light of more recent international and local disruptions occasioned by economic and digital developments and the Covid-19 pandemic, as well as the implications which all these have on media practice.

PRACTICE IN THE SUNDAY TIMES AND OTHER NEWSROOMS (Chapters 8, 9 and 10 of the Report)

- 2.21 Insofar as this Inquiry is mandated to determine the veracity and extent only of allegations of ethical breaches in journalistic practice, we have not sought to, nor has it been competent for this Panel to express any view on, the veracity of the media product in which the journalists and management of the *Sunday Times* were involved.
- 2.22 As already indicated, this is a private enquiry with no statutory powers. The Panel cannot ensure that it is in possession of all the evidence (whether written or oral) pertaining to these stories. The Panel is not in a position to hear all sides of the story and fairly adjudicate thereon. The Panel has also been cautious not to intrude into the work of other statutorily created Commissions of Inquiry, one of which, the Zondo Commission, is still underway.
- 2.23 However, the Panel has acted upon our brief by approaching as many of those involved as was practicably possible to gain an understanding of the processes involved in the work of the *Sunday Times* Investigative Unit, the production of the stories involved and the process which led to the retractions and apologies by the *Sunday Times*.

FOCUS ON THE NEWSROOM (Chapters 3, 4, 5, 6, 7, 9 and 10 of the Report)

- 2.24 The ambit of the Inquiry is almost unlimited in that it requires us to take an overview of the function and actions of all players in the media industry, from media companies and owners to editors and journalists whether in print, online or broadcasting; from political parties and government institutions; and from business entities to members of the public. The only specific exclusion given is that of the South African Broadcasting Corporation (SABC); that institution is thus considered only in so far as its output contributes to the South African news landscape. This broad scope as to players has meant that the Inquiry has not drilled down into any one paper, radio station, television channel or online platform but has attempted an overview of all aspects of media in South Africa.
- 2.25 There must necessarily be limitations on the product examined. Direction has been given by SANEF that it is the news aspect of the media industry which is to be examined.
- 2.26 The focus of the inquiry has been to examine the dissemination of information and ideas pertaining to socio-economic-politico-cultural events relevant to the South African society and constitutional future. This must follow by reason of the content of the series of articles which led to the allegations of ethical breaches on the part of the media practitioners; the centrality of ethical practice to SANEF concerns; the identification of appropriate, honest, accountable and effective reporting of the journalism under scrutiny; the intention to regain credibility for the media; and the concern for the advancement and strengthening of the South African constitutional democracy
- 2.27 In particular the Panel understood the Inquiry to pertain to the content of the mass media that is created, produced and disseminated by professional journalists and editorial staff, whether publicly or privately owned or operated by non-governmental organisations (NGOs) or community-based organisations (CBOs). In short, the subject matter of this Inquiry is the

news and the newsroom, news programmes and news presentation, news investigation and news reporting – all aspects of news journalism.

- 2.28 It should be noted that the majority of the journalists or media practitioners who approached the Panel had much to say about their place of employment, management or owners and demonstrated a need to 'sound off' without expanding their unhappiness into reflection on journalistic practice or media ethics. Much of that comment is relayed in this Report but the Panel appreciates that this does not really assist with the inquiry into ethical malpractice, the reasons therefore and solutions thereto. Nevertheless, to ignore the many, many persons who approached the Inquiry in this regard would be to do them a disservice and also to evade raising an issue clearly of pressing concern to multiple media practitioners.

STATE AND CORPORATE CAPTURE (Chapters 3, 4, 5, 6, 9 and 10 of the Report)

- 2.29 As already indicated, the Commission of Inquiry into State Capture chaired by the Honourable Mr Justice Raymond Zondo has been hearing evidence and argument throughout the life of this private inquiry and that Commission will continue for some time to come. State capture falls within the purview of that Commission and cannot be, and has not been, investigated by this inquiry.
- 2.30 Corporate capture is more difficult to define or identify. Traditionally print and broadcast media have been a corporate endeavour with ownership vested in shareholders or oligarchs. It is difficult to comprehend how 'corporate capture' is an issue to be investigated by this Panel when, on the whole, print and broadcast media are the creatures of those who own them and who are usually corporate institutions.
- 2.31 Presumably what was meant in the Terms of Reference was improper interference in the sanctum of journalistic independence by those who own the entity employing those journalists and enabling the product. The Panel has been receiving complaints of interference by 'management', 'owners' and 'directors'. Sometimes such interference has been occasioned by personal predilection, sometimes motivated by financial concerns, sometimes impelled by political (national, regional, local) pressure, sometimes justified by the desire to appease or please newsmakers.
- 2.32 The Panel has been told of many suspicions or instances of such corporate interference. However, in almost all instances the informant has insisted on confidentiality which means that the Report cannot identify the media house or product, the nature and impact of the alleged interference or the source for these allegations. This, of course, always renders such allegation somewhat nebulous and difficult to assess. As already remarked, the concern – and even fear – expressed by such informants reflects the current volatile nature of the media industry and the insecurity of journalism practitioners and employees generally, including those who engaged with the Panel.
- 2.33 However, there are known and public instances of tension between owners, management and media practitioners (reporters, journalists, presenters, announcers), which are noted and can be contextualised within the challenges facing the South African media. It is difficult to always identify ethical conflict or disturbance when looking at the relationship between

owners, management and journalists but, interestingly, this was the topic about which most of the informants to the Panel made representations or desired discussion. Thus it has been given what is perhaps undue prominence.

CONCLUSION

- 2.34 These are each complex and wide-ranging topics. The Panel is aware that it has not been possible to do full justice to any of them. The recent *Cairncross Review into Sustainable Journalism* which reported to the Government of the United Kingdom in February 2019 employed a cohort of qualified civil servants to research and write on that one topic alone. The failure of this Panel to address any or all issues in depth implies neither lack of interest in nor disrespect to the media as an essential pillar of our democracy or those who ensure its functioning in this society.
- 2.35 It is hoped that the overview offered in this Report will provide a reminder of the issues for consideration and a springboard for the future work that is envisaged by SANEF and its members.

CHAPTER THREE: CONTEXTUAL UNDERSTANDING OF THE MEDIA IN SOUTH AFRICA

MAIN POINTS OF THE CHAPTER

This chapter:

- **situates the development of the South African media within its historical context;**
- **traces the growth of oligopolistic control of mainstream South African media and state control of news content, and of oppositional media;**
- **describes the ensuing tensions between contending instrumental views of the media;**
- **discusses the persistence of ownership concentration and limited media diversity after the end of apartheid;**
- **sets out South African and international views on the value of well-resourced, free, responsible media in a democracy; and**
- **notes the new constraints and challenges posed by a rapidly changing business and technological media environment.**

CHAPTER THREE: CONTEXTUAL UNDERSTANDING OF THE MEDIA IN SOUTH AFRICA

INTRODUCTION

- 3.1 Ethics and principles cannot exist in a vacuum. Principles of thought and behaviour are informed by individual circumstances, societal mores and pressures, economic stresses and reliefs, political demands and the impact thereof. The media must necessarily be responsive to the society within which it operates. But the media is also the creation and reflection of society. In an enquiry into ethical media practice, this Panel has had to have regard to the underpinnings of the media; the past and present philosophical terrains of its operation; and the concepts of duty and morality with which practitioners were inculcated as individuals, as craftpersons, as citizens and as universal beings. The South African media cannot be divorced from South Africa's historical baggage.
- 3.2 Accordingly, this section seeks to contextualise the position of the media in South Africa today. It offers an overview of the development and role of the media in colonial and apartheid South Africa, which is then contrasted with the centrality and significance of the media in the current participatory democracy. It is suggested that many of the challenges confronting South African media today reflect the tension between the legacy of the collaborations and failures during the now discredited past colonial-apartheid regimes and the expectations and demands of the post 1996 constitutional democracy.

THE MEDIA IN THE COLONIAL AND APARTHEID ERA

Emergence of the media

- 3.3 The news media in South Africa emerged as a product of our long history of colonial imperial conquest and the relatively short period of apartheid capitalism. Print media and subsequently radio and television have developed within an environment of constant tension between political control and struggles for freedom of expression and of the media. Those tensions and struggles continue today and remain the context within which the South African media is situated.
- 3.4 The print media emerged with the arrival of waves of colonial settlement, commencing with

the Dutch in 1652, continuing with the French Huguenots in the late seventeenth century into the Cape, and thereafter English settlers into the Eastern Cape from the 1820s. They developed with the founding of the British colonies of the Cape and Natal and of the Boer Republics of the Orange Free State and the Transvaal. The press assumed an even more prominent role with the formation of the Union of South Africa in 1910 and this was intensified after the proclamation of the apartheid republic in 1961.

- 3.5 Privately-owned local and special-interest radio services began broadcasting in the mid-1920s. National radio emerged in 1936, with statutory provision for the national, government-controlled South African Broadcasting Corporation (SABC). In 1960, the SABC structured a bouquet of radio channels divided by language for Black listeners, to underpin the apartheid ideology of separation; this system was dubbed 'Radio Bantu'. Television, under the strict control of the apartheid regime, arrived in 1976. Some of the apartheid 'homelands' started their own radio services; privately owned radio stations had begun to operate as early as 1924; the first state-run commercial station (Radio Springbok) began in 1950; pay television (owned by print media groups) arrived in 1986.
- 3.6 By the early 1990s the South African media was dominated by the National Party government monopoly mouthpiece, the SABC, and four major media groups (Argus Holdings; Times Media Ltd; Perskor, and Nationsale Pers Beperk), which were all interconnected with the wider web of South African monopoly capital. These press groups controlled the bulk of the major newspapers. The four white-owned press groups together also controlled M-Net (the only commercial pay-TV licence to be issued under the apartheid regime) as well as book publishing, paper manufacturing, printing, advertising, and distribution: power along the whole industry value chain.
- 3.7 Historical accounts of the emergence of all media in colonial and apartheid South Africa convey a picture of those in power or in control of the media using these instruments to advance their particular interests. Missionaries and ideologues promoted religious or cultural doctrines or beliefs, government and politicians sought to advance political ideologies to underpin existing power relations, media houses and business manipulated the interests of capital and responded to market demands.
- 3.8 African language newspapers dating back to the 18th century and linked to the establishment of mission stations in the Eastern Cape were followed by many papers founded and run by black journalists and then organisations representing African and Indian expectations, with some expressing openly oppositional or resistance messages. These pioneering black publications suffered economic and political constraints and restraints. Some closed down, but ultimately these pressures led to the incorporation of most into the white-owned corporate newspaper groups.
- 3.9 Independent anti-apartheid newspapers launched in the 1980s with the assistance of international donors contributed toward exposing the brutality of apartheid. There also existed 'progressive-alternative' community-based publications, often referred to as the 'alternative press' or the 'people's media', which expressed community struggles at grassroots level.
- 3.10 Media scholar Kobus van Rooyen has offered a detailed insider perspective of the control exercised over the media by the apartheid government in "its pernicious quest for white supremacy" through censorship and the heavy hand of the Minister of Justice, while other writers have detailed the politico-economic tentacles which hampered freedom of expression.

Assessment of the media

- 3.11 The news media during the apartheid era is thought to fall into one of two broad categories: those who acted as handmaidens of the apartheid state and those who fought off the regime's censorship. A redacted summary of the pre-1996 landscape is offered by Lloyd:

"Under apartheid, the mainstream print media were accused of either actively or passively colluding with the government. The big four publishing houses were predominantly owned by big capital – either the mining houses, which controlled the English language press, or Afrikaans business interests. These companies were vertically integrated at the level of print and distribution with restrictive measures in place to limit distribution (and to some extent printing) to their own publications. Broadcasting was controlled by the state with the national state broadcaster, the SABC, operating as a propaganda arm for the government.

In the 1980s, this status quo was challenged by the launch of a number of anti-apartheid weekly newspapers supported by foreign funders. What was dubbed the anti-apartheid or alternative press was established by respected journalists frustrated with the failure by the mainstream newspapers to report fully on the brutality of apartheid. Independent journals and newsletters began publishing over the same period, also targeting audiences and issues neglected by the commercial media, and a handful of independent news agencies reporting from outside the major urban centres extended the coverage of these papers and magazines.

The apartheid government, obviously threatened by these publications, banned many of them for periods and detained some of the editors and journalists working for them. The alternative papers and magazines were completely reliant on international donor aid, as big business avoided advertising in them for fear of appearing to be critical of the government."

- 3.12 The role of the media as one of the many institutions making up the apartheid social structure came under scrutiny during the Truth and Reconciliation Commission's (TRC) special 'institutional' hearings.
- 3.13 The monopoly role of SABC came under excoriating criticism. In addition, the TRC concluded that during the apartheid era the news media had, either through acts of commission or omission, created a climate that enabled apartheid as an ideology and a practice to flourish and thereby contributed to human rights violations. This was done through the active propagation of information, misinformation and simple lies, or by withholding information about the atrocities committed in the name of apartheid. The effect was to deny the South African public access to information and thereby prevent them from fully exercising their basic human rights.
- 3.14 Although the TRC did not make a finding that the media in general were responsible for perpetrating gross human rights violations, it did underscore the importance of the media in implementing the apartheid project. This was evident in the countless reports of government operatives in newsrooms and of specific journalists and media houses (most notably the SABC, but also certain Afrikaans and English language publications) that were found to have deliberately suppressed information or disseminated misinformation.

Commissions of Inquiry into the media during the apartheid era

- 3.15 That the Apartheid era witnessed a plethora of inquiries into the media is indicative that the regime understood the power of propaganda, the uses to which all media could be directed in service of the apartheid project and the need to stifle dissenting media voices. Ostensible reasons presented for such inquiries ranged from the need to maintain law and order to outright censorship in the interests of the public. Understandably the response of media institutions was to reject the need for such inquiries and to resist attempts to control the free flow of information.
- 3.16 The chronology of such inquiries, their subject matter, the tenor of their reports and the response of the media thereto reveal the tension between architects of authoritarian government and proponents of press freedom.
- 3.17 As one example, the 1962 Van Zijl Commission of Inquiry was critical of news in foreign media and recommended greater influence by Afrikaans newspapers in the affairs of the South African Press Association. In response to the political times, the Newspaper Press Union adopted a constitution for a Press Board of Reference and a code of conduct for journalists whilst the Newspaper Press Union created its own voluntary Press Reference Board which was intended to protect journalists from harassment. However, the Van Zijl commission subsequently reported that the Press Board of Reference did not “satisfy the fundamental requirements of a body designed to discipline or encourage self-control of the press” and recommended registration of journalists and newspapers with a statutory press council to “impose self-control and discipline”.
- 3.18 The Cillié Commission was established to look into the June 1976 uprisings and the ‘unrest’ subsequent thereto. The Department of Information made submissions that both English and Afrikaans press showed government policy in a bad light, commenting that the press played an important role in “psychological war which is being waged against Whites and the Government” and that it is the “hobby of [the English press] to fan the flames of dissatisfaction amongst black people to the point where a revolution is unavoidable the press must be forced to be more circumspect...”
- 3.19 In 1980 the first Steyn Commission of Inquiry into the Reporting of Security Matters called for the formulation of a ‘national communication policy’ with what has been described as the “clear intention to convert the press from a passive chronicler to an active participant, even partner, in the government’s response to the ‘total onslaught’”.
- 3.20 The terms of reference of the second Steyn Commission of Inquiry into the Mass Media, reporting in 1982, included investigation into “whether the conduct of, and handling of matters by, the mass media meet the needs and interests of South African community and the demands of the time and, if not, how they can be improved”. Evidence was given to the commission by senior commanders in the defence force and the security police. The white media gave evidence while black media declined and the president of the Media Workers Association of South Africa, Zwelakhe Sisulu, remained in indefinite detention.
- 3.21 The report commented that
- “We are told the press is a ‘watchdog’. But just what does that mean? To whom does the watchdog belong? Whom is it watching and for what reasons? If the press is a watchdog, presumably it is protecting something. Just what is that? Is it the people’s watchdog,

watching the government, and keeping the government from doing harm to the people?... Who gave the watchdog this task? Did the 'people' buy this dog for this purpose?

No journalist can report or comment with real insight, impartiality, and truth on people or institutions he dislikes. Journalists reporting in such a state of mind perform a dis-service to the country.”

- 3.22 The 1982 recommendations of the second Steyn Commission were that all journalists should be placed on a register and only registered journalists could be employed by the media; a statutory council should control journalists and have the power to take action against them; shareholdings in newspaper companies should be limited in various ways; and the status of the SABC should be elevated and its autonomy increased.
- 3.23 A Journalist's Bill was tabled in Parliament which was eventually withdrawn and it was agreed with the Newspaper Press Union (NPU) to establish a Media Council with powers to reprimand and fine journalists. The final compromise was the Registration of Newspapers Amendment Act, which, inter alia, provided for government recognition of a new media council to which publishers had to submit themselves, failing which registration of newspapers could be cancelled.
- 3.24 The 1991 report of the Task Group on Broadcasting in South and Southern Africa, (known as the Viljoen Report after its chair, who was the chair of the SABC Board) was directed at restructuring the SABC which included 'commercialisation' of certain functions and operating divisions of the corporation, including Television News Productions (TNP), in advance of 'power sharing' negotiations with the liberation movement. The Viljoen report ignored the central role of broadcasting in maintaining the apartheid regime. This was a catalyst for media NGOs, cultural groupings and the organised labour movement to campaign around the issue of control and regulation of broadcasting. The campaign culminated in negotiations within and outside the Convention for a Democratic South Africa (CODESA) around the composition of the SABC Board and matters related to elections coverage, editorial independence and media freedom. The outcome included the appointment of a new Board in 1993 and the establishment of the Independent Broadcasting Authority (IBA) in March 1994. That became the Independent Communications Authority of South Africa (ICASA) in 2000; its role in regulation of the media is discussed in a later section of this Report.

ADVENT OF THE NEW DISPENSATION

- 3.25 Mainstream media companies changed allegiance and quickly adapted to the new democratic environment, accepting that they were now confronted by Black Economic Empowerment (BEE) challenges. Reduction in donor funding, financial constraints, readership fatigue and restructuring affected by mainstream media companies all contributed to the demise of most of the alternative oppositional or community media.
- 3.26 Notwithstanding dramatic growth in broadcasting with the freeing of airwaves from state control, South African media retains high levels of concentration of ownership across all sectors. A small number of companies dominates news presentation and dissemination in

South Africa as well as media advertising and other revenue. Unsurprisingly, the lack of diversity in media ownership and output has further narrowed public space for debate. It has been suggested that such concentration and the focus by big media companies on profits over editorial quality and integrity have resulted in South Africans across all demographic groups experiencing restricted access to a wide range of in-depth news and analysis.

- 3.27 2013 research from the Media Policy and Democracy Project (MPDP) found that the majority of South Africans “experience extremely low levels of media content diversity in their personal media diets”.
- 3.28 The researchers, Jane Duncan and Julie Reid, propose an audience-centred approach for this measurement of media diversity. Their research tool emphasises 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 physical availability of content, and by ‘accessibility’ they focus on important issues such as the affordability of content and accessibility in terms of language. Living standards or socio-economic measurements are used to divide audiences into different categories. Policymakers are called upon 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 conduct content analysis of 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.
- 3.29 Complex and inter-related factors contribute to this situation but the researchers find them to include “the inequitable distribution of media content across the country, a lack of African language media content, and most especially, the cost of media access which makes such unaffordable to many”.
- 3.30 In the absence of diversity, of and within the media, SANEF comments that: “all citizens [will not] see their voices, stories and their issues covered. Once 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”. This is considered critical for long term trust in and credibility of the media.
- 3.31 SANEF has suggested that the Government Communications and Information System (GCIS) and/or the Media Development and Diversity Agency (MDDA) undertake a mapping exercise of diversity in the media sector nationally using a diversity measuring tool which focuses on audiences rather than issues of media ownership and control, such as that developed by Duncan and Reid.

THE LEGACY OF THE PAST

- 3.32 The colonial/apartheid period was one of constant contention within the media landscape: opposition and oppression as between the state and portion of the media; tension amongst some owners and management; and tussles between management and editors and journalists. This was all situated within the ideological and identity discord between executive government and monopoly capital, English and Afrikaans language groupings, apartheid apologists and liberation activists, mainstream and alternative media, owners and workers.

- 3.33 The unbanning of organisations, the holding of elections based on a universal franchise and the introduction of a new constitution could not necessarily undo the structural, institutional and personal outcomes of years of financing, managing and participating in a media industry embedded within colonial/apartheid structures and mindsets. Nor could the editorial and commercial opening-up of the media market to a diversity of new print and electronic news media voices that occurred in the early years of the post-apartheid era. The structural, financial and attitudinal shackles of the past persist.
- 3.34 Thus it is appropriate to restate the demands both of and upon the media in a constitutional democracy such as the Republic enjoys today. It is against these purposes that the challenges confronting the South African media are identified and against these criteria that the successes and failures of the South African media must be assessed.

CONCLUSIONS: THE ROLE OF THE MEDIA IN THE SOUTH AFRICAN DEMOCRACY

- 3.35 In announcing its intention in 2018 to establish this Inquiry, SANEF stated:
- “The media in South Africa plays several important roles. The SANEF Inquiry offers media owners, media houses, journalists and the public the opportunity to reflect on these. Traditionally, the role of the media has included enabling people to make informed decisions in the interest of democracy and being a watchdog of governments and other powerful institutions and people.”
- 3.36 The submission of Africa Check, an independent, non-profit news fact-checking organisation, affirmed that a strong media in South Africa is a catalyst for democracy and development. However, as panellist Bikitsha has pointed out, it remains vital to consider the socio-political-economic environment that frames how media and communication systems and content are shaped by ownership, market structures, commercial support, technologies, labour practices and government policies. The political economy of the media then links the media and communications systems to how both economic and political systems work, and how social power is exercised, in society.

Communication and information

- 3.37 It is generally accepted that freedom of speech and the free flow of information is the lifeblood of a liberal democracy. The media serves democracy by enabling public deliberation. It serves as a conduit for the dissemination of information as well as a forum for public debate. The role discharged by the media lies in the expression and communication of information and comment thereon. For the proper functioning of a modern participatory democracy, then, the media must be free, active, professional and inquiring.
- 3.38 Stefaans Brummer of investigative reporting organisation amaBhungane comments that ‘relevance’ is important in that “most people have a deeper instinct over the longer term

that society matters to them” and so “probity and corruption are flip sides and they need to understand what is going on in society”. He says “people have a real need to solve abuses of power wherever they are. They think amaBhungane can do it for them.”

- 3.39 The media affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders and all arms of government: legislature, executive and judiciary. Equally, the media gives politicians and civil servants the opportunity to reflect and comment on the preoccupations of public opinion.
- 3.40 This exchange through the media enables participation in the free political debate that is at the core of a democratic society. Such communication enables both informed choices and informed decisions. Of course, the media also enables readers, listeners and viewers to gain information and form judgments on non-political issues but, in all its work, the media allows everyone to participate in social, cultural and democratic life.
- 3.41 Journalist Niren Tolsi, in ‘Starting the Fire’, the 2018 Ruth First Memorial Lecture, has written how:
- “Journalists move between worlds; we can be in a shack settlement in the morning and in Mahlamba Ndlopfu in the afternoon. We have unparalleled access to the present – in all its shades of class and race, squalor and opulence, power and agency, unnerving beauty, repugnant violence... as we - ideally – document all this for those not as lucky as we are to have such freedom of movement and inquiry...”
- 3.42 This free flow of information and ideas can also operate as a safety valve since people are more likely to accept decisions and support policies or actions where they both understand them and, in principle and where they can, seek to influence them. This role is of inestimable value in South Africa, where for centuries the majority of voices were deliberately excluded from public discourse.
- 3.43 A free, active and credible media is largely understood to be an instrumental good. No price can be placed on active engagement by the media, which is fundamental to the functioning of a democracy. The service of the media to the public interest may be also be understood by reference to those principles and rights identified in the Constitution of the Republic of South Africa of 1996.

Check on power

- 3.44 Through their investigation and communication roles, free press and telecommunications entities form an important check on political and other forms of corporate and institutional and individual power.
- 3.45 The media discovers and exposes errors in governance at all political and institutional and corporate levels and in the administration of justice in the country. Through investigation, exposure and comment the media acts as a brake on abuses by all who hold and exercise power (political, financial, corporate, administrative, institutional and personal), including both public officials at all levels of government and private functionaries in other arenas, and as a bulwark against government duplicity or tyranny and injustice on all levels. In this watchdog role the media serves democracy.

- 3.46 However, in a phrase that former Public Protector Thuli Madonsela is fond of citing, it is vital that everyone, not only the media, “speaks truth to power”. The public interest is served wherever power is constrained in accordance with legal or constitutional or moral principles.
- 3.47 This serious purpose to the work of the media is directed not only to exposure, but also to accountability. The service of the media is not only directed to constraint on wrongful exercise of power but also to ensuring those with power acknowledge that they are answerable to those whose lives they impact and are therefore responsive to media criticism and remedial therein. Similarly, the media performs an educative and enabling service to consumers of media.
- 3.48 Western European discourse has traditionally viewed these services of the media as making a major contribution to the democratic checks and balances on all three tiers of government: the legislature, the executive and the judiciary. That has given rise to its nomenclature as the ‘Fourth Estate’.

Institutional Strength

- 3.49 At the heart of journalism and the work of the media is what British media scholar and former Editor-in-Chief of the *Guardian*, Alan Rusbridger has called “the simple craft of reporting”: of being on the front line, observing events and people, recording what is seen or heard, asking questions, giving context, trying to sift conflicting propaganda from the reality, capturing rival arguments over contested issues and then framing the debate and helping the public to evaluate where the truth lies.
- 3.50 To perform those tasks with integrity and safety requires a confident, professional and energetic media operating within a democracy that is constitutionally committed to the centrality to the democratic enterprise of media endeavour.
- 3.51 On the whole, traditional and mainstream media have enjoyed the capacity to investigate and acquire and disseminate information. It has been expected that journalists will have the resources to do necessary investigations and then to format content and communicate through the print, broadcast or online media.
- 3.52 However, as this Inquiry has learnt, and as is discussed in later sections of this Report, media operating on all or any of these platforms are not always sufficiently resourced to enable such confidence, professionalism, energy or integrity. The media has not been insulated from global economic and political uncertainties, or from the local political factionalism and financial adversity.
- 3.53 Financial constraints have devastated newsroom capacity in all media operations. Loss of experienced journalists, diminished resources, overwork and underpay, ‘juniorisation’ of the newsroom, management interventions and the pressure for scoops and ‘clickbait’ have all played a part in constructing the challenges currently faced by the South African media.
- 3.54 Political and newsmaker interference and pressure, political and commercial factionalism and responsiveness thereto, intimidation and sometimes capture have added to the burden and been the result. The rise of social and online media has enabled individual and unaccountable

voices to evade the professional standards normally expected of credible journalism.

- 3.54 Africa Check has commented to the Inquiry how the roles of the media have expanded just as available resources are shrinking. Further, these expanded roles – enabling people to make informed decisions in the interest of democracy and being a watchdog of government, powerful institutions and people – have taken place in the face of developments related to the online news environment that have added to the challenges. These include digital migration, media fragmentation, the rise of social media platforms with a global reach and the enabling role that tools such as artificial intelligence play in the spread of mis- and disinformation.
- 3.55 Amid media fragmentation, the media has acquired additional responsibilities. One example that is emphasised is countering the so-called ‘filter bubbles’ or ‘echo chambers’ by exposing people to a wide range of perspectives. Its watchdog role now extends to keeping platforms such as Facebook and Twitter in check over issues related to privacy and their role in the dissemination of information. It is also expected to play an active role in the fight against mis- and disinformation. Africa Check believes that a discussion of the expanding role of the media in South Africa cannot be divorced from the industry’s struggle for sustainability and the impact this has on its ability to fulfil multiple roles.
- 3.56 The next chapter applies more detailed attention to these and other constraints on the media’s potential to play a complete and effective role in South Africa’s democracy.

CHAPTER FOUR: CHALLENGES TO ATTAINMENT BY THE MEDIA OF ITS FULL POTENTIAL IN THE SOUTH AFRICAN DEMOCRACY

MAIN POINTS OF THE CHAPTER

This chapter:

- **Surveys the challenges to ethical conduct faced by the South African media;**
- **Discusses, in particular at the macro-level, ownership concentration and lack of diversity; a divided and highly unequal society; economic and technical pressures on news production; the prevalence of mis- and dis-information; and disdain and manipulation from politicians at all levels;**
- **Discusses at the level of the individual journalist, the perils posed by offers of favours; the dangers of factional alignment; the lack of effective workplace organisations; and aggressive threats to physical safety from many sources;**
- **Sets the specific situation of investigative journalism in this context;**
- **Considers the obligations of the media, including accountability for its actions and the responsibility implied by the power to influence it wields;**
- **Weights allegations of media ‘capture’: historical and contemporary; and**
- **Examines the work of post-apartheid commissions of inquiry.**

CHAPTER FOUR: CHALLENGES TO ATTAINMENT BY THE MEDIA OF ITS FULL POTENTIAL IN THE SOUTH AFRICAN DEMOCRACY

INTRODUCTION: A SPECTRUM OF INTERCONNECTED CHALLENGES

- 4.1 A careful contextual analysis of the media industry submitted by Taryn Isaacs accompanied her summary below of allegations and controversies which have led to questions about the media, its agenda and its trustworthiness.

“Allegations of chequebook journalism at the Zondo Commission, controversies of fake news, fabricated interviews, cases of misinformation [which] have irreparably altered the discourse on journalism nationally. The reality of these widely publicised failures alongside the rhetoric of an ineffective media accountability system and a media informed by white monopoly capital and ‘Stratcom’ agents has further added to the decaying of the public trust.”
- 4.2 Expectations of the media may well have been set too high in the euphoria of the first democratic dispensation in South Africa following events of 1990 and then the first democratic elections culminating in adoption of the South African constitution in 1996.
- 4.3 The transformation of the legacy media cannot be presented as a planned and logical sequence of change, development and innovation. Instead, developments have been helter-skelter as the media industry has lurched from one setback to another with both obvious and unexpected forces intervening from all sides.
- 4.4 The challenges faced by the media industry are myriad and multifaceted. Over the past decade or more the global media industry has been grappling with unforeseen hazards which have wreaked havoc upon famous and cherished legacy print titles and obscure start-up radio stations alike. South Africa has not been insulated from these developments with much the same results. The Panel was told, “We mirror the problems which have been and are happening globally.” The particulars of South African difficulties and their repercussions reflect local conditions and identity.
- 4.5 Some hazards that have had to be met are not of the making of South African society or media but emanate from our interconnectedness with the global community. They mirror the fate of media throughout the world. Other hurdles that have arisen are South African in origin, although not necessarily generic or peculiar to this country. Finally, there are our own home-grown difficulties.
- 4.6 The Panel was told that global issues are not always pertinent to the current state of South

African media, but that the real concern is local socio-politico-economic problems wider than the media industry and that it is in that wider setting that solutions must be sought. This Chapter identifies some, but not all, of the obstacles to the media's full attainment of the pinnacle of democratic expectations.

- 4.7 As described by respondents to the Panel, these obstacles include financial strictures occasioned by the state of the South African economy, reductions in adspend and competition from online platforms. Ownership, reported respondents, has become concentrated, with closures of publications and loss of diversity accompanied by late or half-hearted adaption to demands for change. Respondents discussed the commercialisation of Boards and their increasing orientation towards shareholder demand for profits, impelling management involvement – and sometimes interference – in decisions about programming, staffing and content itself. Political uncertainties and the rise of factionalism and populism encouraged interference in the media from all levels of government, respondents noted. Loss of experience in the newsroom, with demands for more output with fewer resources placed on a shrinking number of journalists, was thought to have resulted in slippage of standards at all editorial and journalism levels.

- 4.8 Many of these challenges were alluded to by Pippa Green, current Press Ombud, in her address at the 2019 Vodacom Journalist of the Year awards:

“Possibly the main one is economic – we know circulations of the conventional print media have dropped. This has had an effect on margins and also on operations; newsrooms have been slashed, reporters now do multiple stories a day on multiple platforms; fact checkers (who often used to reside on the subs or news editor's desk) are scarce; I see the results in the complaints that come to the Ombud's desk weekly.

We are also plagued by 'fake news', cyber-bullying of journalists and real-life bullying in many cases by politicians.

We have also seen how unscrupulous businesspeople or politically connected cadres have tried to 'capture' elements of the media often to advance their own personal, political or corporate agendas. The Guptas were the most obvious example – they set up their own newspaper and their own hammy TV station, using their own models as anchors... It was a blatant bid to corner the substantial government advertising market. There was also the crude attempt to subvert the SABC from its role as public broadcaster, which not only critically damaged its credibility but also its revenues. Even today, in spite of an excellent new head of news, the legacy is painful – most news and current affairs on the 13 public broadcast stations have been replaced with music or talk, which could never have been the vision of the Public Broadcast Act. ...

Then there is Independent Newspapers. In their excellent book, *Paper Tiger*, two former editors track how corporate interests combined with hubris have caused considerable damage to what was, and is, the biggest English-language newspaper company in the country.”

The business model and concentration of the media

- 4.9 There is general agreement that the business model that funded traditional mainstream media has changed forever. With invention of the internet and the rise of online media, advertisers

are no longer dependent on the media, which has seen its revenue streams severely impacted. Both the innovation of online media and destruction of past financial models are dealt with in some detail in later sections of this report.

- 4.10 Revenue available from the South African population cannot and does not support a wide diversity of media platforms, as will be discussed below. Suffice to say here that the concentration of mainstream media in the hands of a few media houses has given rise to the perception that established platforms have targeted and ensured the demise of new ventures.
- 4.11 Although media monopolies and oligopolies do occur elsewhere, South Africa is faced by a specific situation: domination by four media houses. This concentration of ownership has led to lack of diversity in control, production, content and editorial policy. Many other media jurisdictions enjoy the luxury of a spread of platforms that offer both a miscellany of content and plurality of normative values, speaking and appealing to diverse audiences.
- 4.12 The Panel has been advised that as a result of this, citizens lack access to a wide range of in-depth news and analysis in their own languages and via an affordable and accessible medium.
- 4.13. In this context, the so-called 'alternative media' have become less and less so, as the traditional media have failed or struggled to adapt to the vicissitudes of the times and innovate. Philanthropy and developmental resources have frequently proven short-lived or fickle. Once the 'struggle' ended, donor funded non-governmental organisations including the media, frequently found themselves with an inadequate revenue base. That uncertainty continues. Social and online media platforms have grown exponentially and now occupy centre stage in much discourse. Approach to change and responsiveness thereto are discussed in the Chapter on the financial pressures on traditional media, the sustainability or otherwise of past and new business models and the development of innovative approaches to gaining communication credibility and traction.

A fragmented society

- 4.14 South Africa is not a homogenous society. Class, race, language, ethnic identity, religion, political allegiance, gender, support for apartheid or struggle credentials, and political ideology are just some of the many lines along which institutions, organisations and people are divided. Unsurprisingly, the outcomes are media that speak to some audiences and ignore or marginalise others; imperfect communication between some media and some socio-economic groupings; accusations of bias in every direction; and lack of credibility on the part of the media in South African society.
- 4.15 As Bikitsha has pointed out, by reference to the work of Tomaselli: "the black experience is fragmented in terms of class, gender, ethnicity, language, geography, and so on".
- 4.16 Media platforms are judged by respondents to be overwhelmingly directed to an urban and middle-class audience. There is thought to be an enormous gulf between middle class newsrooms or studios and stories that emanate from black townships and rural areas, which those news platforms misconstrue or ignore. The *Sunday Times*, Kaya FM and eNCA were singled out as speaking to those with money, and Radio 702 as "existing in an urban bubble". SABC African language radio channels and community media were believed to communicate

with and reflect the concerns of the poor and rural. Further, respondents suggested that privileged media not only neglect those marginalised audiences but are patronising and arrogant towards them.

- 4.17 The outcome is that “we know who chases news but if we live separate lives we don’t see what’s happening on the ground”. One informant recalled how the massacres at the Marikana mine were initially presented as the rampage of violent workers, at a time when Lonmin was “paying vast sums per month to a public relations company to ensure a positive spin on their activities”. When a few journalists and photo-journalists travelled to the scene they found an alternative story. As was pointed out, this was a ‘David and Goliath’ situation of Lonmin and the South African Police Services versus three or four journalists. The question was asked by another informant: “What do we not understand about real anger?”
- 4.18 In this fragmented society, local voices are frequently neither heard nor addressed. One respondent asked rhetorically how many radio stations organised radio debates in the course of the last national or local elections; the answer was very few or none. One university study looked at local stories in radio bulletins and found them elsewhere. In any event, respondents noted that the prohibitive cost of phone calls to stations resulted in less talk time on community radio.
- 4.19 Journalist and media consultant Chris Roper described various ways journalists could create their own data on media consumption. This would enable knowledge about and responsiveness to the audience and also link advertising to the newsroom. As one example Roper cited Civic Digital, which made low-cost sensors available to newsrooms and communities in several countries. Through the data generated by these, the newsrooms knew what areas and kinds of coverage was wanted and needed. Traditional newsrooms, he suggested, had previously lacked effective means of measuring or analysing all their readers or audiences. However new models of membership (as used by amaBhungane) or subscription, or simply online responsiveness, provided data on some audience segments.
- 4.20 Branko Brkic of the *Daily Maverick* commented that: “the market is always difficult to define – we define our market as people who care about the world. It’s difficult to define age, race, gender with about two million unique visitors per month”.
- 4.21 The Panel was contacted by one informant who made a range of interesting observations ranging from the inability of some journalists to pronounce African names and surnames through to the absence of 24-hour TV news channels in each province broadcasting in the majority African languages of that province. It was also pointed out to the Panel that no major TV channel has a complete morning show in an African language, with the comment: “Does this mean morning shows and morning news on TV are not for the poor/uneducated?”
- 4.22 It was suggested by more than one university media scholar that if more were invested in the training of journalists they would “spend weeks in rural or township communities”. However, most conceded that such investment – in money, time or energy – is not expended on training. Newsrooms are under pressure in every imaginable way; they no longer have the resources they once did. Financial pressures have led to departure of senior and experienced editors and journalists and their replacement by smaller numbers of younger and less experienced journalists. This reduced staff complement has less access to administrative, archival, transport and other assistance. The result is that: “We do not really see the poorest of the poor from our newsrooms.”
- 4.23 Media commentator and university scholar Herman Wasserman commented that in this

highly unequal society there are understandably “problems of misinformation and trust”. Trust, he explained, is informed by “the media listening to people across the board”. However South Africa today presents opportunities for populists and others to exploit the lack of trust that exists. For some of those elements, he suggested, it was easy to dismiss the media as catering only to the elite because of the prevailing “perception that the mainstream media largely still caters to an elite perspective”.

- 4.24 For Roper, “the fundamental question is how does the media make people think about it?” He suggested that many readers and viewers did not understand mainstream news because, for them, “journalism is local and good journalism answers their issues about lack of water in the town or corruption in the mayor’s office”. With audiences so fragmented, trust in the media is also dispersed.

Neglect of the majority South African population

- 4.25 Lack of diversity in the media industry means the media is inaccessible to the vast majority of the extremely diverse South African population, cannot and does not meet their needs and fails to reflect their views or provide a voice for them. The corollary, as already discussed, is that the media remains largely uninvolved in and uninterested in the affairs of the whole South African community.
- 4.26 It is then hardly surprising that the South African media loses relevance and credibility in the wider discourse of society. Further, and importantly, it loses the ethical base upon which it could claim to provide information, enable communication or act as a check on the unjust exercise of power.
- 4.27 Relevance also contributes to the survival of media outlets. Murray Hunter of amaBhungane commented that he was not sure that it is excellence which contributes to survival because excellence is relative. He believes, rather, that it is relevance – “slow and hard and investigative journalism... where you unpack everything about the story” – and that it is because it is relevant that amaBhungane supporters see it as a project worth backing. Importantly, Hunter suggests that in communities, audio or print media should be able to say “we are your voice and getting behind us is relevant to your life”.
- 4.28 Insofar as the ‘woeful’ lack of diversity within the media is concerned, Reid *et al* found that shortly after South Africa’s transition to a democratic dispensation, “various efforts were made in the media policy domain to facilitate the democratisation of the sphere of media content, which promised to provide all citizens with meaningful access to an array of media content choices”. These efforts included the establishment of the Media Development and Diversity Agency (MDDA), the transformation of the SABC from a state to a public service broadcaster, the encouragement and support of the community media sector, and the promise of broadened access to media content through the digital terrestrial television (DTT) project and via the online digital world of the Internet.
- 4.29 However, the MDPD researchers conclude that “all such projects have displayed only limited successes, while none have performed optimally” and discuss the “under-performance and ineffectuality of key media policymaking process, projects and institutions”. They make suggestions as to how these can be turned around in the hope that there can be a “collective drive for change for the bolstering and improvement of our media regulators, sectors, and

institutions, resulting in a diverse media landscape that is more broadly accessible to, and representative of, everyone”.

- 4.30 Roper is of the view that “news organisations still do not do anything like enough to explain to readers or viewers what they do and who they are”. He points out that despite the assumption that consumers know what journalism is, the public does not know “either what is journalism, what are the checks and balances, that a piece should go through six other pairs of eyes before it is published”.
- 4.31 Involvement of the public in media issues was also discussed with the Panel by Wasserman. He pointed out that “journalists can disappear behind a professional wall and that journalists must make certain they are not aloof or disengaged”. This is why he advocates responsiveness to audiences, citing as one example the invitation issued to readers by Ferial Haffajee of the *Daily Maverick* to suggest what coverage they wanted of the Covid pandemic.

Economic pressures

- 4.32 Economic pressures have meant that in these shrinking newsrooms, we “have fewer journalists doing more work”; those who remain are often without mentors, guidance or strong editorial scrutiny and support.
- 4.33 The pressure on journalists to produce an ever-increasing quota of stories per work period has meant shortcuts necessarily occur, limiting care and attention to detail in research, interviewing, corroborative and fact checks and writing and rewriting. This less stringent approach to both standards and ethics are discussed in several later sections. Respondents suggested that both the pressure and the shortcuts were replicated in the absence or reduction of time for sub-editorial scrutiny and editorial vigilance.

Intensity of political discourse

- 4.34 The fragmented nature of South African society is reflected in the intensity of political discourse. Our democracy is not thought to be as robust as was anticipated.
- 4.35 Thetha Joel Nzima wrote to the Panel that, while it was “the struggle of many icons which gave the Republic of South Africa freedom of speech and freedom of media”, that freedom now “turns out to serve political interest, personal interest, political agenda and score points”, which “insults our democracy”.
- 4.36 Political factionalism has been the order of the day for a decade or more. Where political parties divide or splinter, retain control or fight back or contain minorities or dissenters, opposing factions have sought to advance themselves and destroy others. The media have not been immune to these developments. Factions approach, flatter and applaud journalists and

commentators. Media practitioners and media houses and titles have succumbed, and this is discussed in sections in this Report on media capture, the media landscape, practitioners and the pressure for scoops. Developments around Gupta-owned media entities ANN7 and the *New Age* as well as the *Sunday Times* investigative unit, the editorial practices of Vusi Mona and the Bell Pottinger ‘fake news’ disclosures exemplify some of these trends. In this context, media platforms may adhere to socio-political-economic positions or even support political parties. But this needs to be done openly, such that readers, listeners and viewers can understand and accept or reject such positions and the news coverage that is grounded in them.

- 4.37 Other informants have pointed to journalists who publicly align themselves with political parties, (such as Karima Brown who appeared on media platforms wearing an ANC T-shirt and cap) as indicative of an example of the ‘capture’ of a journalist. However, Brown asserted to this Panel that, while she may not be indifferent or neutral in her analysis and discourse, she is “fair, balanced and accurate”, which is what is demanded of a journalist with integrity. One informant in a written submission also suggested that openly activist journalists committed not to parties but to socio-economic causes were also guilty of misconduct by “blurring the lines” around their roles. The Panel did not hear discussion of other implications of such explicitly demonstrated allegiances, such as the impact it may have on how interviewees respond to questions from a journalist known to hold certain views.
- 4.38 It is not only political parties or factions of parties that seek to co-opt the media. Since time immemorial, all those who exert power have sought to control or, at the very least, influence the media to their own ends. The history of South African media is, as discussed earlier, evidence of this.
- 4.39 The Reuters Institute writes that: “Political polarisation has encouraged the growth of partisan agenda online, which together with click bait and various forms of misinformation is helping to further undermine trust in media – raising new questions about how to deliver balanced and fair reporting in the digital age.”

Executive contempt for the media

- 4.40 In October 2019, an influential cabinet minister in the current government, the Hon. Gwede Mantashe MP, made public allegations that he had paid monies to the tune of R 70 000 to *Sunday World* journalists so that they would not reveal details of his extra-marital sexual life. The *Sunday World* claimed to have Mantashe recorded on tape admitting to this bribery or subornation of the journalists. The allegations by Mantashe were then retracted without explanation.
- 4.41 SANEF took up this issue, in a public statement addressed to Mantashe: “It is unacceptable to us that any South African, and especially a sitting Cabinet Minister, would bribe journalists to quash a story about them. We eagerly await the truth to emerge and SANEF believes that it is imperative that you verify – under oath – which version of events is, in fact, correct and why you have made two contradictory statements.”
- 4.42 Paul Hoffman of the organisation Accountability Now told the Panel that he believes the admitted actions of Minister Mantashe “fall squarely within the definition of fraud”, and

takes the view that any good corporate citizen should have gone to the South African Police Services and asked for such charges to be investigated. Hoffman also expressed indignation at the harm done to the reputations of *Sunday World* journalists and the standing of journalism generally. He is indignant that the Cabinet of the Government of the Republic allows a Minister in that Cabinet to either be an admitted participant to bribing journalists for personal gain or merely to retract such an admission and said this was a “poor reflection on the standards” expected of those who occupy positions of leadership in the country, when a Cabinet Minister was treated “like an item of royal game blessed with immunity from criminal and civil consequences”.

- 4.43 The Panel made several attempts, through his personal assistant, to meet with Minister Mantashe who was cooperative in this regard. Regrettably, all meetings had to be cancelled due to several emerging crises during the early months of 2020. Thereafter, the lockdown arrangements precluded having a full discussion on this issue.
- 4.44 While the Panel is not necessarily in agreement that there has been either criminal or civil wrongdoing on the part of Minister Mantashe, this is nevertheless a prime exemplar of political and executive disregard and contempt for the media. Either Mr Mantashe did bribe journalists, in which case he has no respect for the institution of the media. Or Mr Mantashe did not bribe journalists, in which case making an on-the-record allegation and then retracting it without explanation is contemptuous of the function and standing of the media and media practitioners.
- 4.45 That a cabinet minister should escape censure from his political confreres indicates disregard for a fundamental democratic institution, which one informant described as “important as the Constitutional Court”, observing that “to undermine the media is to undermine the democratic state”.
- 4.46 Such incidents demonstrate that not only is there subornation of and disrespect for the media, but also a growing discourse on the part of politicians that “deliberately undermines trust in and credibility of the media”.

Politicians’ attitudes towards and manipulation of the media

- 4.47 The Panel was reminded by many informants of statements by politicians – at all levels and in all parties – where news and comment have been dismissed or rejected out of hand on the grounds that the media has its own agenda, is in the hands of one of more factions, is untrustworthy or is simply to be ignored or jeered at. Some politicians may believe they offer entertainment by so doing. But the intention and result is to discredit well researched and factual news and careful and honest news presentation. The Panel was referred to utterances by members of the ANC, the EFF and the DA as well as by their spokespersons in this regard.
- 4.48 As the Press Ombud has said: “the media is constantly fighting for a foothold in a democracy.”
- 4.49 On an institutional level, the antics of Mr Hlaudi Motsoeneng, the former COO at the SABC, are felt by informants to the Panel to have done everything to discredit that organisation. The Panel has also been told by many how the behaviour of Dr Iqbal Survé and his Independent

Group has engendered responses from incredulity to ridicule, from anger to disappointment and from suspicion to mistrust. Where so-called leaders in the media industry are seen as charlatans in the dissemination of news, then the credibility of all media in all spheres is undermined if not destroyed.

- 4.50 The panel has heard how, at all levels, political structures have used their access to taxpayers' money to pressure the media. At a local level, the Panel heard how, after a series of critical and embarrassing exposes of municipal bungling, the Grahamstown (now Makhanda) municipality withdrew advertising from *Grocott's Mail* with clear intention of financially crippling the paper, which crisis was only resolved through negotiation. The Panel did not investigate the details of these events and cannot vouch for the truth thereof but, if true, they represent an instance of local authorities using financial muscle to kill the messenger rather than address the message. Conversely, if not true, the narrative is indicative of the belief that critical journalism is vulnerable to political punishment.

Confusion in the newsroom

- 4.51 On a less malign level, it must be appreciated that a competitive and confused politico-economic environment that is a whirlpool of hostility cannot but engender similar confusion in the newsroom, which the newsroom then perpetuates to the wider public.
- 4.52 The Panel was asked by one informant what the reading public was meant to believe when the *Sunday Independent* opined that Mr Brian Molefe should be brought in to 'fix Eskom' – the organisation from which he was dismissed and where his unsuccessful tenure, political connections and allegedly untoward personal enrichment held centre stage on other media platforms for months. Another informant, who did not wish to be named and is referred to as 'Oliver', wrote to the Panel about the Sekunjalo /AYO/PIC deal. The informant pointed out that "journalists in the Sekunjalo corner went to great lengths to report one set of facts while the Times Media stable went to great lengths to expose them as untruthful." He concluded by asking the Panel, "Who are we, the public, meant to believe? Which leads me to ask how do we as ordinary folk know who to believe when two papers report the same set of facts completely differently?"
- 4.53 The Panel was offered many such examples, where the media cannot necessarily relay 'the truth' because the truth cannot always be found. Yet – particularly in matters of analysis and interpretation; certainly not where reliable evidence exists – reflecting uncertainty and contestation may be the most conscientious reporting approach. However, it can have the effect of making the media appear to be merely another facet of the noise by which it is surrounded and can contribute to loss of trust and credibility.

The 'Gravy Train' and impropriety

- 4.54 The power of payment is believed to have considerable impact on those who have to manage the finances of media outlets. Comments about those who pay for journalists' expenses and luxuries focus on the journalists involved, and often ignore the role of management in allowing

such 'freebies' to be utilised. Such comments do not take into account that if reporters' travel and accommodation expenses cannot be supported by the news organisation, either stories outside easily accessible locations or requiring advance investment will never be covered, or external sources of support will not only be needed, but sometimes solicited. If those sources are related to the newsmakers themselves, conflict of interest and corrupt reporting are almost inevitable.

- 4.55 That is why the Panel was told approvingly how, when Ken Owen was editor of newspapers, he insisted that titles paid for travel, tickets and accommodation from their own budgets and that, when on trips, journalists should "break away from what was arranged and come up with our own stories and reporting". However, such care is hardly observed today, and, it may be argued, is not always affordable.
- 4.56 Journalism itself is thought by some to be a cesspool of 'greed and betrayal'. Sports, travel, motoring and business journalism have been singled out by informants as entailing corrupt practices on the part of media practitioners. But political journalism and news reportage are not thought to be free from this type of 'bribery'.
- 4.57 Free travel, lunches and dinners, overseas trips and local outings are among the largesse offered to and accepted by some (our informants alleged many) journalists. The outcome is not investigative or critical journalism but cronyism and breathless fandom, applause and unlabelled advertorial for sports federations, motor companies, business entities, airlines and holiday venues; for politicians and their careers, cronies, projects and constituencies; newsmakers and their public profiles, business interests, fashion-consciousness and political connections.
- 4.58 This largesse was described to the Panel as the 'gravy train' for journalists. It was also observed that "journalists serve only their interests - it is a winning situation in secret to receive income from their stories".
- 4.59 Informants cited to the Panel the names of those who had been found to have failed to uphold ethical or other standards. One, Mzilikazi wa Afrika, was named as having been fired from the *Sunday Times* for accepting favours from a travel agent who was a source for his 'Travelgate' exposés. Yet he was re-employed by that newspaper a few years later.
- 4.60 The Panel met with persons who claimed to have personal knowledge of an exchange of 'brown envelopes' paid to journalists from a political faction through municipal funds. Unfortunately, no documentation, or even details of dates and payments, were forthcoming and the Panel could not investigate this any further.
- 4.61 Another journalist claimed to the Panel they had been offered a bribe of thousands of rands by the senior executive of a large state-owned enterprise. However, the journalist had inexplicably failed to record the verbal offer they had known was to be made and to report this offer immediately to his editor. This Inquiry could therefore take the matter no further. In these cases, the purpose of the payments was to ensure favourable political coverage or to refrain from exposing corrupt behaviour at the state-owned enterprise (SOE) concerned.
- 4.62 We were given details of a former political editor of the *Mail & Guardian*, Mr Letsoalo, and his wife, who were members of and actively engaged in Kgomomorareng Travel CC, a company that had unlawfully concluded and extended a tender at the Passenger Rail Authority of South Africa (PRASA). This matter was investigated by a firm of attorneys at the instance of the SOE. Apparently to dissuade the attorneys, Mr Letsoalo is believed to have arranged for

another journalist to interview PRASA and write stories criticising the work of the attorneys. When editor(s) at the *Mail & Guardian* were confronted with this apparent conflict of interest, the response ranged from the accusations that the attorneys were “trying to unduly influence our newsroom” to the claim that an “in depth investigation” had found no violation of the *Mail & Guardian* code of ethics. On publication of this story in *Daily Maverick*, Mr Letsoalo was placed under suspension and, after an independent investigation, his employment with *Mail & Guardian* was terminated. This matter is currently under investigation at the Zondo Commission of Inquiry.

- 4.63 Several submissions to the Panel expressed scepticism and even suspicion about the probity of journalists. A repeated suggestion was that a ‘lifestyle audit’ be undertaken of all senior journalists and editors. Another suggestion was that if journalists considered themselves to be the ‘Fourth Estate’ and so essential to the integrity of democracy, they should be required to make full disclosure in a register of interests of all assets, interests and income as do members of the judiciary and of parliament.

Lack of media accountability

- 4.64 The Panel was advised that South African print journalism is “replete with examples of journalists who have been found guilty of wrongdoing and then ‘readmitted’ to the profession”. These examples pertained to plagiarism and included Sharda Naidoo, who was allegedly fired from the *Financial Mail* (FM) for plagiarising an article on rhino poaching for which the FM published an apology stating that plagiarism was “contrary to the publication’s code of conduct and the ethics of the journalism profession”. Yet a few months later she was employed as a journalist by the *Mail & Guardian*. Naidoo is now head of corporate communications at Nedbank. Mention was also made of Darrel Bristow-Bovey who was exposed by the *Sunday Star* in 2003 for having ‘imported’ passages from Bill Bryson’s *Notes from a Big Country* into his own book *The Naked Bachelor*. Bristow-Bovey publicly ‘pleaded guilty’ and ‘begged for pardon’ and has now (in his own words) “returned from hiding” and resumed writing columns for South African newspapers and magazines.
- 4.65 The consequence, the Panel has been told, is that “there is a sense of impunity around misconduct in that journalists who have committed ethical breaches tend to quietly leave the profession and are seldom held accountable or reinvent themselves.” This contrasts unfavourably with a context where the media profession and industry are “hugely critical of corporates that provide ‘soft landings’ to executives who are, for example, involved in corruption”.
- 4.66 The reasons for these lapses from ethical conduct may be many; they may range from financial pressure or incompetence to lack of confidence. The import of the critique, however, is that journalists may commit plagiarism and yet continue to work as journalists and expect readers and consumers to accept their work. Johan Retief, a former Press Ombud described plagiarism in *Decoding the Code* (the handbook he created as a guide to the Press Code) as “indefensible”, saying that if reporters take over text from someone else without acknowledgment “they are stealing and betraying the very trade that they [should] hold so dearly”. That so many recent instances of plagiarism could be cited to the Panel indicates the absence of any personal set of professional standards and redounds seriously to the credibility of the media industry as a whole.

Aggression against media practitioners

- 4.67 Media practitioners can be victims of the anger and lack of control of those who object to them personally or their message.
- 4.68 Among the many examples of physical threats or attacks on journalists given to the Panel were the aggressive hounding of a senior journalist, Peter Bruce, by a group known as Black First Land First which supposedly supported the Gupta family; the personal denunciation of Ann Crotty by an employee of the Independent Group; the demonisation and abuse of Daniel Friedman, a stand-up comedian, satirical writer and former digital editor at the *Citizen* by a group who objected to his exposure of and commentary on their activities. Such examples are dealt with later in this Report.

Concerns about media freedom

- 4.69 A fragile state and uncertain political confidence lead to concern about freedom of the press, as was experienced in South Africa under the National Party government in the apartheid era. Threats to the democratic function of the media can take many forms. In South Africa's past, the most easily identifiable were the banning of publications, detention of journalists, deportation of media practitioners, confiscation of passports, registration and licensing of media platforms and rigorous censorship of content.
- 4.70 As chilling, is the legislation from that era that remains on the statute books and the continuing requirement for the registration and licensing of broadcast titles and media platforms. Not only government but also power brokers and newsmakers can – and have – threatened and utilised expensive and disruptive litigation against communicators of news and comment. Censorship can be covert when accompanied or occasioned by financial or personal influence. Further, suggestions that government should create statutory requirements for the registration or supervision of journalists have been raised even under this new democratic dispensation. Nor is self-censorship by the media unusual in an explosive and uncertain political and economic environment where individual journalists, editors and media organisations are unsure of which way the wind is blowing and what the impact of being on the wrong side will be. Regulation is discussed in Chapter Twelve.
- 4.71 It has been noted that threats against the media as an institution appear or intensify at times when the possibility of further government regulation is touted.

Investigative journalism

- 4.72 The reputation of investigative journalism was dealt a blow with the retraction and apologies issued by the *Sunday Times*, which events and circumstances will be discussed in Chapter Eight.
- 4.73 One of the more strident and concerning comments to this Panel emanates from Accountability Now, pertaining to the *Sunday Times* investigative reportage on the 'rogue

unit', the Cato Ridge 'death squad' and the *Sunday World* allegations of bribery by Minister Gwede Mantashe. These, the comment asserted, "call into question the state of the setting of the moral compass of the Fourth Estate in South Africa". It was suggested that not only would an accountable media have insisted on revealing sources, but that "an accountable media would also have collaborated with the criminal justice administration in the prosecutions which should follow nefarious fake news of the kind in question. Instead, the editor chose to protect the fraudsters who duped his reporters. The upshot is that those who perpetrated the fraud, to the extreme prejudice of the public weal, go unidentified and enjoy scot-free impunity."

- 4.74 This submission raises issues of the competency or otherwise of the 'criminal justice administration' and those issues which should fall within its purview, and also raise a challenge to the time-honoured tradition that the media avoids playing investigative policeperson to the might of the State. But it was not the only comment along these lines and does suggest concern that the investigative powers of the media are under question, mistrusted and sometimes seen as ineffective.
- 4.75 The Panel has been told by several informants that investigative journalism is no longer undertaken or effective within mainstream media as financial cutbacks preclude allocating resources and time to the few remaining experienced senior journalists.
- 4.76 Just one instance of the difficulties experienced by an investigative journalist (or investigative team) has been described to the Panel by Raymond Joseph in relation to his participation in the South African leg of the international 'Gaming the Lottery' investigation, which is discussed elsewhere.
- 4.77 In the University of the Witwatersrand report, *State of the Newsroom 2018*, Harber and Umejei suggested that a longer-term perspective might give insight about where the media is at this stage and "where we are heading". The records of the Taco Kuiper Award for Investigative Journalism indicate that the number of entries started low, peaked in the award's middle years but have recently plummeted.
- 4.78 However, this restraint has not always been applied within the donor-funded or alternative media. During the apartheid era, the work of *Vrye Weekblad* and the *Mail & Guardian* stood out as lights in a time of darkness. In the post democracy era, amaBhungane and Scorpio, *Ground Up*, the *Daily Maverick*, *Mail & Guardian* and others stand out as entities that have persevered against harsh odds and achieved remarkable results. The situation of investigative journalism will be discussed below, but the calibre of work that has been done by these entities and the debt which this country owes to them should be recorded at this point.

Misinformation and disinformation

- 4.79 Misinformation, propaganda and 'fake news' are not only destructive of the originator and the message when discovered but also of the status of the media as an authoritative purveyor of fact-based truth. These travesties of journalism do untold damage to public trust in the media, as reported by the most recent *Global Disinformation Index*. They result in a loss of credibility by all media platforms and media practitioners. This issue will be discussed in a later section.

- 4.80 However, the Panel spent time with observers such as Wits University teacher and writer Lesley Cowling, who remembered the era of ‘spies in the newsroom’ and who questioned why the *Sunday Times* failed to ‘come clean’ on exactly what happened with its own investigative unit. The questions posed by Anton Harber, Simon Pamphilon and others were: was it manipulation and if so by whom? Were there spies for the new regime or a faction thereof in the newsroom? What investigation did the *Sunday Times* actually carry out? There was one, why is it secret? Were the journalists spies or manipulated or were they bribed?
- 4.81 Other informants commented that the failure to inform can also be classified as misinformation. The Panel was referred to Twitter information that the South African Communist Party had alleged the campaign of Dr Nkosasana-Zuma for President was funded from the official funds of the Government of the Free State. Similarly, it emerged that Bosasa, a private commercial entity linked to dubious tenders awarded by local and national government, had contributed to the campaign for the election of Cyril Ramaphosa. Whatever the truth, some informants to this Panel suggested that the media had shown itself incapable of exploring, investigating and reporting fully on either of these issues, with the result that much-needed information was missing, amounting to misinformation in the face of an avalanche of hints, nudges and winks.
- 4.82 Disinformation and fake news are discussed in some detail in the chapters that follow. But more than one person told the Panel of concerns that some people and organisations “are actively enemies of the media”. William Bird of the Media Monitoring Africa (MMA) organisation discussed this in some detail and his views are repeated elsewhere. The “first trick is to attack those who give information” asserted another informant.
- 4.83 Roper said that it was not only the case that “the journalist who does his job will leave himself open to these attacks”, but that it was necessary to understand how some media choose to niche a particular type of audience, by e.g. extensive coverage of ‘white genocide’, making other media vulnerable to accusations of ignoring or suppressing valid stories.
- 4.84 It was suggested to the panel that setting the media up as the ‘enemy’ or the purveyor of ‘fake news’ had several motives. The Economic Freedom Fighters (EFF), for example, were described as using the tactic to garner publicity for their party and leaders. Many public figures – the range described to the panel ran from Donald Trump to Iqbal Survé – used it to deflect attention away from criticism of themselves. Finally, some used the allegation to spread their own narratives, whether about the right not to wear a mask during Covid-19 or the right to make a living and thus receive state tenders through nepotism or corruption.
- 4.85 Roper spoke to the Panel about how “it literally makes people money if they destroy trust in the media”. In the digital world, he explained, there were sophisticated tools to enable such ‘toxic speech’. Roper pointed to the monetary benefits allegedly obtained by bodies such as Cambridge Analytica.

Vulnerability of the media and media practitioners

- 4.86 The financial implosion of both legacy and newer media titles and platforms has had a disastrous impact on the employment of journalists at all levels and in all media. Retrenchments leave skilled personnel searching for jobs in other areas such as public

relations, marketing, editing, advertising, self-employed authorship and publishing. This ‘gig economy’ is discussed in a later section. Not only are individual lives devastated but the media industry itself is deprived of skills and wisdom, historical and institutional knowledge and the capacity for teaching and building confidence and morale.

- 4.87 There is a lack of organisational solidarity and support of and for media practitioners, whether they are owners, managers, editors, journalists, freelancers, photographers, presenters or electronic and technical staff. Former trade unions and worker organisations such as the Media Workers Association of South Africa (MWASA) and the South African Union of Journalists (SAUJ) no longer function. Many of those who approached the Panel spoke of the negative impact of the absence of a broad umbrella organisation for media workers.
- 4.88 Many described to the Panel a climate of mistrust and fear in television networks, radio stations and newsrooms where employees are anxious about speaking out because discussion and debate are influenced by authority relations, monetary considerations and political connections.
- 4.89 That the majority of persons who spoke to the Panel requested confidentiality as to the content of their written submissions or discussions reflects the extent to which these anxieties exist.
- 4.90 SANEF was generally applauded for its work but the point was made repeatedly that it is not an organisation that represents, or claims to represent, all journalists. The Panel was told that it was an uncomfortable position “that both editors and journalists” are in the same organisation. This hybrid nature could create difficulties because the management structures of media houses view editors as management rather than as journalists. Views offered to the Panel are that a more comprehensive body is needed for the benefit of all who work within the media industry.
- 4.91 The greatest challenge for the media industry is its capacity to embrace and plan for further disruption in every sphere of South African society with which the media necessarily engages: finance, business, politics, technology, people and skills.

The double-edged sword of media power

- 4.92 Among the challenges to the media industry are also those which emanate from within. There are necessarily certain risks in the power of the media to reach a wide audience.
- 4.93 The media can frame debate and advocacy and can choose to do so both explicitly and covertly. South African society is characterised by high levels of illiteracy and unemployment and by widespread inability to pay for print or internet media. There are eleven official languages, but media is predominantly offered in only one or two such languages. Many members of the public are dependent upon the SABC African language radio stations as their sole source of news.
- 4.94 Journalists can exert enormous power because they often control both debate and content. Niren Tolsi in ‘Starting the Fire’, the 2018 Ruth First Memorial Lecture, noted how:

“...information is managed by journalists [with] their subjectivities, their biases, their

stresses and pressures, their curiosities, their willingness to witness and make enquiries of the world around them.”

- 4.95 The concerns of those with financial power, of shareholders or advertisers, the middle classes or connected political elites are more likely to be promoted by the media than other ideas. The views expressed through the megaphone of the media are more likely to predominate than other views, and dissenting voices are easily blocked by media concentration and lack of access for audiences.
- 4.96 The sterling work of, *inter alia*, the *Mail & Guardian*, *Learn & Teach*, the *World*, the *Daily Maverick*, *Ground Up*, and investigative consortia such as amaBhungane and Scorpio have over the years endowed the media with an authoritative voice in society. These publications have affirmed the reputation of the media for accurate and vigorous reporting, independence and holding power to account.
- 4.97 It is this authoritative voice, combined with access to mass audiences, that enables the media to exert a significant impact on South African society. The media can, and sometimes does, set the news agenda, shape political and societal and economic debate, and change perceptions of the wider society. Media institutions can entrench or reshape public opinion or change society in a way that individual speakers cannot. Such power can be a potent antidote to the dominance of government and big business but it also has the potential to do great harm.

STATE OR OTHER CAPTURE

- 4.98 This Inquiry is enjoined to have regard to state and corporate and other ‘capture’, which phrase suggests that there has been a seizure of a media house or publication or channel by an outside actor which has not taken place or been achieved through lawful corporate interchange such as acquisition of a controlling shareholding or ownership in a transparent manner. The implication is that this coup was not only undertaken in an underhand manner but also undertaken for nefarious purposes.
- 4.99 Interestingly, Emeka Umejei commented in the 2019 *State of the Newsroom Report*: “we still have a lot to learn about how the media covered state capture,” which suggests that there is work to be done by the media on its ability to investigate and ‘join the dots’, as identified by the *Sunday Times* editor, Bongani Siqoko.

The Citizen

- 4.100 Probably the most brazen of such activities was not the capture of an extant publication in the current era but the creation of an entirely new one that took place some thirty years past.
- 4.101 In an attempt to subvert liberal criticism of the apartheid regime by the *Rand Daily Mail*, the government unsuccessfully tried but failed to acquire a controlling shareholding in the SAAN group. The prime minister, other cabinet ministers and the Secretary of Information then funded the establishment of the *Citizen* newspaper in 1976, utilising willing corporate

figures so to do.

- 4.102 The *Citizen* newspaper had an avowedly independent ownership, management and editor but presented stories and advanced comment that were in favour of the very government policies which it had secretly been created to propagate.
- 4.103 Not only was the *Citizen* newspaper created, but this enterprise – which became known as ‘Infogate’ or ‘Muldergate’ – spread over time into dozens of secret projects that not only included funding church rivals to then Bishop Desmond Tutu but also attempting to buy or influence newspapers and broadcast media in the United States and Europe and influencing foreign election campaigns.
- 4.104 As political journalist John Matisonn has written, this was “a multipronged, international and domestic covert effort to change perceptions about apartheid... newspapers had to be influenced or bought... every sphere ... had to be influenced”. This bizarre capture of one cog in the media wheel involved political figures at the highest level, was conceived in utmost secrecy utilising state security networks, and was effected with taxpayer funds.
- 4.105 The *Citizen* title continues to publish today, albeit after a change of ownership in the late 1990s.

The Gupta family

- 4.106 A South Asian family led by three brothers that settled in the Republic, the Guptas, made intimate and lucrative contacts with the highest echelons of South African political power at national, regional and local levels of government. Revelation of their activities over time now constitutes the subject matter of the Zondo Commission of Inquiry into State Capture and this report shall not trespass on any findings which may be made therein. The Guptas founded a newspaper, the *New Age*, and a television news channel, ANN7, with the overt and unadorned message of solely advancing the interests of a specific commercial network involving both the Gupta family and their corrupted political benefactors.
- 4.107 The Gupta family departed South Africa after the exposure of their dealings in a series of stories known as ‘Gupta Leaks’. Their *New Age* and ANN7 entities were then purchased in 2018 by a former government spokesman, Mzwanele Manyi, whose titles until they folded continued the overt protection of the Guptas’ financially indebted political cronies. Again, this subject forms part of the Zondo Commission of Inquiry into State Capture.

MultiChoice

- 4.108 An ongoing series of departures of board members, management and senior staff from the SABC was accompanied by fanciful rantings (sometimes classed as decisions) by one Hlaudi Motsoeneng who was supported therein by both the chair of the board and the then Minister of Telecommunications.

- 4.109 Leaks, rumours and questions pertained to the 'sale' or 'lease' of the SABC archives to MultiChoice and the payment of millions of South African Rand by MultiChoice to SABC. Contemporaneously, MultiChoice made inexplicably generous payments to the Gupta's ANN7. All this took place while the digital migration of telecommunications, opposed by MultiChoice for monopolistic commercial reasons, was meant to be implemented pursuant to government policy decisions.
- 4.110 Such was the furore that MultiChoice launched an investigation peopled by its own board and management. MultiChoice found no evidence of corruption on its own part and refused to disclose to shareholders or the public the information which it had solicited or received, the scrutiny to which all relevant material had been subjected, or the full report upon which it relied for clearing itself of all improper activity.
- 4.111 That it had become public knowledge that millions of South African Rand had passed from MultiChoice to the SABC and also to ANN7 led to suggestions that MultiChoice had made payments to ensure political support from persons who could influence or delay digital migration. It has also been suggested to the Panel that this saga represents a media capture by both corporate media and political interests.

COMMISSIONS OF INQUIRY IN THE POST-1994 DEMOCRATIC ERA

- 4.112 In the post-apartheid era, commissions of inquiry into media activities have been established by media organisations rather than the government. The stated reasons have been to protect editorial independence, freedom of expression and the freedom of the media.
- 4.113 A notable exception is the Truth and Reconciliation Commission (TRC) which, inter alia, looked at the role of the media in perpetrating human rights violations under apartheid. The TRC found that, although state restrictions on the media played a role in facilitating gross human rights violations: "these restrictions were not in themselves a gross violation of human rights as defined in the Act." It was found that these restrictions denied South Africans the right to a free flow of information and ideas, and created conditions conducive to the perpetration of gross human rights violations by a range of forces. The TRC report also found that these "laws and restrictions controlling the media created an atmosphere conducive to self-censorship in the white-controlled media. As a result, most journalists failed to delve thoroughly enough into allegations that gross violations of human rights were occurring, or to speak out strongly enough when evidence was uncovered."
- 4.114 The Human Rights Commission, created in terms of Chapter 4 of the Constitution, set up an Inquiry into Racism in the Media to "investigate the handling of race and possible incidence of racism in the products of the media". Interventions by a number of interested parties, including SANEF, resulted in further elaboration of the terms of reference to include that witnesses would be invited to comment on their insights into the operation of the media and how racism was reflected therein, with recommendations about the role of the media in the construction of a society free of racism, and how freedom of the press can best be applied in the construction of a 'new South Africa'. On the one hand, the final report dealt with issues of racism, urging training in racism awareness for journalists by organisations such as SANEF, schools of journalism and in newsrooms; exposure of journalists to cultural diversity and engagement in transcultural dialogues; workshops on the impact of the Bill of

Rights and Promotion of Equality and Prevention of Unfair Discrimination Act; training and recruitment of black journalists and editors; and the impetus for the Media Development and Diversity Agency with a special focus on language diversity. On the other hand, the report presented more general recommendations regarding the media industry and regulation: that SANEF should convene a study or conference on media freedom in South Africa or on the accountability of the media in South Africa; that consideration should be given to whether the ICASA Code of Conduct and monitoring mechanism should not be applied to the print media; that a uniform regulatory framework and authority for all media should be established by legislation; and that there should be ongoing public debate about the role and responsibility of the media in a democracy. Some ten years later the SAHRC hosted investigative hearings into social media and racism and resolved to develop a Social Media Charter in regard thereto.

- 4.115 The considerable criticisms of the SAHRC report included that it was inappropriate for the media to be singled out when all areas of South African life were still imbued with racism by reason of the colonial-apartheid legacy.
- 4.116 SANEF established the Press Freedom Commission of South Africa (PFCSA), with a mandate to identify the most efficient and effective regulatory system for the print media in South Africa. It reported in 2012. Various forms of regulation were examined and the PFCSA determined that independent co-regulation would be the most appropriate for South Africa. Specific proposals were made to strengthen the role and participation of the public in wider access to the Public Advocate and to both the Press Council and its Appeals Panel.
- 4.117 The SABC itself established two inquiries into its own affairs. In 2006, in response to allegations of blacklisting of certain political analysts, commentators and journalists by the then News and Current Affairs Division, the CEO instituted an inquiry under veteran journalist and former GCEO of the SABC, Zwelakhe Sisulu. The Sisulu Commission into Blacklisting and Related Matters found that: “several persons were improperly excluded as commentators or analysts and that the manner of decision making in the context of excluding particular analysts and commentators is counter-productive and destructive of good morale.” The Commission made recommendations as to policy formulation on issues such as use of external commentators and journalists as also management style of the News Editor.
- 4.118 In 2018 a Commission of Inquiry into Interference in the Newsroom of the SABC was established by the Group Chief Executive Officer and chaired by a veteran journalist and former Editor-in Chief of SABC TV News, Joe Thloloe, with the focus on political interference in the newsroom. It was found that the SABC: “suffered from the capricious use of authority and power to terrorise staff” which had the result of deflecting the SABC from its mandate; the organisation was “crippled by pain, anger and fear; by frustration, anxiety and apathy; and by inattentiveness, detachment and helplessness.” Although the inquiry found no evidence of a direct line between decisions at ANC headquarters and in the SABC newsroom, “the spectre of the ANC hovered over the newsroom”. Further, SABC executives took instructions from persons with no newsroom authority (such as members of the SABC Board and the Minister for Communication). There were recommendations on changing the designations and responsibilities of various executive positions; the creation of a News and Current Affairs Advisory Committee to advise on editorial issues; and the introduction of team building exercises and improved performance management.

CONCLUSION

- 4.119 The most recent *Global Disinformation Index*, in presenting risk ratings for South Africa, relied on research that:
- “...suggests that 41 percent of people in South Africa distrust the media and that 43 percent don’t trust the news they see on social media. While trust in the media has historically been strong in South Africa, it is now in decline. Disinformation has a role to play. Findings show that 70 percent of those surveyed in South Africa are concerned by what news is real and ‘fake’ online.”
- 4.120 Such views suggest that in this Report, SANEF, all media practitioners and all democrats should always be mindful of the historical and current socio-politico-economic context to the practice of journalism and production of news. Absence of such mindfulness may have been thought by the Sunday Times to have contributed to defects in that paper’s series of stories but the problem is not confined to that paper alone as this Report illustrates.
- 4.121 Everyone can learn from history and from context and it is within such an environment that this Panel has regard to ethical and principled media practice. But before discussing such practice, the Panel is indebted to a senior journalist who made it clear that “to regain trust and credibility, the media industry needs to loudly proclaim to government, business, citizens that they ‘need us and why’”.

POSTSCRIPT

- 4.122 As this report was being finalised, fresh protests were being staged by SABC journalists over proposals for the retrenchment of up to 400 employees out of a total staff news journalist, eNCA news editor Nolwazi Tusini, issued the following Tweet, which aptly summarises the climate many news journalists currently experience:
- “The broadcast news media in this country [has been in] crisis. for some time now. A slow burning bubbling crisis. Juniorisation of the newsroom. Grossly underpaid staff. Grossly understaffed newsrooms with overworked staff. Newsroom cultures and budgets that prioritize numbers over (quality and ethical) journalism. Corporate (and other) politics seeping into the newsroom. (...) Do not for one moment think that other stations are exempt (...) The symptoms may manifest in ways unique to the specific newsroom, but the underlying reasons are the same. I hope this will be our Damascus moment.”

CHAPTER FIVE: ETHICS AND STANDARDS OF PRACTICE IN THE MEDIA INDUSTRY

MAIN POINTS OF THE CHAPTER

This chapter maps the general context for South African media ethics by:

- Surveying the general principles framing media ethics;
- Discussing the rationale underlying the requirement for ethical behaviour;
- Relating media ethics to selected framing documents including the Constitution of South Africa, the Declaration of the African Commission on Human and People's Rights on freedom of expression and access to information, and relevant South African media codes;
- Describing the submissions on normative principles submitted to the Panel;
- Interrogating the commitment of media practitioners to ethical behaviour and engagement with the public on the ethics of their work; and
- Outlining the broad contextual factors impacting on media ethical conduct.

CHAPTER FIVE: ETHICS AND STANDARDS OF PRACTICE IN THE MEDIA INDUSTRY

INTRODUCTION

- 5.1 The issue of ethics, both in content and practice, is central to this inquiry. The Terms of Reference affirm SANEF's commitment to the highest standards of ethics and quality in the media and the inquiry itself emanated from alleged ethical breaches within the media industry. The Terms of Reference give some indication of SANEF's view of ethical media practice by making reference to the appropriate, honest, accountable and effective reporting necessary for advancing and strengthening constitutional democracy in South Africa.
- 5.2 Centuries of news dissemination have resulted in certain general principles and standards of practice being accepted by all those involved in media practice, whether as owners, managers, journalists, presenters, readers, listeners or viewers. These principles provide a useful overview for any consideration of the media industry in South Africa. Of course, the industry itself has formulated those standards to which media practitioners should aspire and the work of the Press Council and the Broadcasting Complaints Commission of South Africa (BCCSA) gives detail to both standards and breaches thereof. Additionally, regard for the principles articulated in the Constitution of South Africa must be fundamental to any public activity, including the ethical requirements of the media industry.
- 5.3 Veteran journalist and academic, and current Press Ombud, Pippa Green, pointed out in a recent lecture to younger members of the media that the preamble to the Print and Online Code contains sentiments that accord with eponymous writings and practice:
- “Journalism's first obligation is to the truth;
Its first loyalty is to citizens;
Its essence is a discipline of verification.
Its practitioners must maintain an independence from those they cover;
It must serve as an independent monitor of power.”

RATIONALE FOR MEDIA STANDARDS

Communication

- 5.4 The very term 'media' implies a conduit through which material is communicated. This communication role is performed for diverse content in myriad ways. It offers information and speculation, news and opinion, debate and comment, education and entertainment, using not only printed texts but the spoken word and visual display.

- 5.5 Effective and authentic communication requires a shared understanding of the nature of the communication between those who initiate it and those who receive and respond thereto. Consumers will have their own views on the purposes for which they are seeking or receiving information, but to engage with such communication a common understanding as to rationale, means, ethos, the spirit of the presentation and content should be reached. For this to occur, above all, communication must be accessible.

A continuum of accuracy

- 5.6 Readers, listeners, viewers and online content users do not deliberately seek out misleading or deceptive news content. (Indeed, the power of mis- and disinformation lies in how effectively it presents itself as authentic and truthful.)
- 5.7 In the battle between truth and falsity, consumers are, however, prepared to accept different standards of accuracy from different functions of the media they consume. They have an expectation, for example, of complete accuracy in programme listings, weather reports, sports fixture postings and election outcomes.
- 5.8 The communication of news information meets more nuanced expectations. It requires a solid basis of fact and truth, but there is allowance for some leeway in offering the spirit as well as the letter of events (news analysis). Editorial or commentary may be opinionated, lively and inspiring, with robust but not misleading debate.

Partisanship

- 5.9 The media is perfectly entitled to be partisan. As noted, the word ‘media’ carries the meaning that the message that is communicated has been ‘mediated’: transmitted via a channel that may alter its form. Print, broadcast and online platforms have the freedom to comment on published material. It is this editorial inflection and the offer of a world-view on the part of the communication platform that enables media consumers to choose a preferred news provider.
- 5.10 Some readers, listeners and viewers speak of the need for journalistic ‘neutrality’. Collen Mabena wrote to the Inquiry that “all journalists must be impartial in their reporting (they must not show bias to any political affiliation or party)”. However, this opinion is not reflective of best international practice.
- 5.11 Karima Brown told the Inquiry: “I am not indifferent and not neutral: I distil and process the news with my life experience.” Brown’s assertion represents an accepted international understanding that no journalist, indeed no human being, can be ‘neutral’ since life experiences shape how we see the world. That makes all the more important the qualification that a journalist must equally reflect ethical standards in their work. In Brown’s case, she described her duty as being “fair, balanced and accurate”. Similarly, she opined that “media owners have bias and are allowed bias” but that they are not permitted to be inaccurate or to spread disinformation.
- 5.12 The station manager at 702 Talk Radio, Thabisile Mbete, expressed it thus: “It is not possible

as a human being not to have a view”, but explained that the media “should not close down other views” and that “others must be given a voice”, which is why different kinds of people staff media houses.

- 5.13 Johnny Copelyn, Chief Executive of HCI, which has a stake in Seardel, owner, amongst others, of eNCA, raised the ambivalent meaning of ‘bias’ with the Panel, seeming to draw a distinction between ‘general bias’ (world view) and ‘intentional bias’ (deliberately prejudiced reporting). He suggested there could be “enormous discretion as to what is general bias on a news channel”. Thus, while it was a “quaint notion in the past that the news is not biased”, he nevertheless hoped that eNCA had “never tried to be biased – not by intent”. Copelyn elaborated on the “general bias” of eNCA as “promoting non-racialism, democracy, socio-political rights”.
- 5.14 Copelyn felt that a media house should stand by and defend its editors robustly if expressing such a worldview had negative consequences. If such “speaking truth to power” put eNCA in the position of highlighting the same issues as did the EFF or any other political party, this did not matter to him; it did not indicate affiliation with that party. However, Copelyn made it clear that his view is not necessarily the view of the editor or the journalists and that they neither report to him nor is their work within his purview.
- 5.15 Copelyn said that it was necessary for the news channel to be a profitable enterprise but he was not only interested in the views and concerns of the wealthier portion of the South African population. So, in order to escape the eNCA allocation into the more expensive DSTV bouquet, e-Media had to expand their footprint through other channels such as eNews and e-Sports in the OpenView bouquet.
- 5.16 From a different perspective, freelance journalist and science writer Mandi Smallhorne was open to the idea of ‘balance’ or even impartiality when it came to a political story but made it clear that this could not be possible in a science story, citing the example of allowing room for comment by members of the Flat Earth Society. The Inquiry was told that in an interview on Radio Sonder Grense with a water and environmental affairs consultant, an entomologist called climate change “*liberaliste propaganda*” (liberal propaganda) promoted by the same people as those who say all humans are equal when “*DNA wetenskap bewys dit is nie so nie*” (the science of DNA attests it is not so). It was thus suggested to the Inquiry that time and space granted to those “punting fringe science and the like is damaging to media credibility”.
- 5.17 Necessarily there are issues on which balance need not be sought, such as AIDS denialism, climate change denialism or the uttering of hate speech. These are among the issues on which journalists should take a position. Herman Wasserman reminded the Panel that the South African Constitution trumps sectarian values. George Claassen, Public Editor and Ombud at News24, has taken the view that it can be unethical to give a platform or oxygen to those who counter factual positions on AIDS or climate change.
- 5.18 Consumers want the truth but understand that there may be many versions of the truth and incompleteness in all versions. The very act of selecting a fact and then describing it – both entailed in crafting any news story – is to have editorialised and commented thereon. Offering a perspective on the news does not necessarily negate providing balance and context thereto.
- 5.19 As Wasserman told the Panel, “it is agreed that not everyone sees things in the same way” and the way to counter presumed subjectivity is to “seek different views and try to incorporate

them”. As he pointed out, “balance can lead to anodyne journalism without much punch”. Editorial style, taste and values determine the different roles of journalism, which can range from attack dog to informed debate, from stridency to collaboration. “Different times and different issues and different roles and different tensions,” he suggested, mean that the media needs to be flexible and, in a democracy, the media can play various roles, including facilitator, collaborator, monitor, watchdog and more.

- 5.20 Chris Roper offered the Panel a different perspective on issues of partisanship, suggesting that people “become used to the relationship between themselves and their favourite brand, which fits what they need”. In this view, to follow a partisan publication is to occupy a position of comfort. But Roper points out that the advent of digital news has fragmented news consumption: people may not enjoy the same comfortable relationship with the news they used to read. In this context the business solution is for each media outlet to increasingly niche itself. This may create gaps for new providers, as if consumers “can’t find what [they] want in one place, [they] will have to go to another”.
- 5.21 This loss of a ‘comfortable’ relationship also means, said Roper, that “audiences are experiencing news coming from everywhere which means that people don’t know their brands and are now out of their comfort zone”. This means that some consumers may be offended by news from an unfamiliar source.
- 5.22 Some informants asserted to the panel that a set of values or principles is different from an agenda shaped by adherence to a grouping or philosophy. As writer and media trainer Lesley Cowling put it, “an agenda is fine in the area of opinion, not in the area of fact”. But even then, that agenda must be explicit and disclosed, so it is understood that the opinion arises from and is situated within such an agenda. The panel received no submissions about the source of principles, and whether different sources impacted differently on a journalist’s relationship with verifiable facts.
- 5.23 While informants conceded to the Panel that the media may be partisan and express opinion, a different approach was expressed about a media practitioner being a member of a political party or owing allegiance to a group with an ideology to promote. As noted in previous sections, much criticism was expressed to the Panel about the journalist Karima Brown who appeared at an ANC function wearing clearly labelled items of ANC regalia. Most informants argued that this was more than being partisan in one’s opinions as a journalist. They suggested that such a journalist was an apologist for the ruling political party, which entailed allegiance to its policies, personalities and practices. It should thus be concluded that such a journalist would be incapable of offering dispassionate, factual, non-partisan analysis and could only offer the party line, rendering their utterances those of a spokesperson and not a media practitioner.
- 5.24 For example, informants from Primedia and eNCA went as far as to suggest that Brown sought to impose these views on other journalists. In the case of the Independent Group, she was thought to have circumvented editorial guidelines to act as a ‘hatchet man’ on behalf of factions within the ruling party and for the owner, Iqbal Survé. Brown approached the Panel to make submissions and one meeting was held with her. However, it became impossible to explore these issues further with her when she withdrew her participation in the Inquiry

shortly after Advocate Terry Motau made adverse findings against her behaviour at Primedia.

- 5.25 In an email to the Panel, Brown said: “I hereby wish to inform you (that) I am no longer willing to participate in your inquiry. Sanef is a farce and it’s (*sic*) chairperson the enforcer of Gwede Mantashe at 702. From the conflicting reports I have received from members in Sanef as to how the organization dealt with my complaint of censorship at Prime Media (*sic*) I cannot in good conscience participate in any process which results from the organization under the leadership of Ms Gallens (Mahlatse Mahlase).”

Integrity and independence

- 5.26 *Daily Maverick* founder and co-editor Branko Brkic told the Panel that: “what gives us hope is that there are enough people who actually care about truth in South Africa and understand how strategically important it is to tell the truth.”
- 5.27 All informants stressed the necessity for media practitioners to retain their independence from the persons and institutions constituting their subject matter. Many instances were given where such independence was thought to be non-existent, tenuous, or porous.
- 5.28 Issues of financial dependence on newsmakers are discussed in this report in the section dealing with corruption. Additionally, senior journalists and editors complained to the Panel of some more junior practitioners behaving like fans of those they cover. They described such ‘fans’ as enjoying being on first name terms and seeking the friendship of newsmakers and the powerful. In so doing, they failed to maintain a critical distance from those on whom they reported. Others offered examples of practitioners who seemed to have lost – or never had – any critical distance from their sources and were suspected of being knowingly or unwittingly manipulated by such sources.
- 5.29 There was discussion of practitioners who traversed more than one employment or career avenue - from journalist to spokesperson for government officials or public relations consultant - and then back again to journalism. Since the mission of journalists is to serve news consumers, while public relations practitioners and spokespersons are committed to serving those who engage them, there was apprehension about the blurring of roles when such people returned to the newsroom.
- 5.30 It was strongly argued that loss of critical acumen arises from all such examples. This can lead to diminution of ethical standards of practice or actual malpractice, all of which contribute to loss of credibility by both the individual media practitioner and the media in general.
- 5.31 However, as discussed in a later section, many of these difficulties are either inherent in the work involved or a function of the vulnerability of media practitioners. To obtain inside information, sources must be cultivated, and fear of losing such contacts can lead to difficult – and sometimes erroneous – decisions about where to ‘draw the line.’ Where salaries are low and employment precarious, practitioners may move into other areas where their skills are relevant. A return from these to journalism does not necessarily imply unethical behaviour; it may simply reflect the fluctuations of the job market.

- 5.32 In his 2004 presentation *Ethics and Excuses*, media scholar Guy Berger discusses “the normative question of what a journalist’s role should be in regard to the intense politics around a likely presidential successor and within the context of an increasingly competitive media industry”. His work details the travails of several journalists: one participated in confidential briefings and then refused to allow a hostile story to be written; another took the story from her own paper to a competitor; and yet another allowed the story to be published in his paper – all resulting in the fallout of the Hefer Commission and damage to the media industry. Berger examines the role of all involved – and those who reported on the saga – and concludes that “the ethics ... left much to be desired from a professional journalistic point of view”. What Berger suggests is that while hidden agendas were not always being promoted by media practitioners, “their actions could not easily be neutral”. He concludes:

“The spy story and its sequel highlights major problems in regard to non-journalistic motivations and agendas, the pitfalls of confidential briefings, and principled opposition to testifying in legal processes (...) A major opportunity was missed for the maturing of the media in regard to playing an independent role vis-à-vis the fierce political battles of an emerging democracy...”

Expertise

- 5.33 In engaging with and communicating about the issues of the day, media practitioners must have professional skills and resources at their disposal to enable the media as an institution to provide authentic communication. Without expertise and resources, the media cannot purport to have an authoritative or convincing voice.
- 5.34 However, in many instances, media users lack the specialist and contextual knowledge to evaluate media content such as science and health reporting, reporting of consumer issues or business analysis. Where specialist expertise is needed, where there are conflicting viewpoints or evidence, or where information may simply be incomplete, consumers of media content may be ill-equipped to make informed decisions or form opinions swiftly. In these circumstances, the media must clarify and explain, not mislead. Yet even in the absence of deliberate misdirection, an ill-equipped media may easily mislead.
- 5.35 The Inquiry was approached by the South African Science Journalists’ Association (SASJA) with concerns that stories around science topics are often simply accepted without question, especially where sources appear to be ‘scientists’. Smallhorne pointed out that the stories sometimes emerging from the communication departments of universities or research institutes require a “critical, informed ...eye and more rigorous engagement” with the content of such press releases. The media “should not simply place press releases holus bolus, without putting them through the normal process which any true product of journalism should undergo”. At the very least, she asserted, it should be made clear that a story has not emanated from the newsroom but from an interested party.
- 5.36 The Inquiry heard that such stories should be handled by a media practitioner with a background in the field, for example health, environment or science. It was asked why no mainstream publication currently has a ‘science desk’ or ‘science editor’, with the result that no science-trained eye has assessed science communiqués.
- 5.37 A member of the public who wrote to the Panel via its e-mail address, Craig McLachlan,

submitted that expertise was also needed in relation to what is considered “poor and inaccurate reporting” on Government expenditure and Auditor-General Reports where journalists have frequently equated the term “irregular expenditure” in annual financial statements with “wasted, lost, squandered” funds. His point suggests that journalists and editors need to have financial and accounting expertise or understanding, or be able to access such easily.

Plurality of voices as a democratic imperative

- 5.38 When information is being communicated, the media user needs to know that the facts are true and that the comment thereon is balanced. Because the media claims to occupy the high ground in communicating information and views, it must thus aspire to achieve the high standards concomitant with its role in a democracy. Further, users need both to be able to access perspectives congruent with their preferences, and to have access to other, diverse voices and views. Only in this way can democratic debate be enriched. A plurality of media voices and accessible communication platforms – print, broadcast and online – are imperative to sustain democracy.

Truth and evidence

- 5.39 The media must report matters of fact accurately and observe the disciplines of truth seeking.
- 5.40 It is where truth claims are made that there is a particularly strong public interest in standards of media communication. These include accuracy about evidence and its limitations, distinctions between different types of evidence and the inclusion of qualification or contextualisation about some evidence.
- 5.41 Knowledge as to the source of a story is relevant to how the consumer can interpret it. The media should seek to make the sources of information and the evidence upon which such information is based available to the public. As the Panel heard, the difficulty with confidential sources is that the consumer does not know the reliability of the source (or even if one existed) and media should take this into account in how they handle and then present such stories.
- 5.42 Many persons expressed strong views to the Inquiry on this issue. Collen Mabena wrote: “journalists must not refer to anonymous sources and/or individuals when they are reporting; that casts doubt on the credibility of their stories.”
- 5.43 This is an important juncture where public interest in the truthfulness and accuracy of what is being communicated and media interest in maintaining a culture of trust intersect. All standards of media practice are directed to ensuring that nothing erodes a culture of trust in media communications.
- 5.44 Stefaans Brummer of amaBhungane has made the point that “if you make an absolute priority of being credible and being trustworthy at least some of the people start believing you” and

when that which is published turns out to be the truth on something significant then that creates a cycle of positive reinforcement. What is needed, says Brummer, is the response: “We believe you!”

- 5.45 News media serve as intermediaries between what has happened, is happening, or is about to happen in the real world and their audience. They communicate facts that have been discovered or established by their own reporters, or discovered, established or claimed by others. This process is made more complex, however, when the evidence or justification for such claims is lacking or suspect, or where the media intermediary may not be competent to assess the claim or does not have access to the evidence. Sometimes the media intermediary, willingly or because of deception, risks relaying uncritically invalid claims made by self-interested parties. For these reasons all media platforms must have appropriate procedures and mechanisms in place to ensure that material can be evaluated and justified before it is communicated to the public.
- 5.46 A submission to the panel from Africa Check highlights at least six areas where the media improve its credibility through a more rigorous approach to accuracy:
 - 5.46.1 Transparency of sources involves using only publicly available information rather than anonymous sources. In many instances, believes Africa Check, there is little justification for obscuring news sources. The use of vague descriptions such as “sources with knowledge of the matter” or “close to the investigation” and “experts” or “analysts said” should not be unquestioningly accepted by editors or the public. A commitment to transparency by South African media houses will strengthen the public’s trust in their work.
 - 5.46.2 As changing news consumption habits continue to throw media business models into a spin, Africa Check would encourage media houses to set up independent fact-checking units and ensure they are certified by the International Fact-Checking Network (IFCN). These can then serve as third party fact-checkers on social platforms. Facebook, for example, pays for fact-checking units to verify content on its platform and other platforms are considering similar moves. Africa Check has been part of the programme since October 2018 and sees its work on the platform – which is a major conduit of misinformation – as key in efforts to identify false claims and present facts. Setting up these fact-checking units can advance two goals. Firstly, it will strengthen the fight against misinformation in the country: more independent fact-checkers in South Africa will help hold the line against false information, which continues to hurt media credibility. Secondly, the income can be ploughed back into newsrooms.
 - 5.46.3 Africa Check welcomes the contention that experts and analysts quoted in news stories should have qualifications and expertise that are appropriate for the story and that sources are able to provide factually accurate information or commentary. We have seen instances where experts interviewed do not hold the credentials assigned to them or are quoted solely for the purpose of false balance. Media houses need to encourage their journalists to conduct thorough background checks on anyone presenting themselves as an authority or expert in a field.
 - 5.46.4 A further working principle for Africa Check is an honest and open corrections policy: “Mistakes and errors do happen, including at Africa Check. But what’s important is how these are corrected. There is an opportunity for South African media houses to greatly improve the way that they acknowledge and make corrections on their platforms. Unfortunately, our experience has been that errors are often ignored or changes are made quietly without acknowledgement. Africa Check would support a commitment to a transparent national

corrections standard.” (The Panel notes that the South African Ombud’s Code already requires corrections to be published with the same prominence as was given to the original article.)

- 5.46.5 Africa Check supports the proposal made by SANEF to amend the Code of Ethics and Conduct to expressly disapprove ‘click-bait’ headlines. These headlines, [designed] to attract attention and encourage readers to click on a link, should be avoided by media houses. In the experience of Africa Check, experienced readers, who often only view headline previews on social media platforms, are misled by click-bait headlines that stray from the truth.
- 5.46.6 Africa Check also believes that more collaboration – not less – can only be beneficial to South African media. An example of this is working together on projects to verify elections claims.
- 5.47 Branko Brkiic of the *Daily Maverick*, underlined the principle underlying these points, observing: “The only thing we have is our name and reputation and trust comes with that.”

THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, ACT No 108 OF 1996

- 5.48 Media practice is intimately and symbiotically intertwined with the Constitution. The Constitution Act No 108 of 1996 both affirms and protects the role of the media, yet places constraints upon media practice.
- 5.49 Herman Wasserman commented to the Panel that he believes South African media practice has moved away from strict replication of ethical principles as in the United States and the United Kingdom to slightly more context specific principles informed by the Constitution.

Freedom of expression

- 5.50 Freedom of expression is entrenched as fundamental in Section 16 of the Constitution, which specifically and explicitly protects the freedom of the press and other media.
- 5.51 The Constitutional Court has frequently given content to the reasons for this right: first, it is essential to the establishment and maintenance of a democratic society; and second, it allows people to develop as individuals, protecting and enhancing the dignity of all human beings.
- 5.52 In *South African National Defence Union v Minister of Defence and another* 1999(4) SA 469 CC at Paragraph [7] the Court stated:

“Freedom of expression lies at the heart of a democracy. It is valuable for many reasons, including its instrumental function as a guarantor of democracy, its implicit recognition

and protection of the moral agency of individuals in our society and its facilitation of the search for truth by individuals and society generally. The Constitution recognises that individuals in our society need to be able to hear, form and express opinions and views freely on a wide range of matters.”

5.53 In *Khumalo and others v Holomisa* 2002(5) SA 401 (CC) at paragraphs 22 – 24, the Court went on to affirm the role of the media in the South African democracy.

“[21] The importance of the right of freedom of expression in a democracy has been acknowledged on many occasions by this Court, and other South African courts. Freedom of expression is integral to a democratic society for many reasons. It is constitutive of the dignity and autonomy of human beings. Moreover, without it, the ability of citizens to make responsible political decisions and to participate effectively in public life would be stifled.

“[22] The print, broadcast and electronic media have a particular role in the protection of freedom of expression in our society. Every citizen has the right to freedom of the press and the media and the right to receive information and ideas. The media are key agents in ensuring that these aspects of the right to freedom of information are respected. The ability of each citizen to be a responsible and effective member of our society depends upon the manner in which the media carry out their constitutional mandate....

[23] The media thus rely on freedom of expression and must foster it. In this sense they are both bearers of rights and bearers of constitutional obligations in relation to freedom of expression....

[24] In a democratic society, then, the mass media play a role of undeniable importance. They bear an obligation to provide citizens both with information and with a platform for the exchange of ideas which is crucial to the development of a democratic culture. As primary agents of the dissemination of information and ideas, they are, inevitably, extremely powerful institutions in a democracy and they have a constitutional duty to act with vigour, courage, integrity and responsibility. The manner in which the media carry out their constitutional mandate will have a significant impact on the development of our democratic society. If the media are scrupulous and reliable in the performance of their constitutional obligations, they will invigorate and strengthen our fledgling democracy. If they vacillate in the performance of their duties, the constitutional goals will be imperilled. The Constitution thus asserts and protects the media in the performance of their obligations to the broader society, principally through the provisions of section 16.”

Limitations on freedom of expression

5.54 However, freedom of expression, whether by or through the media or anyone else, is not unlimited. The Constitutional Court has confirmed that the right affirmed in Section 16 of the Constitution is “not an unqualified right”. [*S v Mamabolo* 2001(3) SA 409 (C)]

5.55 Cautious about the impact of legal encroachment upon press freedom identified as a “public sentinel” and which might be “a comparable blow to the public’s rights to a healthy, unimpeded

media”, the Constitutional Court has noted that “... the Constitution does not accord the media superior status or protection, rejecting the notion known as press exceptionalism” [Print Media of South Africa and another v Minister of Home Affairs and another [2012 (6) SA 443 CC 53-54]. Press exceptionalism – the idea that journalism has a different and superior status in the Constitution – is not only an unconvincing but a dangerous doctrine; “...freedom of expression does not enjoy superior status in our law” [S v Mamabolo *supra*].

- 5.56 The Constitutional Court has held that there are legitimate limits on freedom of expression. Such limits may arise from the need to protect another constitutional right. The values of dignity, equality and freedom and those rights which are given prominence in the South African Constitution, and the Section 16 right are not unqualified.
- 5.57 The result is that freedom of expression and media practice and the work of journalists must be balanced against other constitutional rights such as dignity, equality, privacy.

The right to dignity

- 5.58 Dignity has taken a central place in the constitutional jurisprudence of South Africa since 1994. Section 1 of the Constitution provides that the Republic of South Africa is one, sovereign, democratic state founded on the values that include “Human dignity, the achievement of equality and the advancement of human rights and freedoms”. Not only is dignity a foundational principle to the Constitution but Section 10 of the Constitution provides that: “Everyone has inherent dignity and the right to have their dignity respected and protected.”
- 5.59 Dignity is thus both a founding value and a discrete right in the Constitution. As was spelt out in *Dawood v Minister of Home Affairs*; *Dawood v Minister of Home Affairs*; *Shalabi v Minister of Home Affairs*; *Thomas v Minister of Home Affairs* [2001] ZACC 8; 2000(3) SA 936 (CC):
- “Human dignity therefore informs constitutional adjudication and interpretation at a range of levels. It is a value that informs the interpretation of many, possibly all, other rights. This Court has already acknowledged the importance of the constitutional value of dignity in interpreting rights such as the right to equality, the right not to be punished in a cruel, inhuman or degrading way, and the right to life. Human dignity is also a constitutional value that is of central significance in the limitation analysis. Section 10, however, makes it plain that dignity is not only a value fundamental to our Constitution; it is a justiciable and enforceable right that must be respected and protected. In many cases, however, where the value of human dignity is offended, the primary constitutional breach occasioned may be of a more specific right such as the right to bodily integrity, the right to equality or the right not to be subjected to slavery, servitude or forced labour.”
- 5.60 This public dimension of dignity has been given a unique flavour in South African jurisprudence by imbuing it with *Ubuntu*, which has been identified as humanness and both as a philosophical concept forming the basis of relationships, especially ethical behaviour, and as a politico-ideological concept referring to socio-political action.

- 5.61 Dignity thus operates in the jurisprudence of the Court in two ways: as a foundational value that informs the interpretation of all other rights, and as a fully justiciable right. Dignity is relatively rarely invoked as a right in itself. More often it operates as a value infusing other rights.

The right to privacy

- 5.62 The right to privacy is an amorphous one that has been related to the concept of identity and that has been stated to mean “that it is only the inner sanctum of a person, such as his/her family life, sexual preference and home environment, which is shielded from erosion by conflicting rights of the community” and: “Privacy is an individual condition of life characterised by seclusion from the public and publicity. This implies an absence of acquaintance with the individual or his personal affairs in this state.”
- 5.63 Dignity, self-worth, reputation and privacy are amongst the variety of personal rights encompassed in those Constitutional rights which are enmeshed, as was pointed out in *Khumalo v Holomisa supra*.
- “The right to privacy, entrenched in section 14 of the Constitution, recognises that human beings have a right to a sphere of intimacy and autonomy that should be protected from invasion. This right serves to foster human dignity. No sharp lines then can be drawn between reputation, dignitas and privacy in giving effect to the value of human dignity in our Constitution. [27]”
- 5.64 Along a continuum “... Privacy is acknowledged in the truly personal realm, but as a person moves into communal relations and activities such as business and social interaction, the scope of personal space shrinks accordingly.” [*Bernstein v Bester* NO [1996] ZACC 2; 1996 (4) BCLR 449 (CC); 1996 (2) 751 (CC)]

The law of defamation

- 5.65 The law of defamation has been developed by balancing respect for personal rights such as privacy, with concern for freedom of the press, by adding the test of reasonable publication to any action against the media for defamation. In *NM v Smith* [2007 (5) 250 (CC); 2007 (7) BCLR 751 (CC)] Sachs J. commented that this approach firstly, sought to harmonise respect for human dignity and freedom of the media rather than to rank them in terms of precedence, with the emphasis placed on context, balance and proportionality, while secondly, objective standards were introduced accentuating the need for the media to take reasonable steps to verify information before publication. These standards can be determined in advance by the media profession and then evaluated on a case-by-case basis by the courts.
- 5.66 The Constitutional Court has been alert to the advisability of the media profession itself developing ethical rules: in both *Khumalo v Holomisa supra* and in *NM v Smith supra* the court noted the importance of ethical rules developed by journalists themselves as determining appropriate limits on freedom of expression and the need to bring appropriate journalistic and publishing standards to the law of the media.

DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

Development

5.67 In November 2019 the draft Declaration of Principles of Freedom of Expression and Access to Information in Africa was revised by the Special Rapporteur of the Africa Commission on Human and People's Rights drawing on consultations with states and other stakeholders.

5.68 The Commission replaced the 2002 Declaration for many stated reasons, which included taking note of developments in the "internet age", including recognising the role of new digital technologies and also societal developments such as the need to protect and promote the right to freedom of expression and access to information of marginalised groups. The Declaration reaffirms:

"the fundamental importance of freedom of expression and access to information as individual human rights, as cornerstones of democracy and as means of ensuring respect for other human rights"

and desires to promote the free flow of information:

"considering key role of the media and other means of communication in ensuring full respect for freedom of expression, promoting the free flow of information and ideas, assisting individuals in making informed decisions and facilitating and strengthening democracy;"

General principles

5.69 General principles include:

- I. The importance of the rights to freedom of expression and access to information;
- II. Non-Interference with freedom of opinion;
- III. Non-Discrimination;
- IV. Protection of the rights to freedom of expression and access to information online;
- V. Protection of human rights defenders and others;
- VI. Specific measures to address the needs of marginalised groups;
- VII. Recognition of the evolving capacities of children.

Freedom of expression

- 5.70 There are detailed principles on content and method of implementation of issues pertaining to freedom of expression, which include:
- I Guarantee of freedom of expression;
 - II. Media diversity and pluralism;
 - III. Media independence;
 - IV. The need for independence, transparency, accountability, adequately funded, comprehensive public service media;
 - V. Diversity in disclosure of ownership of private media and the basis upon which broadcasting licenses shall be issued;
 - VI. Facilitation of community media;
 - VII. Self-regulation shall be encouraged to promote high standards in the media with codes of ethics developed to ensure highest standards of professionalism in the media;
 - VIII. Independent regulatory bodies shall be established in the areas of broadcast, telecommunications or internet infrastructure;
 - IX. Public complaints systems shall be widely accessible; Journalists and other media practitioners shall not be “subject to undue legal restrictions” and media practitioners shall be free to organise themselves into unions and associations;
 - X, States shall guarantee the safety of media practitioners and shall take measures to prevent attacks on them;
 - XI. Reputations are to be protected although “public figures shall be required to tolerate a greater degree of criticism” and “no one shall be found liable for true statements, expressions of opinion or statements which are reasonable to make in the circumstances”.
 - XII. Criminal restrictions of content shall be reviewed to ensure that they are justifiable and compatible with international human rights laws and standards;
 - XIII. Speech advocating national, racial, religious or other forms of discriminatory hatred which constitutes incitement to discrimination, hostility or violence shall be prohibited;
 - XIV. States shall promote a conducive economic environment in which all media can flourish including adoption of policies for provision of financial and other support for the sustainability of all media with transparent and accountable allocation of funds for public advertising and effective measures to avoid undue concentration of media ownership;
 - XV. Journalists and other media practitioners shall not be required to reveal confidential sources of information except where ordered by a court after a full and fair public hearing and under certain conditions.

Access to information

- 5.71 Further principles affirm the right of access to information held by public or private bodies, which principle shall be guided by the principle of maximum disclosure. Public bodies and certain private bodies shall be required, even in the absence of a specific request, to proactively publish certain specified information.
- 5.72 Further principles cover access to internet and online information, privacy and protection of personal information and privacy and communication surveillance, which issues shall be discussed in a subsequent chapter.
- 5.73 States are required to adopt legislative, administrative and judicial measures to give effect to this Declaration and to facilitate its dissemination.

ETHICS AND JOURNALISM

- 5.74 The Panel received submissions from and held discussions with a broad number of media practitioners and members of the public, all of whom expressed clear commitment to the role of the media as an energetic participant and contributor to democracy in South Africa.
- 5.75 To a certain extent, practitioners discussed and concretised normative and ethical concepts in terms of practice and, unsurprisingly, were a fount of information on breaches of professional media practice and expressed concern for the impact of ethical breaches upon the credibility of the media.

Normative principles and procedural ethics

- 5.76 Professor Anthea Garman heralded this approach when she stressed to the Panel the importance of an ethos to underlie all media practice.
- 5.77 Professor Hermann Wasserman has written extensively on media ethics and made many of his articles available to the Panel. Our time with him in Cape Town was cut short by the Covid-19 pandemic. It may be appropriate to summarise some of his analysis of issues pertaining to procedural ethics and substantive normative issues
- 5.78 Wassermann has found that the media ethics landscape in South Africa has been a terrain of much debate since the democratisation of the country. Procedural ethics, in the forms of press codes and self-regulatory systems, have been set up to align with the new democratic values of transparency and accountability. However, in substantive terms, there is still much negotiation, contestation and disagreement about what the role of the media in post-apartheid society should be.
- 5.79 On the level of procedural ethics, much emphasis has fallen on refining the procedures and institutions of regulation (through a Broadcasting Complaints Commission) and

self-regulation, under a Press Council. Effort has been put into constructing a formalist ethical system for South African media that could be aligned with the values of the new democracy, such as transparency and accountability. A system of self-regulation exists, with a Press Council at its centre, adjudicating public complaints with reference to ethical codes appropriate to the new democratic era. A statutory body with stronger fines than the press self-regulatory system, the Broadcasting Complaints Commission, was formed to adjudicate complaints against broadcasters. (The greater stringency of the BCCSA is, of course, related to the limited availability of broadcasting bandwidth. Any broadcast licensee is, by its presence, preventing another potential licensee from occupying that bandwidth, and so must be held to a high standard of worthiness.)

5.80 Debates about best procedures and institutions to ensure an accountable, ethical media are underpinned by a deeper and still unresolved question: what are the desired substantive outcomes of ethical institutions and procedures? This question is a normative one, interrogating what role the media should play in a transitional, developmental democracy such as South Africa. Wasserman notes that debate around the normative models and the role of the media was sometimes reduced to, on the one hand, the liberal-democratic ‘watchdog’ or ‘Fourth Estate’ monitorial paradigm, versus, on the other, a collaborative developmental paradigm or ‘guide-dog’ journalism.

5.81 Wasserman sums up the disagreement about normative models as representing a tension between two ethical concepts central to consideration of the media: “freedom and responsibility”. The result, says Wasserman, “has been a normative impasse with media ethics being seen largely in formalistic terms, as a strategic ritual to protect an existing corporatist media paradigm on the one hand, and crude political economic critiques and attempts to co-opt the media into political power projects on the other”.

5.82 There seems little room for disagreement with Wasserman’s proposition that the position of South African media is a good example of how normative theories are linked to their social, political and historical contexts; to lived experiences within specific contexts. In the South African context, normative theories have largely been developed in response to the country’s apartheid history.

“Under apartheid, the media in South Africa were polarised into broadly two camps – those who opposed apartheid and those who were loyal to the government. In both these camps a spectrum of positions could be discerned. The English-language commercial press adhered to the liberal-democratic monitorial role of the press... as a ‘watchdog’ to point out the human rights abuses of the apartheid system. Because most of these newspapers were linked to mining capital and therefore capitalist in orientation, their critique was more limited than the alternative or underground press, who assumed a more radical, adversarial position. The Afrikaans-language press (with the exception of some Afrikaans alternative papers) by and large supported the ruling Afrikaner Nationalist party by playing a collaborative role.”

5.83 Interestingly, Wasserman has postulated that with the advent of democracy, the South African media had to consider which of these roles it wanted to adopt:

“The renegotiation of a journalistic paradigm in this era has posed a particular conundrum to journalists who had supported the struggle for democracy: should they continue supporting the liberation movements now that they have formed the new government (even if the movement itself had increasingly become riven with internal divisions), or should they continue in the adversarial mode which characterised the liberal and radical media’s stance towards the state under the previous dispensation?

The broad consensus among the mainstream commercial media was the latter, coupled with an increasingly commercialised orientation, while the public service broadcaster, the South African Broadcasting Corporation (SABC), has increasingly come under fire for what is seen as its uncritical support for the government. The various positions taken in these debates include a development journalism framework, in which a greater collaborative role for the media was proposed as a way to support nation-building after the racial conflict during apartheid; claims to tradition and ‘indigenous values’ such as the African concept of *Ubuntu* which would see a less individualistic approach to media responsibility and ethics.”

- 5.84 The upshot would appear to be that there is clarity about procedural ethical arrangements in the South African media landscape but no agreement about normative frameworks or substantive outcomes.
- 5.85 As discussed in a subsequent chapter, the situation is made even more complex by the continued emergence of novel media genres and platforms including social media, blogging and digital newspapers.

Commitment of media practitioners to ethics and standards

- 5.86 No rules and regulations have value if media practitioners themselves do not engage with the meaning of ethical practice and commit thereto. The Panel was told that journalists should not be quick to seek excuses in financial, logistical, political and other pressures which tempt journalists away from ethical practice and highest standards.
- 5.87 It was suggested that this Inquiry provides an opportunity for media practitioners to engage in some self-reflection. The Panel has been alerted to the need for persons calling themselves journalists to examine and understand themselves and their personal practice and principles. Journalists needed, the Panel was told, to critically self-interrogate their motives for entering the domain of media practice and their basis for believing they are worthy of the responsibility of investigating and reporting on society, individuals and their institutions. What steps (if any), it was asked, had each taken to learn and upgrade essential media skills and gain knowledge of the society in which they operated? Did these provide sufficient knowledge, qualification, expertise or status to warrant the presumption they could write and publish general or specialist opinion pieces?
- 5.88 More than one informant commented on “the massive arrogance of news people and the arrogance of print journalists and their disdain for readers”, although this was thought to have changed with a younger generation who “speak to readers”.
- 5.89 In short, multiple informants and documents concur on the need for those who choose to practise the craft and claim the title of journalist as well as standing as a member of the media industry to be conscious of their motivations and qualifications for so doing. Such reflection is thought to assist in developing an ethos conducive to ethical practice.

MEDIA CODES

- 5.90 With the demise of apartheid, self-regulation of both press and broadcasting was formalised. The regulatory systems of the Press Council, the Broadcasting Complaints Commission and the ACC are discussed in a later chapter. What is of relevance is that these regulatory systems are underpinned by media ethical codes which drew inspiration from international codes adapted to the South African context.
- 5.91 These codes of ethical practice are the outcome of formulation by media practitioners and financed, administered, and in the main, adjudicated by media practitioners and management in the industry. They can be said to represent the commitment and adherence of the organised media industry to ethical standards and practice. Indeed, SANEF itself has decided that it need not formulate its own distinct ethical codes in parallel to those of the Press Council, the BCCSA and the ACC, but has instead undertaken to support those of these organisations.

The South African Print and Online Media Code (“The Press Code”)

- 5.92 The preamble to the *Code of Ethics and Conduct for the South African Print and Online Media* states:

“The media exists to serve society. Their freedom provides for independent scrutiny of the forces that shape society, and is essential to realising the promise of democracy. It enables citizens to make informed judgments on the issues of day, a role whose centrality is recognised in the South African Constitution.”

The preamble continues by referring to Section 16 of the Bill of Rights in the Constitution and affirms that the media strive to hold these rights in trust for the country’s citizens and commits journalists to the highest standards, to maintain credibility and to keep the trust of the public.

- 5.93 The Print and Online Code distinguishes between ‘Media-Generated Content and Activities’ and ‘User-Generated Content and Activities’. The Code identifies 12 principles and practices for that first, each intrinsic to the purpose of this Inquiry. The explanatory booklet *Decoding the Code*, jointly published by the Press Council and SANEF, and described by Mathatha Tsedu as an “ethics made easy manual or a Code of Ethics for dummies” provides an invaluable tool for both journalists and the public. Further it is indicative of the commitment of both the Press Council and SANEF to empowering both journalists and the public in producing and consuming media. The Code’s guidance on principles and practice follows below:
- I. Ethical practice in the gathering and reporting of news demand that the media report news truthfully, accurately and fairly; present news in context and in a balanced manner; present only what may reasonably be true as fact; use personal information for journalistic purposes only; identify themselves as media; verify the accuracy of doubtful information; seek the views of the subject of critical reportage in advance of publication; state where a report is based on limited information; make amends for presenting inaccurate information or comment and not plagiarise.

- II. Independence and avoidance of conflicts of interest require that the media shall not allow commercial, political, personal or non-professional consideration to influence reporting; not accept any benefit which may influence coverage; indicate clearly when an outside organisation has contributed to the cost of newsgathering, and keep editorial material clearly distinct from advertising and sponsored events.
- III. Privacy, dignity and reputational considerations oblige the media to exercise care and consideration in matters involving the private lives of individuals; afford special weight to South African cultural customs, and exercise care and consideration in matters involving dignity and reputation.
- IV. Protection of personal information entails that the media shall take reasonable steps to ensure that personal information is accurate and protected from misuse; to verify accuracy of information; to only disclose sufficient personal information to identify the person being reported on; to inform the affected person and to take reasonable steps to mitigate prejudicial effects.
- V. The section on discrimination and hate speech necessitates the media to avoid discriminatory or denigratory references to people's race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth or other status; balance their right and duty to report and comment on all matters of legitimate public interest against the obligation, and not to publish material that amounts to propaganda for incitement or hate speech.
- VI. The media may strongly advocate their own views on controversial topics, provided that they clearly distinguish between fact and opinion and do not misrepresent or suppress or distort relevant facts.
- VII. Protected comment includes that the media shall be entitled to comment upon or criticise any actions or events of public interest and comment and criticism is protected even if it is extreme, unjust, unbalanced, exaggerated and prejudiced as long as it is without malice, is on a matter of public interest, has taken fair account of all material facts that are true, and is presented in a manner that it appears clearly to be comment.
- VIII. Children are given special status by reference to Section 28.2 of the Bill of Rights and the media shall take exceptional care and consideration when reporting about children.
- IX. Violence and graphic content requires due care and responsibility when presenting brutality, violence and suffering; shall not sanction, promote or glamorise violence or unlawful conduct; avoid content which depict violence or explicit sex unless public interest dictates otherwise, in which case a prominent warning must be displayed.
- X. Headlines, captions, posters shall not mislead the public and pictures and video shall not misrepresent or mislead.
- XI. Confidential and anonymous sources are to be protected while the media should not publish information that constitutes a breach of confidence.
- XII. The media should not pay informants to induce them to give information.

5.94 The principles applicable to user-generated content and activities state that the media are

not obliged to moderate all user-generated content in advance; shall have a policy on such user-generated content; may remove such content; place a notice on platforms discouraging posting of prohibited content; and inform the public that user-generated content does not necessarily reflect the views of the media platform.

Broadcasting Complaints Commission of South Africa (BCCSA)

- 5.95 The Code of the BCCSA specifically prohibits the broadcast of certain material and provides for programme classification and parental control mechanisms. These issues are dealt with under the section on regulation.
- 5.96 The BCCSA appears, on the face of it, to be geared towards compliance by a licensee with the directions of the National Association of Broadcasters (NAB) and therefore guided towards exclusion or restriction of sexual, violent and offensive content. This can be understood in the context of an industry which is focused on entertainment and where the Code contemplates that a subscription broadcasting service licensee may not include news or comment on matters of public importance.

Accordingly, the BCCSA Code makes no mention of the role of the media in South African society nor does it affirm constitutional principles:

- I. Licensees are required to report news truthfully, accurately and fairly; in context and in a fair manner; only that which may reasonably be true may be presented as fact; reports must be verified and where this is not practicable that must be mentioned; incorrect reports must be rectified, and identity of rape victims must not be divulged.
- II. Licensees may broadcast comment on and criticism of any actions or event of public importance; comment must be an honest expression of opinion and must clearly appear to be comment, and must be made on facts fairly indicated.
- III. Controversial issues of public importance are not defined in the Code. However, a licensee must make reasonable steps to fairly present opposing points of view and a person whose views are to be criticised on such an issue must be given a right to reply to such criticism.
- IV. Exceptional care and consideration must be exercised in matters involving private lives, concerns, and dignity of individuals.
- V. No payment may be made to persons involved in a crime or other notorious behaviour to obtain information.

Media assertions of ethical practice and engagement with the consumer on ethical standards

- 5.97 The preamble to the SANEF constitution states that the Forum is founded on the belief and understanding that public and media scrutiny of the exercise of political and economic power is essential; the law relating to the operation of media should be consistent with South Africa's Bill of Rights in its protection of freedom of expression; journalists and media owners have a duty to work to the highest professional standards and ethics; and journalists and media educators embrace a learning culture by committing themselves to ongoing education and training.
- 5.98 The extent to which the media industry and media practitioners are imbued with these ethical principles and abide by and implement these practices will be discussed in a number of later sections.
- 5.99 The media is considered a voice of authority in society. This authority is based on its accepted role as an upholder of rights and freedoms, its reputation for accurate and vigorous reporting, its financial clout, its perceived independence and its ability to reach mass audiences. The attention it commands endows the media with the ability to set the news agenda, shape culture, change perceptions and entrench or change public opinion. As Lord Leveson commented: "Opinion comes with an imprimatur."
- 5.100 But few media platforms prominently and explicitly offer evidence of their ethical standards to affirm their commitment to ethical practice. The audience is more often expected to take on trust the factual assertions made and absorb the comment and opinion offered. This implies a top-down, hierarchical attitude on the part of the media and an assumption that the news consumer is merely a passive recipient.
- 5.101 Readers, listeners or viewers are not generally asked to engage or participate in any meaningful way with the news that is offered. Phone-in comments and Twitter or other messages are often invited and included, but these are framed as responsive only, with no power over news policy or practice. Should consumers differ with factual assertions or disagree with conclusions or commentary they may write a letter to the editor for publication, contact the broadcaster, post a comment online or, in extreme cases, submit a complaint to the relevant regulatory body. But the consumer is not encouraged to undertake critical engagement as a regular, proactive community practice to interrogate and challenge what appears on various media platforms or how it is presented.
- 5.102 A minority of media do remind their readers or listeners to be critical and active participants in their engagement with news dissemination and take audience responses seriously. These media affirm their ethical and professional standards and, by so doing, call upon the media consumer to actively interact with the process of news dissemination.
- 5.103 The United Kingdom-based online publication, *The Conversation*, outlines expertise and connections (including potential conflicts) of its writers. It is worth noting that *The Conversation* is not a platform for all journalists but for university-affiliated writers only, who wish to report on their research related to newsworthy events. Nevertheless, the pop-up announcements interspersed between its articles, reprinted below, provide a positive example of how an explicit and well publicised practice of identifying writers and their connections can be used to build confidence in a platform:

“Get your news from people you can trust”

“Don’t just consume news, understand it”

“Read news coverage based on evidence”

“Get your news from people you can trust”

“Get news that’s based on truth, straight from the experts”

“We democratise knowledge – as a non- profit organization.”

- 5.104 The *Daily Maverick* displays a pop-up ribbon in red and black reading: “Defend the Truth”.
- 5.105 Most print media give details of the expertise of writers of opinion pieces to enable the reader to understand the credentials of the source, while most radio and television interviews introduce outside interviewees with some indication of their role or qualification as experts. However, their time and research capacity to verify credentials beyond the most basic checks – sometimes simply based on self-description or prior popular reputation – is very limited.
- 5.106 The television station eNCA proclaims across the screen: “No Fear. No Favour”. Tucked away in a lower corner of a page it is possible to find reference to membership of the SA Press Council in most newspapers.

In-house ethical codes

- 5.107 Many media houses have in-house Codes of Conduct regarding ethical conduct, These codes regulate, for example, what (if any) gifts or considerations a reporter may accept in the course of their work. Full-time employees normally affirm acceptance of these codes as part of the employment contracts they sign. However, the Panel received no submissions on the adequacy of either the contents of these or their associated monitoring or enforcement measures.

CONTEXT

Loss of moral compass in South African society

- 5.108 Ethical norms and standards of practice neither emanate from nor exist in a vacuum. The reasons therefore and the content thereof may be considered universal in nature but their acceptance and adherence are, as discussed in an earlier section, particular to the society in which the media is located.
- 5.109 Chris Vick suggested to the Inquiry that South African journalists are living and working in a society that is “itself suffering a moral and ethical crisis” evidenced in macro-corruption

(such as massive tender fraud or the 'State Capture Project') or micro-corruption (paying a bribe or soliciting favours at an individual level). In such circumstances, he suggested it would be irrational to expect that journalists would not fall into the same traps and patterns of behaviour.

- 5.110 The thought is somewhat analogous to the slogan of the anti-apartheid sports campaigners in the 1980's: "no normal sport in an abnormal society". Similarly, it can be suggested, "no ethical journalism in an unethical society". But this would negate the proud history of many journalists and media enterprises during the years of the apartheid regime and would ignore the fact that many, many media practitioners have upheld and continue to hold high values in their work, which has had enormous and valued impact upon South African society.
- 5.111 The solution is to improve the ethical foundation of South African society and in this task no one would argue that the media industry does not have a significant contribution to make.

Efficacy of codes

- 5.112 Codes will not necessarily affect the behaviour of journalists, because many will lack the interest or integrity to abide by them. However, it has been suggested in a *Nieman Lab* article by Bill Grueskin, Professor of Professional Practice in the School of Journalism at Columbia University, that the:
- "...most significant signal of an ethics code would be for some of our readers, viewers and listeners. It could help guide their expectations about the journalism they consume. And it could empower them to demand more from the journalists who cover their communities."
- 5.113 The value of an ethical code of practice has been supported by all those with whom the Panel met or from whom we heard. However, some have suggested that current codes be revamped to reflect current challenges to the media industry.
- 5.114 As Wasserman remarked, the present codes could be used as a framework for discussion; the general public could be asked for input on change and such a conversation would signal "to the media audience that ethical issues are being taken seriously". Wasserman stressed that ethical codes and process should remain open for change since, quite obviously, "media ethics is a reflective process" and "as society changes and the context changes" so the codes should change and the organisations which operationalise them should invoke participatory processes to this end.
- 5.115 Similarly, many of the practitioners and teachers from whom the Panel heard stressed the importance of teaching ethical practice to students; of journalists maintaining and updating their knowledge of ethical codes and requirements and development; and of newspapers, broadcasters and online news publications constantly affirming their adherence to ethical principles and practice and publicising the content thereof.

Need for introspection

- 5.116 Among the comments made to the Panel concerning ethical practice, some highlighted an alleged absence of introspection within the media industry and that a sense of complacency and self-congratulation exists. It has been suggested to this Inquiry that such an attitude can be found on an organisational as well as individual basis.
- 5.117 The issue is one which should be confronted by the Inquiry because it informs the approach towards the existence of – as well as the content and regulation of – ethical standards.
- 5.118 One media practitioner criticised the written submission to this Inquiry by SANEF as an example of such a lack of introspection, in that only four paragraphs of the document pertain to the actions of journalists themselves while the remainder apportions blame to public relations practitioners, politicians, the vagaries of social media, interference by media owners, etc. The critique stated: “This tendency to blame others for ethical failures, and not internalise the fact that it is journalists themselves who are undermining the perception of journalism, has been a common trend among journalists and editorial decision-makers for many years”, and went on to argue that:
- “Many – if not all – of the ethical collapses we have witnessed in the media in recent years are the result of a personal ethical failure by individual journalists. Journalists and editorial decision-makers can apportion blame to others, but ultimately it has required a personal decision by a journalist to trigger an ethical crisis. If you are offered money to write a particular story or kill a particular story (as alleged recently by Energy Minister Gwede Mantashe), it requires a personal decision on whether to accept payment or not. If you receive a dossier of seemingly true information, it requires a personal decision on whether to report on it without interrogating the true source or motive of the provider of that dossier. You cannot blame the system – any system – for that.”
- 5.119 This submission concluded: “All the checks and balances in the world will do nothing if individual journalists continue to be ethically weak or compromised, and it requires deep introspection – and circumspection – about the cause of ethical failures and the direct role that individual journalists have played in this.”
- 5.120 From a different perspective, a member of the public, Leanne Hunt, advised the Panel: “Constitutional democracy is not just about rights and responsibilities; it is about humanity and lived experience.”
- 5.121 Ms Hunt told the Panel that she is blind and reliant on radio for news and information. “Humanity and lived experience is what ultimately binds us together, not a code of conduct,” Ms Hunt said. She suggested that for the media to become more credible, “they need to listen more than they speak”. For her, reporting is about passing on information, not forming opinion (except in the case of editorial pieces, which should be clearly identified as such). Ms Hunt asked that the media listen rather than focusing on what is being shouted from the rooftops.
- 5.122 These comments and suggestions resonate with the thoughts of the late Hugh Lewin, activist, political prisoner, journalist, educator and Truth and Reconciliation Commission (TRC) Committee Member who, reflecting on what the TRC has meant for the media, said in a Heinrich Boell Foundation Memorial Lecture in 1998:

“as a compassionate and listening panellist, ... never being the insensitive digger, the pushy reporter... having to choose which witnesses would best reflect the turbulent history of a community through several difficult and different years... And then finding that it’s not you and your reactions which matter; it’s the community. It’s their story, and they want it told, and you are just the medium the messenger, so make absolutely sure you’ve got it right. Clear and simple.

“It’s changed the whole nature of story-telling. By giving this open, front-of-the-lights platform to the people, the real people with their own stories – by giving them that opportunity, we have changed the nature of story-telling, how we report it. You have to listen and record in a way that wipes you out as ‘the messenger’. You cannot dare to interpret, you cannot presume to explain. You can only record, very precisely, what you have heard and how you have heard it. It makes nonsense of our rules of objectivity. It’s not about sound bites or the selection of ‘main points’. It’s a process that takes a long time to tell and is very humbling.”

- 5.123 These criticisms must not be understood to suggest that the academics, editors, journalists, media regulators and members of the public with whom the Panel engaged did not provide careful and concerned analysis of media industry. All those to whom the Panel spoke stressed the centrality of ethical considerations to media practice.
- 5.124 Simon Pamphilon told the Panel of the importance of teaching ethics to media students; Anthea Garman stressed there must be concern for the ethos within which the industry operates; Mathatha Tsedu was mindful of public response to the media; Franz Kruger looked for ways of safeguarding the integrity and trustworthiness of the journalistic and editorial process; John Perlman said that media practitioners must be mindful of the public’s view of what they do; Herman Wasserman advocated “new, deeper focus on ethics training for those entering the profession”; Jovial Rantao told the Panel that the starting point of journalism must be that “when we publish something the reader must trust this implicitly”; Anton Harber was concerned that political coverage had “lost credibility” where the need to explain, analyse and highlight was not met; Colm Tonge complained that sources must always be disclosed and conflicts of interests declared; Thumi Atshar appeared angered about “manipulation and misinforming the public”; Mapi Mhlangu talked about compromises which resulted in “not being honest” to the viewer, leading to loss of credibility; Rob Rose told the Panel of the need for an “estimable mark of quality” and the need for media practitioners to subscribe to an ethical code; Thetha Joel Nzima wrote that “without the truth a journalist has neither integrity nor credibility”; Tanya Isaacs de Vega wrote on commitment to the truth and provided a full memorandum on the “dire need to address the failing ethics and credibility of the South African media” which occurs at levels of individual and collective accountability as well various accountability mechanisms; Julie Reid of the Media Policy and Democracy Project (MPDP) stressed the need to promote participatory media and communications policymaking in the public interest. These are but some of the individuals who engaged with the Panel on concerns about ethical practice, but their comments indicate the diversity of, and genuine concern about, such issues. It was made clear that SANEF had indeed embarked upon a process which resonates amongst those interested and involved in the media and its role for the South African community.
- 5.125 But, as Berger wrote, the search for a scapegoat meant that there was “an excuse for the media to avoid having to confront the need for self-critical reflection” about what those events said about the institution of the media and what it portended for the future.

CONCLUSION

- 5.126 Ethics codes and policies have been promulgated by societies of journalists and individual news organisations throughout the world. It was suggested by Bill Grueskin, Professor of Professional Practice at Columbia Journalism School, in the 2019 Nieman Journalism Lab Report, that 2020 ought to be the year that “our ethics codes get an overhaul, as journalists face relentless business pressures, relinquish even more control over how our content is distributed and framed, and deal with the consequences of doxing and anonymity”. This need has become more urgent, he writes, as countries become increasingly polarised and as “trust in the news media remains tepid”.
- 5.127 Issues that Professor Grueskin suggests the next great ethics code might cover in the digital age include:
- I. How candid should journalists be with the people we quote, photograph, and record, knowing that a single picture or paraphrase can, thanks to Google, irrevocably change their lives?
 - II. What’s the responsibility of journalists to address the way others mischaracterize or mislabel their reporting, and how can that be done most effectively?
 - III. When aggregating or linking to others’ stories, what’s a journalist’s responsibility to fact-check those pieces, to examine their provenance, to evaluate the credibility of the author?
 - IV. How much transparency do non-profit news organizations owe their readers, revealing not just donors’ names and amounts but the nature of any discussions or promises (implicit or explicit) that preceded a gift?
 - V. How much anonymity do we owe our commenters, whose remarks shape the way our stories are evaluated? How do we choose which stories are open to comments and which are closed?
 - VI. How much daylight should there be between reporters’ social media feeds and their professional profiles?
 - VII. Should journalists’ Twitter feeds ever reflect angles or opinions that they wouldn’t feel comfortable including in a news story?
 - VIII. What measures should we take as some journalists simultaneously produce both independent news stories and sponsored content (or other pieces that are driven largely by advertisers’ interests)?
 - IX. As news organizations move to subscription-driven models, how much of an obligation do we retain to serve communities who can’t afford, or aren’t interested in, the journalism that we publish?
- 5.128 Whether or not the media industry in South Africa chooses to enter into such an exercise, Professor Grueskin’s view that codes of practice should solicit contributions from those outside the media industry and be constantly updated as media economics and technologies change, may not be controversial.

MAIN POINTS OF THE CHAPTER

This chapter

- **Describes the current South African news media landscape in terms of ownership structures; revenue sources and perspectives;**
- **Discusses the profitability and business prospects of various news media;**
- **Examines the current financial crisis currently faced by broadcast and particularly print media;**
- **Explores the sustainability of various business models for publishing the news;**
- **Surveys the precarious state of community news outlets and how this contributes to ethical vulnerability; and**
- **Describes the impacts – positive and negative – of the emergence of online news platforms, including the growing prevalence of ‘fake news’ promulgated online.**

CHAPTER SIX: THE MEDIA LANDSCAPE IN SOUTH AFRICA

INTRODUCTION: OVERVIEW OF THE MEDIA

- 6.1 The South African legacy has been one of media embedded in different ethnic and political camps. The National Party government controlled the propagandistic public broadcaster, the SABC; English speaking journalism belonged to white monopoly capital; Afrikaans speaking journalism was a product of National Party political and business interests; while African language journalism sat uneasily on the margins of commercial media; some papers independent, some commercial, some the creations of religious foundations; some of reform-minded political organisations.
- 6.2 Journalism cannot be separated from those who fund it. Without capital for equipment and material and revenue for ongoing expenses, there can be no media product of whatever persuasion.
- 6.3 Media enterprise has traditionally involved a measure of mission, in the sense that owners were prepared to subsidise a message that served their interests, or those of their constituency or of the wider society. Hence the creation of Nasionale Pers in the image of the National Party apartheid regime and the Anglo-American interest in South African Associated Newspapers and the Argus company to reflect its liberal, pro-capitalist philosophy. The *Mail & Guardian* and *Vrye Weekblad* were originally subsidised by donors wanting to challenge apartheid structures and more recently investigative consortium amaBhungane, online news platform GroundUp and others by stakeholders' interest in exposing improper and corrupt practices. Hence the multifarious funding of the Gupta and Survé (Independent) media empires.
- 6.4 amaBhungane staff commented to the Panel that: "There is declining quality and an inability to differentiate from a much larger set of structural issues. There is the baggage institutions are carrying with them, the baggage of the past which is apartheid or obvious political connectivity or crony capitalism, and the entire problem is exacerbated by huge media concentration when what is needed is more independence and diversity".
- 6.5 Today South African media is dominated by the Big Four: Arena Holdings (formerly Tiso Blackstar, formerly Times Media Limited and before that Johnnic Holdings); Independent Media; Media 24 (a subsidiary of Naspers), and Caxton. Media 24 has the largest print media circulation in both weekly and daily papers. The only truly independent newspapers with significant national readership are the *Mail & Guardian*, *Ilanga* and the *Sunday World*. Most papers are urban or regional. Outside the Big 4 are small-circulation community papers, often supported by the Media Development and Diversity Agency (MDDA). Audiences have begun to migrate online: all the Big Four have a substantial online presence but other news websites are also holding their own. Small independent radio stations often lack the resources to generate their own news coverage.

- 6.6 The media market is concentrated but currently the four main print media groups remain separate as do the two main radio groups, Primedia and Kagiso. Those who prefer news in their home African language, wherever they live, and those living in rural areas, are served almost exclusively by the SABC. The mandate of community media is to broaden access for these audiences, but their output is not being consistently monitored. In rural areas there are also issues of coverage via transmission infrastructure: the planned migration to digital broadcasting can remedy this if affordability (of data and devices) is prioritised.
- 6.7 Donor-funded online news outlets – amaBhungane, GroundUp, Bhekisisa, *New Frame* – provide what is considered by some of our informants to be the “most interesting recent journalism”. Stefaans Brummer of amaBhungane comments on the evolution, as he sees it, by the *Daily Maverick* from “niche product to full-service provider” (the *Maverick* has recently launched a weekly print edition too), while amaBhungane has chosen to remain a niche product generating specialised investigative content for other media.
- 6.8 A distinction must be drawn between the ideologies of newspaper owners and their ethics. Newspaper owners usually espouse a broad world view, as already discussed. In this context one might cite *Southern Cross*, the *Muslim News* and the *Jewish Report* all advancing a particular spiritual message and associated organisational allegiance. *Business Day*, *Business Times*, *Business Maverick* and the *Financial Mail* all cohere around a pro-business ethos. The *Mail& Guardian*, *Daily Maverick*, *New Frame* and *Ilanga* offer a more critical and perhaps visionary world view, while *The Conversation* presents news-relevant articles exclusively from university-affiliated writers.
- 6.9 For all media outlets traditional models have changed and innovation has brought great challenges. As the 2019 *Cairncross Review* stated:
- “... only in the past decade have these epoch-making ideas begun to have a serious impact on the main sources of high quality news: television, radio and above all, the newspaper. The ways in which news is provided and the ways people find and read it are changing more rapidly and radically than ever before. This digital revolution is bringing enormous potential benefits to consumers, but is also challenging the future of news provision.”

THE MEDIA AS AN INVESTMENT

- 6.10 Owning news media in South Africa was historically a route to making money for very few –and it is even less so today. SANEF recently commissioned from media researcher Reg Rumney a report on *Covid-19 Impact on Journalism*, whose data and comment depict the critical situation of the media within the South African economy. This report’s additional subsection on the early impact of the Covid-19 pandemic and emergency measures can only begin to envision the devastation currently being visited upon the media industry.
- 6.11 Rumney makes four key observations. First, the market capitalisation of listed media companies is low when compared to the rest of companies listed on the JSE. Second, there has been a steep decline in the share price of media companies over the past five years. Third, the discount to Net Asset Value reinforces the idea that media companies are not particularly

attractive investments, notwithstanding some reasonable returns by way of dividend. Fourth, that media companies have delisted from the Johannesburg Stock Exchange (JSE) is a serious sign of stagnation since the purpose of listing on the JSE is to raise capital necessary for expansion.

- 6.12 The failed attempt to list Sagarmatha Technologies in 2018 gave some clues concerning the financial performance of Independent Media. The entire enterprise was described, by one financial analyst, as “an eclectic gathering of loss-making assets”. Figures showed an operating loss, but most of the revenue seemed to be derived from the newspaper business. Media24 which, as a subsidiary of the listed Naspers, is obliged to make its financials available, has also reported operational losses for the years ending 2018 and 2019.
- 6.13 Since the beginning of this century, unbundling, deconglomeration and diversification have taken place within the world of media investment. Rumney points out that investors are historically wary of conglomerates and investment holding companies and that political pressures to enable Black Economic Empowerment (BEE) may exacerbate this wariness as it fosters the growth of holding companies that can present a BEE identity. Meanwhile, media deconcentration and streamlining have benefitted share prices.
- 6.14 Diversification has historically and currently characterised the news media business. There are limited benefits from the simple acquisition of competitors. In the past, attempts were made to integrate vertically by controlling the entire value chain from pulp-tree plantations to newsagent chains. In the current era, media enterprises are attempting to grow horizontally by using their existing expertise to move onto other media platforms – from print and broadcast to online – and into closely related areas of business. Many broadcasters, including Primedia, have set up news websites. Kagiso Media has a market research agency, KLA; a video producer, Urban Brew Studios; book publishers, Juta and Company; a property data company, Knowledge Factory; an online film distributor ReelAfrican; the sports platform, Maga8; and marketing agency, Adjoin Media. Kagiso also owns Media Mark, whose assets include radio marketing and sales; the South African edition of the digital Microsoft Network (MSN) website; DSTV channels; and events organising.
- 6.15 The search for new revenue streams has been the proposed solution globally and locally. However, it brings its own problems. Some businesses within such diversified enterprises are more profitable than others and shareholders and management may begin to question the continued presence in the bouquet of companies of a loss-making news business. Media scholar and researcher Harry Dugmore, noting the sequential unbundling of first Anglo-American, then Johnnic, then Times Media, then Tiso Blackstar (now Arena Holdings), has commented that: “conglomeration and its attendant undervaluation of the underlying assets makes firms vulnerable to hostile takeovers and to shareholder activism”.
- 6.16 Rumney has commented that the question used to be, “who pays?” for the media business. Now, the question is more likely to be, “Is anyone willing to pay at all?” Chris Roper concurred that boards and management are not succeeding in monetising news and shareholders are not really seeing a return. Johnny Copelyn, HCI Chief Executive, however told the Panel he believed one did not invest in a news channel to make money – although one hoped to do so – but rather that this commitment “is not based on an ordinary commercial view alone but on some sense of a social and political view and commitment to society.”

THE MORE RECENT FINANCIAL PREDICAMENT OF THE PRINT NEWS MEDIA BUSINESS

Costs

- 6.17 Newspapers, news journals and magazines are all products of an industrial age and still rely on an industrialised manufacturing process with high fixed and operational costs. Rumney noted that every new reading customer acquired by a newspaper publisher incurs the additional cost of producing and administering the distribution and sale of one more unit of the physical product. By contrast, additional radio and TV listeners and viewers cost little to attract and nothing to inform: the fixed transmission infrastructure and news-generating staff cost the same irrespective of how many audience members there are. While broadcasting news generates no direct revenue, it can generate substantial indirect revenue from advertising if it can prove it attracts a relevant audience for advertisers' wares. Internet news organisations, like broadcasters, incur no extra cost for each additional page view once the digital publishing infrastructure is in place (consumers pay for their own data) but can offer advertisers a much larger – even worldwide – platform for their marketing messages.
- 6.18 Newspapers and news journals have the news as both their core business and reason for existence; while they may contain many other elements that are more entertainment-oriented, such as cartoons and recipes, these are not their *raison d'être*. Broadcasters have the capacity to present multiple other forms of content, such as music and drama performances, and while dedicated 'news channels' do exist, so do other channels devoted to these, with news as a discrete entity. For example, Satellite TV channel, M-Net, owned by the four big newspaper groups and initiated as a way of offsetting the loss of income from the competition of terrestrial TV, has no dedicated news bulletin although it does air ostensibly news-oriented feature programmes.

Advertising

- 6.19 Claims on advertising revenue used to be fiercely competitive. Newspaper groups relied on advertising and not sales of papers as their main source of income, and they benefitted from regulations requiring publication in the press of legislation and legal notices as well as the financial results of listed companies.
- 6.20 Print however began losing advertising revenue to both radio and TV as soon as these platforms emerged and this has intensified. The panel heard how there has been a sharp diversion of adspend from print to TV: over the ten years prior to 2017, print's share of adspend fell approximately 17% - 21%, while TV's share rose by the same percentage, reaching 57% of total adspend. The pre-inflation-adjusted advertising revenue share of newspapers more or less halved over this period. Exacerbating this loss, with the advent of online significant newspaper advertising revenue – particularly from the previously lucrative classified sales pages – has moved online to shopping sites, Google pay-per-click ads, real-estate websites and job vacancy sites.
- 6.21 At least one informant told the Panel that "the advertising model is broken. It doesn't work anymore. It is too expensive," while many others highlighted the migration of advertising

into different and cheaper arenas with more extensive reach.

- 6.22 Because of the revenue it provides, advertising wields extremely strong influence in the media industry. For purposes of the ethical concerns discussed in this Report, the Panel has been mindful of a quote attributed to media commentator Chris Moerdyk: “Do you bite the hand that feeds you?”
- 6.23 Lesley Cowling, Chris Roper, Anton Harber and many others pointed out that one of the real enemies of media success was how over half of all advertising revenue goes offshore to Google and Facebook. This means that revenue is no longer available to the South African media.
- 6.24 The panel heard enthusiasts for the new online environment describing its advantages over legacy print media for both advertisers and newsroom. With digital sales, the platforms receive additional information about who views which site, how often, and when; information that is much more timely and nuanced than previously provided by print media reader surveys. It is thus possible, in the words of one, to have “a granular understanding of the eyeballs” and from this generate innovative approaches to selling advertising and marketing news.
- 6.25 Agencies that place digital advertising care about which people see their ads and are now able to obtain that information in great detail. For example, a niche platform such as the *Daily Maverick* can provide information to potential advertisers about its specific users’ finances, employment, location and social and political views.
- 6.26 The Panel did not receive any submissions on three other aspects of the use of digital analytics which may have less positive potential implications for ethical news production, and which have received significant attention internationally. The first is the emergence of the reader data generated by online news platforms as a commodity in its own right, which can be bought, sold and potentially used as a basis for news manipulation (Cambridge Analytica). The second is the way newsrooms may employ real-time analytics of reader responses to narrow the range of news reportage readers are subsequently offered, by encouraging journalists to repeat only popular story topics and formulae, creating a self-reinforcing ‘bubble’. This is a particular danger where journalists’ career progress is explicitly linked to the clicks their stories receive. The third is the role of real-time feedback in reinforcing the pressure to speed up story generation, which may erode the time available for reporting, writing and the ethical checks undertaken during the performe painstaking, detail-focused work of copy editing.

Circulation and audiences

- 6.27 Professor Harry Dugmore’s Rhodes University 2018 paper *Paying the Piper*, and the reports prepared at the instance of this Inquiry by Martinis and Rumney set out the viewing patterns and circulation figures of radio, television and print media as at 2019. Perhaps the easiest comparisons are provided by the report for the period ending June 2019. In that period, 95% of all households had viewed television; 88% had listened to the radio; 63% had accessed the internet; 38% had read a newspaper and 17% a magazine in the past seven days before being surveyed.

- 6.28 The decline in the circulation figures of daily and weekly newspapers and some magazines is both widespread and indiscriminating across language, community and gender, and irrespective of whether the publication is broadsheet or tabloid, daily or weekly. It has been described as “carnage”. Declines in circulation ranged from 45% to 77%, with the *Sunday Times* experiencing a 56% drop, *Rapport*, 69%; *City Press*, 77%; the *Star*, 60%; *Sowetan*, 51%; *Beeld*, 70%; *Cape Times*, 45%; *Business Day*, 55%, and *Mail & Guardian* 45% over a ten-year period. This survey did not collect data on community newspapers, for which there is no centralised data collection.

The online news presence

- 6.29 At the same time, the traditional media houses have carved out an online presence. The great majority of the news websites are owned by a media company and are not independent, which reflects the need for capital, and the weight of known brands and existing infrastructure and skills.
- 6.30 Measurement of web traffic by pages viewed indicate that sales and advertising site Gumtree.co.za (owned by eBay) and news site news24.com (owned by Media24) are by a large margin the most popular sites, followed by timeslive.co.za (owned by Arena Holdings); iol.co.za (owned by Sekunjalo); with ewn.co.za (owned by Primedia); thesouthafrican.com (owned by Kagiso Media), and citizen.co.za (owned by Caxton) following.
- 6.31 Globally, many news organisations have erected paywalls to force readers of online news to subscribe. The *New York Times*; the *Financial Times*; the *Wall Street Journal*; the *Washington Post*, and *Bloomberg News* have succeeded in attracting and retaining readers and viewers despite the paywall. The UK *Guardian* remains open-access but has a membership model and solicits voluntary donations. Locally, BusinessLIVE (featuring articles from the *Business Times*, *Business Day*, and the *Financial Mail*) is a subscription service as is *TimesLIVE* (containing news from the *Sunday Times*). The Maverick stable is free to view but ‘insiders’ have “earlier and wider access to content”. Some other South African news sites employ a mix of subscriber-only and open-access stories, sometimes opening stories to all readers after some time from publication, while yet others, such as *New Frame*, remain free.
- 6.32 The Reuters Institute *Digital News Report* (2019), found only a small increase in the numbers paying for any online news, whether by subscription, membership or donation, in the previous 12-month period. Their finding that most subscribers at the time of their survey had only one online subscription suggests that larger sites will endure total or greater paywall barriers. Of course, limiting access to content in this way will contribute further towards reaching and serving a smaller, wealthier audience. This will likely result in far greater reliance by lower-income and African language users on the broadcast news provided by SABC radio and TV (in African languages) or the free-to-air eTV and free after the purchase of a decoder eTV OpenView (in English and Afrikaans) or, if users have internet access, the various free online news sites, including those with dubious credentials.
- 6.33 News24 editor Adriaan Basson commented on the good fortune of News24 in having an owner who, some twenty-two years ago, was an “early starter” and wanted the company to

“start online in English”. The result is that News24 is “in the lucky position of being the biggest by far with 8 million monthly users” thereby offering the “scale to compete with Google and Facebook” in a way we “can sell to a local audience and add to that the trust and integrity which Facebook and Google cannot”.

- 6.34 Basson made it clear that speed in posting news is important for an online presence but the editorial mission statement of this online news platform is “to be first and right, not to be first and wrong”. By “building up trust with our users, getting it right, if reporting is true and correct, there is no attempt to be elitist but serve the mainstream and be a broad church”. Basson suggests News24 has achieved a successful media model.

THE FINANCIAL STATUS OF NEWS BROADCASTING

- 6.35 Although established broadcasters have inherent strength in the radio and TV business model, and enjoy the benefits of the current South African regime of digital inequality, it has only been the growth in subscription revenue, much of it going to MultiChoice/DSTV pay-TV, that has demonstrated an ability to outpace inflation. The eTV Openview platform, in existence since 2013, is an attempt at a disruptive innovation: subscribers buy a dish and decoder, but thenceforward pay no subscription and enjoy access to 16 channels including local and international (BBC) news. However, although the platform claims steady and healthy growth and at time of writing close to two million watchers, as yet no independent research has assessed its impact.
- 6.36 However, concentration of ownership and the related issues of regulation, as well as the possibility of the same kind of digital disruption as print media have experienced, all pose challenges to broadcasting.
- 6.37 South African ownership of television and radio stations is highly concentrated in the public broadcaster, the SABC. Not only is this a damper on competition; it also hampers media diversity. Nevertheless, the corporation’s African language radio stations, which are often the only home language media available to the poor, provide the public service justification for the SABC. Julie Reid has commented that without the SABC almost 65% of the population of South Africa “would be almost completely in the dark about the world around them”.
- 6.38 Commercial radio does face digital disruption but this online competition has not had a dramatic effect so far. According to the National Association of Broadcasters (NAB), streaming and podcasts compete with radio but also contribute to a “culture of listening and the spoken word”, helping radio stay relevant. Also, legacy radio stations have used the internet to extend their reach by streaming their own output, and have entered the space occupied by the traditional print media groups by launching their own news websites, as the 12-year-old ewn.co.za has done.
- 6.39 News is only one part of the public service that both radio and TV are ordered to provide in terms of license conditions. News production and content is therefore a matter of licensing

and regulatory compliance before it becomes a journalistic and commercial commitment. Commercial radio stations such as Talk Radio 702 are obliged to air news every hour, daily, and to state whether the news on its bulletins is generated by its own journalists or sourced elsewhere, encouraging diversity of news. News and current affairs are sometimes linked to the profile and core business of radio stations but on the whole it seems that it is 'talk radio' that dominates. While this is an extension of content related to the news, it is not news generation.

- 6.40 SABC-TV and MultiChoice dominate the television market, followed by e-Media Investments (68% held by e-Media Holdings and owner of e-tv). There is one independent subscription service, StarSat, and a new channel Newzroom Afrika recently entered the market. MultiChoice relies on subscription revenue, although it does also benefit substantially from advertising. SABC-TV is funded by advertising, license fees and government grants. E-media's e-tv and Openview rely on advertising revenue and sponsorships.
- 6.41 Community TV stations (for example, Soweto-TV) do exist and offer some diversity. However, the Panel heard how without government support, they are hobbled by a lack of capital and face an uncertain future. If, as noted earlier, community radio struggles with revenue, community TV must face an even bigger battle because of the higher cost of television production and distribution.
- 6.42 Although SABC, with its three channels and substantial news presence, is able to attract a substantial amount of available advertising revenue, it still complains in its annual report about the decline in that revenue, which it believes is due to "pressure from lower investment in content that is negatively affecting channel viewership, the general depressed media market and competition from digital platforms". Its competitors are likely experiencing the same pressures, although in 2018, e-Media Holdings reported its 2017 ad revenue from e-TV to be around R1,5-billion. MultiChoice is on a par with the SABC in terms of ad revenue, even though it is a subscription service. It outstrips eTV's ad revenue, which led eMedia Investments to lodge a complaint with ICASA about uneven playing fields in 2018. Current research confirms the shift of adspend towards digital platforms.
- 6.43 MultiChoice's DSTV platform flights e-Media's successful eNCA 24-hour news service. At least in free-to-air television, the SABC has one substantial competitor in eTV.
- 6.44 Copelyn commented on the "constant dilemma as to how much we have to commit to limiting the news in exchange for financial stability" in that eNCA is flighted by DSTV on their premium – and more expensive – bouquet, which is therefore not available to the poorer sectors of the population. It is this "commercial relation to news which cuts across the objective of providing information to the population as a whole," he said. While eNCA remains confined to the more expensive bouquet by DSTV, eMedia has eNews and a sports channel available for the cost of a decoder, and no subscription, on Openview.
- 6.45 It had been hoped, the Panel heard, that the ending of analogue transmission and the switchover to digital terrestrial transmission (DTT) might break, or at least dent, the MultiChoice monopoly in subscription TV. This report has earlier referred to the saga of alleged State and regulatory capture, and returns to the topic below.
- 6.46 Notwithstanding the overall decline in TV viewership since 2016, TV news still has enormous reach. News is not the most viewed programme category, but remains in the top ten of programme titles by viewership supplied by SABC.

- 6.47 The markets in which broadcasters operate are less competitive and more highly regulated than print and online. This may contribute to the healthier business state of broadcast platforms. However, operating a TV or radio station is by no means a licence to print money. Both MultiChoice and e-Media are profitable, and the SABC has stated that it could turn the corner if it were allowed to proceed with cutting its biggest expense, its large staff complement. Staff costs accounted for 44% of the SABC's total expenditure in the 2018/19 year.
- 6.48 The NAB stated in its 2019 report on the broadcasting industry that, although "TV advertising dominance is expected to end in 2022", broadcasters are responding to changes in technology and consumer behaviour by providing streaming options on websites, video-on-demand, over-the-top roll-out (OTT: content provided direct to viewers over the internet, bypassing traditional distribution channels); partnerships with OTT platforms and making content available on YouTube.

OVERVIEW: SUSTAINABILITY OF THE NEWS

- 6.49 All the developments described above have led to the print news business model being described as 'broken'. Print used to serve two sets of customers: its readers who paid a cover price, and its advertisers through adspend, and was faced with the task of balancing the page-space devoted to editorial or news against the space made available for paid advertising, to attract payment from both. Pay-to-view TV still commands both these revenue streams, but other broadcasters, apart from the government-subsidised SABC, have relied on advertising
- 6.50 The advertising revenue attracted by online news is lower than that which newspapers have been able to attract, because of competition from Google and Facebook and the way online advertising functions. The former CEO of Media24 reported that Google alone swallowed around 70% of local online advertising; social media (mainly Facebook) another 12%, and mobile operators a further 10%, leaving South African media houses only 8% of online ad revenue.

The search for a new business model

- 6.51 It is now almost a platitude that traditional media enterprises should seek diversified revenue streams and embrace Reuters' "smart strategies" but many South African news houses are trapped in what one respondent to the Panel called "the evident vicious cycle of lower revenues leading to cost cutting that further decreases audience leading to even more cost cutting".
- 6.52 Branko Brkic takes the view that sustainability requires "five or six" different streams of income "so that if one collapses you don't go down". He commented that "you have to eke out where you can – events, philanthropy, radio, books. You have to have a kind of mental and psychological elasticity to respond to the world and sometimes to lead. You have to innovate all the time."
- 6.53 The vicious cycle referred to above is not independent of quality of news content. Anton

Harber commented that the model which is working internationally is “where there is significant investment to improve content, so that it is valued by those who you need to pay for it”.

- 6.54 However the Panel heard that traditional media businesses are thought not to be reinvesting sufficient resources to make their products, either in print or online, essential reading. The downward spiral thus continues because the less they earn the less they reinvest and the less they earn. One indicator of declining quality may be the skeletal dimensions of many surviving South African newspapers. The ‘fat’ papers are routinely padded by full-colour advertising inserts from retailers.
- 6.55 It is the spread of content and quality of journalism that matter. Cuts in newsroom staff numbers and reluctance to employ experienced and specialist journalists certainly has an impact on this, which will be discussed later.
- 6.56 The difficulty in thinking strategically about this dilemma, suggested Chris Roper of Code for Africa, is that those actually working on the ground and producing media content – editors and journalists – “don’t have the time or opportunity to think about larger issues”.
- 6.57 Those with whom the Panel discussed these new business models also talked about the need to explore tax credits in recognition of the media as an essential service in a democratic society; to track down copyright payments from offshore and online entities which simply ‘freeload’ off the work of journalists; and to implement state contributions to all media entities: the so-called ‘Nordic Model’.

Niche journalism

- 6.58 GroundUp founder Nathan Geffen appreciates that the online publication is an unusual news organisation in that, “we publish under a Creative Commons licence, so anyone is welcome to publish our work”, because “our focus is precisely where mainstream papers are not going to follow stories”. The result, he told the Panel, is that GroundUp has carved out a niche as a “news agency providing content to mainstream media, and we do not compete with their journalists but we are supplementing and adding”.
- 6.59 Brkic understands this niche position and commented that “GroundUp and Spotlight have given us a window into a wider world. They have purposely courted civil society organisations and we vouch for the expertise.”
- 6.60 GroundUp Associate Editor Alide Dasnois commented that the work of GroundUp is of benefit to mainstream media who don’t have to pay, and that she had “thought how ironic it is that we put out material for free to the for-profit companies”. But GroundUp considers information a public good and wants as much to be read by as many as possible.
- 6.61 This may be “fashionable at the moment,” said Geffen, but, currently reliant on donors, “we may one day have to close down. But we are at peace.” Geffen added that GroundUp had tried to raise funds from individuals by selling t-shirts, with little success, but then realised, “We

weren't in the t-shirt selling business". He pointed out that in March 2020 globally everything, including the media, was in uncertain spaces.

- 6.62 Survival, for Basson, came down to "be the biggest or have a clear niche". For instance, he mentioned a new subscription-based, ad-free sports website based in the United States but also serving the UK, *The Athletic*. This brought together sports journalism covering all codes and from multiple sources. After just over a year the site had over 100 000 paying subscribers, which was "an encouraging model".
- 6.63 Basson distinguished News24 from the Maverick model which is "small but with a niche audience which has strong views". He saw their business model as being similar to that of the UK *Guardian*, with no paywall but a membership model plus donors.
- 6.64 Basson said he worried about the future for second and third and fourth media houses because "if you do not have scale or audience then what do you have?" The implication is that "if you do not have a niche then you do not have quality".

DONORS, PAYWALLS, SUBSCRIPTIONS AND MEMBERSHIPS

- 6.65 Paywalls, membership contributions, subscriptions and other strategies for ensuring revenue from consumers, have been used by every media outlet from the *New York Times* to the *Guardian* and are now utilised by those local media that have an online presence.
- 6.66 What the Panel heard called "the elusive business model" has thus looked both to payment from subscribers and donations from members, with some media houses providing other types of online content to forge connections with audiences. The Reuters Institute, however, expresses doubts about such streaming of podcasts, video, webinars or live events as a way of making paid content work. It suggests that most news will stay free and dependent on low-margin advertising.
- 6.67 Adriaan Basson says News24 is a financially viable media house and sees News24 as "mainstream... a broad-based publication that writes about sports and business and news and entertainment". At the time of his interview with the Panel, the business model was a "free for now medium", but the media house was investigating what kind of subscription service should be introduced. Although News24 is part of the Naspers stable it pays its way. From August 2020, the company introduced a paywall, charging subscribers R75 a month for selected premium content.
- 6.68 South African media has experienced the vagaries of donor funding during the struggle era and is well aware of the ever-present danger that such funding may dry up. However, newer models of media practice such as amaBhungane, GroundUp and the *Daily Maverick* currently receive donor funding. The policy of amaBhungane on donor funding is discussed in the chapter on investigative journalism below.
- 6.69 Murray Hunter of amaBhungane told the Panel that when amaBhungane supporters make donations, they often comment that "they aren't paying for the product but investing in the

mission” in the sense that: “I want this product to be out there.”

- 6.70 Basson expressed concern about the risks that are run by a donor funded business. He knows that amaBhungane is “strict about not taking donations for specific stories” but cautions about the equal risk of “capital flight”, or if the donor revenue stream dries up. For Basson, “diversity is necessary” and so are multiple revenue streams. He noted that there must be clarity on who the donors are and transparency about them; it would cause problems if this was not made clear to readers so they knew there was no influence behind the scenes. amaBhungane (with whom News24 collaborated on the Gupta Leaks reportage) and ProPublica in the United States have formal mechanisms to ensure such transparency.
- 6.71 Stefaans Brummer of amaBhungane told the Panel that they “feel strongly” about calling the model they utilise “the supporter model as opposed to the membership model”. amaBhungane doesn’t want to “give the idea that money can buy access”, especially in South Africa, where the majority of people do not even have credit cards and thus could not donate even if they could afford it. amaBhungane does however offer the opportunity to subscribe to their newsletter. The importance of growing subscribers means that amaBhungane can diversify and not be over-reliant on grant funders, thus making itself less sensitive to sudden decisions.
- 6.72 Brkic told the Panel: “Each company has to decide which way to extract money from readers. This is a philosophical issue. What is the fundamental purpose of every story? If it is to be read by as many people as possible, that you publish something and want people to read it, then it is difficult to build a successful [company] if you go against [the] grain of [the] product. In our case, if we limit our writers and access to our stories then that goes against the grain of our product.”
- 6.73 Brkic’s view is that “fake news is free and we have chequebook justice, where whoever has money can steal and stay out of gaol”. It was highly inadvisable, he suggested to the Panel, for a country to have chequebook truth. “So let us not sell our product. We look for support for our mission. A paywall means you pay or leave it. With membership our basic feeling is that when a member helps *Daily Maverick* you help people who cannot afford to pay. A paywall is a left brain decision but to be a Maverick Insider is a right brain decision because you want to contribute to the mission (...) In 18 months we have over 10,000 members. We believe the ceiling is much higher for people who want to help the country survive.”

Conclusions on sustainability

- 6.74 An MBA dissertation by Ngiphiwe Mhlangu seen by the Panel explored the future of legacy private news organisations in the age of digital disruption in a number of countries on the African media continent. Changing market conditions were evaluated; responses to technological challenges examined; changing consumer behaviour patterns collated; and commercial and non-commercial funding avenues were considered. Some conclusions of her study also stand as relevant conclusions for this part of the chapter, namely that:

“(...) in the world of disruptive digital business models. (...) Legacy news media organisations will not exist in their current form in the next few years unless they offer more than news products. (...) Commercial investors candidly stated that investing in these firms does not make economic sense, as prospects of them becoming profitable in the

immediate future were slim. However, they believed that some of these companies are too big to fail because a vibrant independent media is needed to support democratic Africa.”

- 6.75 The *Cairncross Review into Sustainable Journalism* was established by the Government of the United Kingdom to consider the sustainability of the production and distribution of high-quality journalism, and especially the future of the print press, in this dramatically changing market. The work of the Review is commended for an inter-continental overview of all challenges facing the media at the present time.
- 6.76 The Review concluded that public intervention may be the only remedy in respect of public-interest news; intervention may be needed to determine what, and how, news is presented online; more favourable tax treatment for online news subscriptions may be justified; and regulators should study the online advertising market. Policymakers should seek to ensure that the unbalanced relationship between publishers and online platforms does not threaten the viability of the media business. Interventions may include government development and distribution of new technologies and business models, and measures to tackle the uneven balance of power between news publishers and the online platforms that disseminate their output, which include codes of conduct overseen by a regulator to govern the relationship of online platforms in their commercial arrangements with news publishers, and which include the involvement of competition authorities to examine the online advertising industry.
- 6.77 For the purposes of this SANEF Inquiry, the recommendation by the *Cairncross Review* that, pursuant to a “news quality obligation”, online platforms should be placed under regulatory supervision, is interesting. The purpose thereof is to help users identify the reliability and trustworthiness of sources, but this should be done with “appropriate oversight”, since this task is too important to leave entirely to the judgment of commercial entities.
- 6.78 Furthermore, the Review recommended that government “should develop a media literacy strategy” which would assist the consumers of news, and that government should expand financial support for news.
- 6.79 The creation of an Institute for Public Interest News was also recommended by Cairncross to “amplify efforts to ensure the future sustainability of public interest news”. This would become a centre of excellence and good practice, carrying out or commissioning research, building partnerships with universities, and developing the intellectual basis for measures to improve the accessibility and readership of quality news online. It would collaborate with the many institutions seeking to contribute funds, organisation or ideas. If new business models failed to adequately support public-interest news, and especially local democracy reporting, the Institute might channel a combination of public and private finance into those parts of the industry it deemed most worthy of support.
- 6.80 The Review intended to improve the “outlook for high quality journalism”. The recommendations were designed to encourage innovative models to emerge, not only in technology but in business systems and journalistic techniques. The Review conceded that:
- “Ultimately the biggest challenge facing the sustainability of high-quality journalism, and the press, may be the same as that which is affecting many areas of life: the digital revolution means that people have more claims on their attention than ever before. Moreover, the stories people want to read may not always be the ones that they ought to read in order to ensure that a democracy can hold its public servants properly to account. This Review has therefore dwelt most on what it considers to be the most signifi-

cant functions of journalism – ensuring public accountability and investigating possible wrongdoing.”

These are much the same issues which impact upon the media in South Africa and affect the maintenance of ethical standards of media practice.

- 6.81 But sustainability is about more than finances. Janet Heard of the *Daily Maverick* believes that the challenge with sustainability is to ensure the ethos continues to infuse new growth areas, so that the original core of *Daily Maverick* is maintained. In the *Daily Maverick*'s case, “the structure of Maverick is such that it can't work another way. It has a flat structure, very anti-corporate, quite individualistic, and allowing people to find their voice.” But, says Heard, “sustainability has a lot to do with trying to build excellence. We have seen growth, not attrition. Sustainability is about managing growth so the wheels don't fall off.”

COMMUNITY BROADCASTERS AND PAPERS

- 6.82 The MDDA Act of 2002 defines community media as:

“any media project that is owned and controlled by a community where any financial surplus generated is reinvested in the media project; and ‘community’ means a geographically founded community or any group of persons or sector of the public having a specific ascertainable common interest.”

Development and the social compact

- 6.83 Community media was understood by all the Panel's informants to have a multiplicity of values. Firstly, it creates and reflects community and enables local, small, rural and disadvantaged groupings to express views; share concerns, and speak to those who should hear from them. Second, it enables such communities to be connected with municipalities, local business and parochial activities and to receive information of interest and relevance to them. Third, community media provides an opportunity for the development of skills and employment, local activism and a sense of representivity.
- 6.84 In South Africa, geographical distances between disparate populations across the urban-rural divide give particular significance to community media. The Panel was told: “remember, community media reaches where others don't”. It was pointed out that national and even provincial newspapers have long since withdrawn their local presence for reporting purposes. Even distribution is no longer available in many areas. The result is that some areas are left with “little community sheets, and the voice of the people is going to the wall”.
- 6.85 Karen Thorne, founder of Cape Town TV, believes that community media occupies a development space which reflects the social compact between media and government. This made sense to the Panel. Government should, and does, have an interest in ensuring both plurality of media and diversity of content and audiences. Government should, and does, fund community media to ensure that the valuable objectives and purposes of the media reach all

citizens. This approach depends on the social compact between all levels of government and the population and the media being upheld and honoured. The view was expressed by several informants that this social compact has broken down.

- 6.86 Informants pointed out that there was a reasonable expectation government should do more than merely fund community media through the MDDA. The Government Communication and Information System (GCIS), for example, which is responsible for government media buying, could be expected to advertise through community media. However, this has not been the case. Only a few – apparently connected – television stations, it was felt, seem to obtain government contracts, while others are left “out in the cold”. Further, GCIS does not have oversight or voice in government departments, each of which has its own communications strategy. GCIS is not seen to be supporting such departments when they place material, advertising and notices, to ensure they are mindful of the need to ensure viable community media.
- 6.87 SANEF’s critique to the Panel was that Government has not delivered on its promise to develop a strategy and plan of action to support the community sector. It has not set aside 30% of government and Chapter 9 advertising; GCIS has employed only one media buyer to represent GCIS and one to represent community media in the past ten years. Further, Treasury has advised municipalities to use their own websites rather than newspapers to advertise their events (budget speeches, municipal campaigns), despite approximately 80% of municipal websites not currently functioning. Government has also failed to finalise or implement the draft Community Broadcasting Support Scheme, gazetted in 2015.
- 6.88 It must be recognised that ethical concerns arise where government has funding power, just as such concerns arise with corporate power. Some informants believed that community media might “become a government mouthpiece” because of financial reliance; for this reason, development media can be controversial. Such considerations also apply to donor, or philanthropy-funded, media.
- 6.89 Whatever the funding, licensing or structural issues involved in community media, there is, as the Panel was told by amaBhungane, “a crying need... we are constantly reminded of this by the nature of the calls we receive”. The “constant problem is that there are few credible community media outlets”. amaBhungane staff reported to the Panel that “we have heard horror stories of corruption and capture”.

The SANEF overview

- 6.90 SANEF provided an overview of its concerns about the particular challenges confronting community media. A summarised version is included immediately below:

“In terms of community print media, there has been lack of consistent advertising for the 230 publications in the sector, which have been forced to find other means of funding, e.g. funding earned through roadshows such as Stokvel Talk. Independent publications often have to rely on printers from rival publications, where there are sometimes delays that reduce their newsworthiness. There is also the anxiety that small commercial media publications produced by the big media houses are able to undercut the advertising rates that independent publications can charge, thus undercutting the independent publications’ ability to survive.

In terms of community broadcasting, 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. The battle for survival is often the biggest challenge for community radio stations, and even more so 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. 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.

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); many community radio stations are obliged to rely on government sources and government funding to keep their operations afloat (such as the MDDA), and funding is limited.”

Community publications

- 6.91 The Association of Independent Publishers (AIP) advances the interests of the local, grassroots, independent print media sector in South Africa. The association includes mostly small newspapers, but it also represents newsletters, magazines, and online publications, all of which are owned by local communities. The AIP is a projects-driven association but also focuses on research, policy issues, and the setting of industry standards for the grassroots print media sector.
- 6.92 As at 2020 AIP has about 200 members, representing a diverse range of publications, from one-person, home-based operations that rely solely on advertising for revenue to the more established titles distributed in different cities.

Legislation and licensing of community broadcasters

- 6.93 The Broadcasting Act provides for a three-tier system of commercial, public and community broadcasters. ICASA has issued licenses to some 280 community broadcasting services, but Franz Kruger, who leads the journalism department at the University of the Witwatersrand, counted a smaller number actually operating and on air. These services have a collective audience share of about 6.3 million people.
- 6.94 The issue of licensing is understandably contentious. It has been so internationally and historically; former US President Lyndon Baines Johnson made his fortune through obtaining much valued licences. The Independent Communications Authority of South Africa (ICASA) is obliged to issue licences to applicants on a first-come-first-served basis without due diligence or hearings. Thus there are no public hearings and applicants do not have to prove they are in the best position to serve the public interest. The result is, as one Panel informant observed, that: “Pretty much anyone got a licence. Sometimes there was

zero capacity to run a television station or even an NGO. Consultants did it all. Then, once the licence was got it was sort of privatised in someone's own name and then that person really started to make money."

The Panel was told that the manner in which ICASA issues licences through the class licence regime was not, and is not, stringent enough and so licences are given to:

"people who do not represent the community and do not ensure sound governance is in place ensuring accountability to the community. Opportunists or the politically connected have benefited."

- 6.95 This licensing regime, described as "arbitrary and without requiring proof to ICASA that the applicant had the capacity to run a professional media organisation", is thought to have contributed to continuing administrative inexperience; lack of management capacity; poor governance; poor programming; financial instability; and vulnerability to rogue take-overs or capture.
- 6.96 This, the Panel heard, has led to a situation where there is "zero monitoring on the ICASA side". It was said: "They do nothing and every now and then the Portfolio on Communications craps on them and then ICASA demands information within 24 hours".
- 6.99 ICASA has requested information on language quotas and the percentages of sports and children's programmes, but was said to have shown no interest in governance structures or skills levels and seems to have "no stomach to tackle broader and systemic issues".
- 6.100 Another informant said: "We only hear from ICASA every couple of years or so." However, new regulations were promulgated in April 2019; information must now be sent in annually. It is too soon to know whether or not ICASA will scrutinise these reports and take any action thereon.

The Media Development and Diversity Agency (MDDA)

- 6.101 The Media Development and Diversity Agency (MDDA) is meant to provide financial support to the community sector but it has a small budget and is dependent on government and no longer supplemented by commercial and public broadcasters.
- 6.102 Informants generally told the Panel that the MDDA has had a chequered history and had not been particularly effective. It was suggested by some that this was because of political complications: it was said that "the MDDA is riven with political battles" and that political contacts were needed to obtain assistance from them.
- 6.103 Others took the view that the MDDA had competency problems in many respects. "Huge inefficiencies" were mentioned where a one-year grant would take two or three years to process.
- 6.104 Obvious areas in which there was criticism were business management; financial acumen; sustainability, and planning. It was also suggested that the MDDA lacked imagination,

enthusiasm or energy. These criticisms were linked by informants to allegations of corruption, favouritism, political bias or connections. Obviously, all this has important ethical implications.

- 6.105 It was suggested that the MDDA could spend the money it receives very differently. For instance, the Panel was told that the MDDA sometimes puts significant sums of money into a publication and then discontinues that support at the most crucial stage of development. This suggests that the MDDA lacks business management expertise and is unable to take a view on sustainability.
- 6.106 Quite independently of the above comments, Murray Hunter of amaBhungane told the Panel that he understood that the MDDA “operated on the belief that what is required is seed funding to set up entities which will become commercially viable”. Community media that obtain a once-off grant are expected to be viable after a year or two, but he described that assumption as “questionable and not credible”.
- 6.107 One perception reported to the Panel was that the MDDA wants to have “flagship publications” to include in its annual reporting, so it gives online projects priority, ignoring that many consumers cannot afford online news. Only after these have been funded does it turn to print. Although the agency has the buying power to purchase blocks of printing time at a discount with big printers on behalf of several community publications to help them with printing costs, it does not use this power.
- 6.108 One informant took the view that the MDDA was insufficiently resourced or enabled to assist the community media sector.
- 6.109 Oscar Oliphant, a dissatisfied applicant for funding for a newspaper, found the MDDA “unprofessional” and also dilatory in that “they never closed off our application”. He commented that MDDA personnel were not always insulated from their own financial interests and that “key decisions are made by people who are in essence competitors to the very people who are applying to it for funding”.
- 6.110 The Panel was told that the MDDA remains isolated from the communities it is meant to serve by developing community media and fails to engage with, oversee, or be cognisant of, what is actually happening on the ground.
- 6.111 However, there was some optimism from informants that efforts have been made to reform the MDDA; that appointments have been made in an open manner; that a deployee from the Department of Communications did a good job in cleaning up the organisation; and that matters are improving.
- 6.112 SANEF made a detailed submission regarding the MDDA, which it believes “needs to be strengthened to adequately support community media in South Africa”. Much of the material that SANEF relied on comes from the Association of Independent Publishers (AIP), so all allegations and commentary are really those of the AIP. SANEF referred to multiple issues that have been flagged over recent years. These include that the MDDA has had serious governance and leadership crises including a near constant turnover of leadership and has not received clean audits for a number of years, for various reasons including, supposedly, because it funded publications lacking tax clearance. Further, the agency has deposited funds into personal bank accounts and awarded funding to projects with no clear terms of reference or mechanisms for accounting for funding. In the past three years, the MDDA has funded

fewer than ten community publications. The agency has argued that funding for community print media should come from the 'Big 4' print media companies, although the AIP has argued strongly that funding from this source has historically been insufficient. In addition, the submission notes that the Portfolio Committee on Communications has played a poor oversight role with regard to the MDDA and allowed the problems to persist.

The financial see-saw of community media

- 6.113 Community radio stations rely on advertising and sponsorship for revenue. They also have access to grants, and some receive limited financial support from the communities they serve. Research conducted by Wits Journalism revealed the financial difficulties the community stations face in addition to the challenges of corporate governance. That was one reason ICASA imposed a moratorium on the issuing of new licences, which was lifted only in late 2019.
- 6.114 Producing news is a very expensive exercise and it is impossible for the community radio stations to compete against commercial media for advertising revenue on an equal footing. Nevertheless, they are catering for the niche of hyper-local audiences, which continue to grow.
- 6.115 Although community TV has a 9,5% reach, it has only achieved adspend revenue of below 1%. Community radio reaches 25% of the population but only receives 2% of adspend. The sector also relies heavily on government advertising.
- 6.116 The Panel was told that a significant proportion of income is now coming through airtime sales where the community station "sells off chunks of airtime: primarily to evangelical churches who are the only ones who can pay".
- 6.117 Community media has been unable to attract much commercial income and remains reliant on government and airtime sales. To attract commercial revenue, a media outlet must be registered on a central supply database, and participate in the Nielsen listenership sample calculations. The R15 000 per month cost of this is prohibitive and, in any event, this type of sampling is designed to assemble national not local numbers. This confirms for some who spoke to the Panel their belief that there has not really been any political will for community media to succeed.
- 6.118 As a result, one third of stations must manage on an annual budget of under R500 000 and another third on under R2 million. This is not a generous budget on which to run a station. Unsurprisingly, both research and those with whom the Panel engaged indicated that the community media sector generally operates at a survivalist level, which contributes to instability.
- 6.119 One informant tried to put scale to his comments on community media by comparing "the big guys", who have vast congregations of co-religionists who empty their pockets, with other less partisan community radio and print media that struggle to "find ways to pay for telephones".

- 6.120 Community media has depended on municipal and government advertising, a strategy that makes sense for both media and advertisers: such publications and stations reach the local readers and listeners whom administrative entities serve. However, when as often, municipal notices go online, community media receives no income from them. The upshot is that community print media can often publish only intermittently, when they have advertising.
- 6.121 This infrequent advertising often becomes covert advertorial: the station or paper is paid for conducting an interview or including inserts, but publishes no indication that this is paid-for programming and not based on diligent reporting. The Panel was told that “an interview is purchased on community TV” frequently. Lack of experience and skills, as well as financial desperation, allows this to happen. The Panel was told of a prevailing lack of understanding of basic media ethics so that neither management nor journalists see anything wrong in this because “this is how it works”. Many community media practitioners have never had any training, either formal or on the job, in media skills or ethics. It is thus not surprising that community activists feel the need for training on “how to negotiate this landscape”.
- 6.122 Such a financial environment is not conducive to the continued operation of community media, rendering it dependent upon waning government funding and vulnerable to takeovers by religious groupings or the political agendas of the powerful. The impact, for purposes of this Report, is that “quality and independence” are tenuous. News, whose generation requires resources, plays a small part, if any, in community media content. Standards of media practice are diminished and ethics fall by the wayside.

Community radio and television

- 6.123 There are five community TV channels, each with a local footprint. These stations are obliged to include news, current affairs and information programming that is produced by residents in their coverage area, and originates from the communities they serve. These requirements are part of their license conditions. However, given the high costs of producing original news content this is not always possible.
- 6.124 The five stations currently listed by ICASA on air are:
- KZN TV;
- Cape Community;
- Soweto Community Television;
- Trinity Broadcasting Network; and
- Tshwane Community Television.
- Additionally, Bay TV in the Eastern Cape is not listed but is on air.

- 6.125 The community radio stations listed as having the highest listenership are all based in urban areas. These include Gauteng (Josi FM, Kasi FM); Western Cape (Radio Zibonele, Radio Tygerberg, Voice of Western Cape); Eastern Cape (The University of Transkei UNITRA

Community Radio). Similarly, the community television stations around the country also all operate out of the big metropolitan areas; Cape Town, KwaZulu Natal, Tshwane, Soweto and Nelson Mandela Bay.

- 6.126 One experienced media practitioner and community journalist commented: “I don’t think government ever wanted community TV. In 2004 ICASA licensed the first TV stations and this was followed by licenses until they declared a moratorium on issue of other licenses.” The informant cited a range of reasons to the Panel for this situation, including scarcity of bandwidth and the migration from analogue to digital.
- 6.127 Admiration was expressed to the Panel for the “pilot fish” who inspire and manage these stations. There was agreement that skills are imparted, and these stations have been job-creators. However, the trajectory of community print media suggests this may not continue: *State of the Newsroom 2018* noted that the community print media sector employed about 4 000 journalists ten years ago, but that these numbers had halved, along with the number of community media titles.
- 6.128 The majority of community broadcasters appear to continue to serve the communities for whom they were established. Some, however, have simply collapsed. Of those that have survived, the Panel heard that many are thought to have been “captured” by individuals or interest groups; to be subject to pressure from local power brokers; and to be self-enriching or geared to political and commercial interests rather than community concerns.
- 6.129 Successful stations have tried to diversify their revenue streams as much as possible. Karen Thorne informed the Panel that Cape Town TV has diversified and so is able to balance their reliance on providers of funds and the influence of the funders.

Governance

- 6.130 Skills may be lacking in several necessary areas, but the Panel was told that it was remarkable how committed individuals take responsibility for every task and skill and, as a result, produce what is needed. The absence of such multi-tasking individuals, or their departure, can trigger the collapse of a community media outlet, and this points to the dangers of resource-strapped organisations becoming ‘one-person shows’.
- 6.131 As already indicated, many of the problems of community media occur at governance level. The Panel was told: “Management has been captured either by evangelical interests in it for money, or by commercial or political interests,” which is entirely antithetical to the purpose of community media.
- 6.132 One media practitioner not engaged with community media recounted to the Panel the tale of a television station whose license was granted to a man in his own name, rather than to a community or group. The board comprised the man’s friends. After some unsuccessful years, he was approached by another man, who purchased the station from him, paying the original licensee a monthly retainer and partnering with an evangelical pastor who bankrolls the station. The new owner is close to disgraced former SABC Chief Operating Officer (COO) Hlaudi Motsoeneng and the daughter of the pastor is the station manager. Allegedly through GCIS, this station obtains many government contracts.

- 6.133 The Panel did not have the opportunity to meet with the owner or manager of this community television station due to lockdown and thus the full details are not published.
- 6.134 Community television has not escaped the dispute over migration from analogue to digital and the related encryption debate. The Panel was told that an association had been started for community TV, the Association of Community Television, South Africa (Act-SA), which took a stand against encryption. That grouping and individual television stations are believed to have received equipment and financial support from MultiChoice, which has a clear and public agenda on this issue.
- 6.135 amaBhungane told the Panel that they had been informed of corruption, where a middle person needs to be paid a certain percentage in order to unlock sponsorship, whether from municipalities or elsewhere.
- 6.136 The Panel was also told of rumours that “boards are battlegrounds for different ANC factions”. The role of board members is seen as bringing lucrative contracts to stations through their Party and government connections, rather than as overseeing ethical governance, and these board members are thought to be paid “enormous” fees as well as rumoured kickbacks.
- 6.137 Suggestions of financial impropriety were also made in respect of many other stations. It is strongly underlined that the Panel was unable, in the time available and under conditions of lockdown, to investigate these allegations. They are reiterated not because they are believed by the Panel to be true, but because they indicate the environment within which media practitioners believe community media is situated, and the challenges faced by community media practitioners. As one example, a senior, politically connected board member at 1-KZN, responsible for directing lucrative contracts to the station, was alleged to have been found with “his fingers caught in the till; he accessed a credit card (...) took commissions” because “financial controls were not in place”. The Panel’s informant said these allegations were the subject of ongoing investigation. It was further suggested that 1 KZN is required to – or does – have a team following and acting as a public relations body for King Goodwill Zwelithini. A senior person at Soweto TV was allegedly involved in soliciting bribes; senior persons at Bay TV were described as aligned to one ANC faction, which has allegedly appointed people to run the station. The prevalence of all these allegations and rumours strongly suggests that in such an environment it is not possible to even begin discussing the purposes of the media as set out in this Report, the ethos required for good media practice and the ethical standards expected of the media. One informant said to the Panel, “How can ethics even find a foothold or survive in a climate like that?”

Content

- 6.138 Those with whom the Panel engaged indicated a disjuncture between the community need for news and desire for local content, and the need of the station or paper to “make money and present lots of entertainment, music, religion, youth, celebrity and gossip”.
- 6.139 Licence conditions do set requirement for the percentage of news required, as well as language spread and local and international content. But news is expensive. On limited budgets, with junior staff, and without dedicated news teams, it is unsurprising that a dearth of time is devoted to news. Additionally, as described above, sometimes news editors are political appointees and have no desire to engage with community issues. All this renders it difficult to maintain and preserve the editorial integrity of a daily news service.

Editorial policy

- 6.140 The Panel was told of only one community station which has an explicit and grounded editorial policy. Cape TV is a membership-based organisation, divided into sectors concerned with labour, education, sports and other relevant areas. Representatives are elected to the Board so that different interest groups have voices there. At annual general meetings there is strong engagement with the views of members, who have an influence on the channel. News is looked at through a human rights and social justice lens. The station explicitly “practices community participation” and considers that it exists “to facilitate a media platform for community groupings” whether they are emerging production companies creating content for TV, advocacy programmes, education NGOs, and so on. The station takes a position. It seeks not balance but accuracy and editorial integrity.
- 6.141 Thorne commented that she was uncertain of the extent to which SANEF editorial policy and guidelines could be applicable to the community media sector. She thought that community media had not been taken as seriously as it deserved and that “we have been totally under the radar whether SANEF, SABC, ICASA”.
- 6.142 This may be explained by the different roles played by mainstream and community media. Community media locates itself within “development communication” and members of community media operate in an “advocacy space”. After engagement with community media to discuss its role, mandate and the appropriate ethical guidelines, it was suggested that not enough specific guidelines for this role are in place.

THE DIGITAL WORLD

Internet challenges to traditional media outlets

- 6.143 The growth of the internet has been surprisingly fast and its effects dramatic. By 2018 it was estimated that no less than 56% of the population of South Africa was using the internet. By 2019, over 21 million South Africans were using Facebook alone. The Reuters Institute commented that: “South Africans are some of the heaviest users of social media and messaging in the world. In terms of general use, almost 9 in 10 (88%) use WhatsApp weekly with 8 in 10 (80%) using Facebook”.
- 6.144 amaBhungane told the Panel that the sooner “people make peace with the future the better. This is a transitional period. Digital is the future”.
- 6.145 News media is under pressure from changes in audience consumption of news wrought by the digital age. As already discussed, traditional publishers of newspapers who produce most of the news driving the political agenda have been hardest hit. Time-honoured print news production practices have been disrupted by the need to produce news in new ways for new audiences online. Broadcasting will face new challenges with the transition to digital broadcasting.
- 6.146 The displacement of the traditional business model has already been discussed, as well as the pursuit of what have been called “bright shiny things” in the “relentless, high-speed

pursuit of technology-driven innovation”. Among the various models for transition, Rumney has identified and discussed those where the audience pays (subscription, membership, advertiser); where a third stream is developed (events, services, advertising); where citizens pay (licence fees, direct government grants, tax breaks); and where corporates or donors pay (corporate social investment (CSI), advertising, taxes on Google/Facebook and others).

- 6.147 For this Report the issue is the impact of digital innovation on the news media and the implications for ethical media practice: to what extent has digital media advanced normative considerations and ethical practice in journalism?

The Contract for the Web

- 6.148 Izak Minnaar introduced the Panel to the World Wide Web Foundation’s *Contract for the Web* (and much else besides). The *Contract for the Web* was created by representatives from over 80 organisations, representing governments, companies and civil society, and sets out commitments to guide the digital policy agenda. It states:

“The Web was designed to bring people together and make knowledge freely available. It has changed the world for good and improved the lives of billions. Yet, many people are still unable to access its benefits and, for others, the Web comes with too many unacceptable costs. Everyone has a role to play in safeguarding the future of the Web.” (...)

Governments will:

Principle One: ensure everyone can connect to the internet.

Principle Two: keep all of the internet available all of the time.

Principle Three: respect and protect people’s fundamental online privacy and data rights.

Companies will:

Principle Four: make the internet affordable and accessible to everyone.

Principle Five: respect and protect people’s privacy and personal data to build online trust.

Principle Six: develop technologies that support the best in humanity and challenge the worst.

Citizens will:

Principle Seven: be creators and collaborators on the web.

Principle Eight: build strong communities that respect civil discourse and human dignity.

Principle Nine: Fight for the Web.

- 6.149 Achieving acceptance of the principles above would enable the South African population

to access the media and news through every digital medium; would empower the rural and disadvantaged who currently cannot access newspapers or view television and whose understanding of current events is confined by being derived only from SABC or community radio in African languages; would offer a diversity of voices and ideas emanating from the greater diversity of voices who are currently unheard; and would reveal the media industry in all its diversity to all those who deserve to be informed about the society in which they live.

- 6.150 Should the media industry promote this *Contract for the Web*, it would be implementing one of the functions for which the media exists.

Control by algorithms

- 6.151 Audience engagement with digital news has been varied. Rumney has summarised work done by others on how the audience has, or has not, been able to approach digital news media. Reid and the Media and Democracy Project (MPDP) have also researched this area.
- 6.152 The development of blogs was initially thought to extend freedom of the media to more actors. However, established media have entered the blog space aggressively, and hybrid sites use bloggers ('opinionistas' or 'influencers') for a range of purposes including crude marketing. Podcasting may have given audiences access to programmes, but the space has been colonised by radio stations and professional journalists. It was hoped that online video would be accessible to all users. Yet although YouTube videos, and video material created and accessed via cell phone applications such as WhatsApp by ordinary citizens, have had a powerful impact in many politically charged moments, video production remains expensive, and big media houses still originate much of the news posted and disseminated via YouTube and the cell phone apps. Certainly, the public need no longer be passive: if they can access and master the relevant technology, they can create, edit and circulate news for themselves. Thus there is some convincing evidence that top-down communication is now being supplemented by horizontal-citizen-to-citizen flows via social media. However, dominant players such as (most importantly) Facebook and Google employ algorithms to determine what will be included and prioritised and disrupt spontaneous searches for and interaction with content. Often these algorithms embody the unquestioned biases and assumptions of their creators. These dominant online spaces, and Twitter, are additionally infested by more malign actors, including covert marketing disguised as news content or personal comment, 'trolls' posting aggressive and inflammatory material and 'bots' harvesting and disseminating data as the basis for many, often manipulative and sometimes criminal, activities.

New approaches to information

- 6.153 Despite these challenges, there has unquestionably been an irreversible move away from the traditional view that only centralised information from established and 'official' media sources can be relied upon. With the advent of a situation where, at least potentially, 'everyone is a publisher', there has been an explosion in the amount of information available; in the sources of such information, and in its type and nature. One has only to think of the many citizen journalists recording events in the Black, working class townships of South Africa, which

would never before have seen the light of day, let alone received an audience response.

- 6.154 The internet has provided necessary facilities for significant and innovative journalism to exist and grow. amaBhungane, investigative journalism par excellence, deprived of an outlet in a specific newspaper, went its own way by publishing the results of its investigations on its own website, from which they could be utilised by other online sites and newspapers, as well as by conducting investigations on commission from those other news organisations. The *Daily Maverick* has grown from an unknown start-up to a force of unknown potential on South Africa's news landscape.
- 6.155 Stefaans Brummer of amaBhungane told the Panel that "the soup of information is now available for free to everyone – that soup contains chunky bits, very nutritious bits, delicious bits and (bits that are) not nutritious at all". The fact that anyone can publish "has enabled this great broth to be served up".
- 6.156 There is also an uptick in the numbers of those seeking and obtaining information. amaBhungane told the Panel that access to data is changing and is increasingly via smartphones which means that "access to our long stories is available for more than just the middle class because it doesn't take that much data to download". amaBhungane believes that some 70% of the stories published on their website are accessed by smartphones, not via computers, which "tells about the changing nature of media consumption".

Disinformation and fake news

- 6.157 However, digital media has also increased the potential for spreading mis- and disinformation and propaganda, all of which are often popularly conflated under the label 'fake news'.
- 6.158 Platforms such as Facebook, Twitter, and Google claim to be no more than conduits for information and take only very limited responsibility for the misinformation, lies, abuse, hatred and other types of conflict-fanning utterances on their sites. These sites afford a convenient mask of anonymity to those posting with malign intent and thus there is no accountability for the production or publication of this type of content.
- 6.159 However, propaganda, disinformation, and 'fake news' are not solely a product of online news development. The traditional print and broadcast media were never wholly innocent in this regard; online platforms simply provide a much larger, faster and more efficient engine of dissemination.
- 6.160 Insofar as it impacts upon the ethical and other challenges facing the media; on the credibility of the media; and on the trust which the consumer can place in the media and news; fake news is further discussed in Chapter Ten.

MAIN POINTS OF THIS CHAPTER

This chapter:

- **Describes the historical background to current debates about editorial independence;**
- **Discusses the impact of shareholder pressure and the arguments for and against a ‘wall’ between owners’ influence and editorial policy;**
- **Recounts the submissions the Panel received on this topic from owners, editors, reporters and interested members of the public;**
- **Evaluates reported instances of breaches in editorial independence ranging from unacknowledged advertorial to the media ‘capture’ associated with the Gupta family; and**
- **Investigates the existence and adequacy of newsroom codes and possible improvements thereto.**

CHAPTER SEVEN: EDITORIAL INDEPENDENCE

INTRODUCTION: The legacy of control, propaganda and liberalism

- 7.1 The Panel heard of many instances where editorial independence had not flourished. The SABC, for example, has had to struggle to emerge from its carapace of obedience to State propaganda, and the Panel's informants suggested it remains somewhat respectful and dated in its approach to news production and presentation. It never claimed to have any 'Chinese Wall' between political masters and journalism (an allusion to the 'Great Wall of China': any barrier to communication and interference in situations where the interests of the two conflict). The Hlaudi Motsoeneng era clearly demonstrated that this porous 'His Master's Voice' relationship with the state continued, although some editors fought to instil an ethos of editorial independence, exemplified by the struggle of the 'SABC8': SABC news journalists harassed, restricted and dismissed for insisting on their right to report news fully and truthfully. Under new management, efforts to eradicate historic deference continue.
- 7.2 Much the same applied in respect of the relationship between the Afrikaans media and the apartheid regime until the advent of democracy. However, the dislocation between an ANC-led government and an erstwhile pro-apartheid media regime has apparently successfully encouraged some necessary distance between newly democratised owners and management and a younger, more transformed media staff.
- 7.3 Traditional English media professed a libertarian model of journalism protected from commercial interference by so-called 'Chinese Walls' between owners and editorial.
- 7.4 From submissions heard by the Panel, it seems the ambitions and expectations of owners have changed over time. Anton Harber cited owners such as Abe Bailey (the gold magnate, whose son Jim founded *Drum* magazine with family money) and Robert Maxwell (who acquired the UK *Mirror* group of newspapers in the mid-1980s). They, Harber said, ran newspapers "to enhance their power and prestige". When listed conglomerates were focusing only on making money, "power became dispersed. But when they stopped making money, then the search for power became important".
- 7.4 Another journalist commented that some owners had a tendency to see the news as "a driver for their business interests" and a route to "leverage opportunities in the market". This puts pressure on the editorial staff and the news agenda and results in "values being pushed back" and "media practitioners wonder[ing] whose interests we are serving".
- 7.5 At outlets in the Independent Newspapers stable, informants suggested it was "commonplace for reporters to be sent on assignments without the news editor knowing" because "these are decisions taken in collaboration with politicians". When a reporter files a story and it has passed checks for fairness, balance and accuracy, word will come from "upstairs" that the story is "not correct".

- 7.6 The Panel was told that the chairs of the media house boards could sometimes have a relationship with politicians “founded on questionable interests”. Politicians then approached the chair of the board “because he has created expectations”. The chair “goes to the people he has put in place as people he trusts”, such as the CEO, the editor and the group political editor to “execute the decisions of the chair”. Thus a situation could arise where they “take instructions without due consideration for ethical standards”.
- 7.7 One former editor commented that people wanted to own media companies “because they are driven by their own business interests and see the media to be used as a powerful tool to advance those business interests,” so that “if you want a contract with government, then you give government a voice, or project them in a positive light, or not publish stories which harm their reputation”.
- 7.8 Alide Dasnois had the opportunity to consider and write about the impact of a corporate agenda on the media, where the media investment is often a tool for making money or supporting whatever political faction will make the media owner money. As Dasnois has said, owners are frequently thought to “own a paper not for product for power or access to power”.
- 7.9 However, in their book, *Paper Tiger*, Dasnois and Chris Whitfield described a different situation. The earlier Irish owner of Independent Newspapers, Tony O’Reilly, “stripped our newsrooms and sent our money as dividends to Ireland” because the issue was one of money, but did not interfere in stories: “there was a lack of editorial interference”.

The need of shareholders and owners to make money

- 7.10 In Rasmus Kleis Nielsen’s 2018 draft chapter on the *Changing Economic Contexts of Journalism* for the Reuters Institute ICA Handbook of Journalism Studies, he notes that “the private for-profit business of news is particularly central to investment in journalism”. This certainly impacts on the role of owners and management in relation to media norms, ethos and ethical standards and practices.
- 7.11 As Nielsen writes: “the need to make money has been a central consideration for journalists and news media from the very beginning of modern journalism. This is not some nefarious plot. People need to make a living; Organisations need to cover their costs, (and) investors expect a return on their investment. So someone has to pay.” Norman Munzhelele, Managing Director of eNCA, concurred descriptively, telling the Panel, “I worry about the eyeballs!”
- 7.12 Those ‘someones’ who pay include advertisers who have access to the boardroom. Among these are politicians who deliver lucrative government notices and a corporate world seeking the imprimatur of the so-called independent media via the publication of material that is really ‘advertoiral’ authored by corporate public relations departments. Owners often want more than news and parley their media platforms and influence for participation in political and commercial enterprises.
- 7.13 SANEF has submitted that false advertising contributes to an overall erosion of trust in the media. Indeed, one of the first submissions received by this Inquiry was from retired investigative journalist Jon Abbott on the same issue. SANEF has noted the work being done

by the new Advertising Regulatory Board (ARB) and by ICASA's Complain and Compliance Committee (CCC) to counteract false claims in advertising in terms of Section 55 of the Electronic Communications Act, 2005.

Principled justification for separating ownership and editorial

- 7.14 A majority of the journalists with whom the Panel engaged demanded adherence to the 'Chinese Wall' model of distance and separation between owner/management and editorial.
- 7.15 Judge Satchwell repeatedly asked each interviewee why investors and shareholders, who are only interested in dividends, should not be entitled to expect boards of directors and management to intervene to ensure that the products of their investment made money for them, regardless of the news content offered, opinion or vision expressed, or ethical practices involved. Informants were asked to explain, in other words, why those who put up the money should not influence the enterprise and output of journalism. The answer was always a shocked response setting out the need for a free press, which included freedom from corporate as well as political interference.
- 7.16 But, for Judge Satchwell, this begs the question. No news and no journalism is neutral. From the selection of news through to its final presentation there has been subjective approach, interpolation, production and editorial input. Journalists are not mindless automata without personal views and predilections, and are entitled to have views on the issues of the day and the subjects they cover. Similarly, media owners have historically used the media they control to advance a world view or a position on particular issues. Judge Satchwell found it surprising that so many practitioners could not advance convincing arguments as to why owners and managements should not express a voice or give direction on editorial matters of concern to them. It would appear to her that the practitioners with whom she had discussions had the expectation of a free hand to do as they wished, without any real appreciation that they are no wiser or more all-seeing than those who put up the money in the first place. She queried why journalists had no appreciation that they might owe some accountability to those whose investments enabled news production.

The Primedia report

- 7.17 Answers, of course, have been proposed. One, from Advocate Terry Motau SC, is found in the report of the Primedia inquiry into allegations of editorial interference at Radio 702. There, he commented that: "censorship and editorial interference are inimical to media freedom and are an affront to the foundational principle that media must be immune in order to promote plural programming and a divergence of views." Motau's statement, of course, rests on the assumption that 'the media' which needs freedom comprises only journalists/presenters and does not also include owners and shareholders; that assumption itself merits further interrogation.
- 7.18 When adjudicating a complaint by journalist Karima Brown, against the station manager of Radio 702, about allegations of editorial interference and censorship, Motau found that a

station manager: “as editorial custodian is entitled to give editorial input and, where there is merit, it will be implemented”. He continued: “the mere fact that a station manager disagrees with a journalist and gives input contrary to that of the latter does not, in and of itself, without more, amount to censorship and/or editorial interference.”

- 7.19 Interestingly, Brown herself met with this Panel and discussed the circumstances of her appointment to her position at Radio 702, which was determined by members of the board of directors and senior corporate management, without the contribution of the station manager. Some might consider that intervention by owner and management as interference in matters which should fall within the purview of station and editorial management.

Editors’ rights and the ‘Chinese Wall’

- 7.20 A recent article written by Advocate Colin Kahanovitz SC and published in the October 2020 issue of the *Industrial Law Journal*, examines the extent to which the common law duty of a newspaper editor to obey the instructions of the employer is impacted by the constitutional rights of freedom of expression and the right to information. Kahanovitz argues that the editor, while remaining subject to the policies and instructions of the employer, is a different kind of employee protected, in appropriate limited circumstances, from suffering occupational detriment where her disobedience in publishing content is consistent with journalistic ethics and reasonably required to promote freedom of expression and the public’s right to know. The author argues that press freedom requires protection for news-producing employees not only from state power but also from media-owning private interests.
- 7.21 The offensive interference by employers which is cited by Kahanovitz pertained to attempts “to restrict the free flow of information” and included blacklisting of certain commentators, non-broadcasting of programmes or non-publication of stories for political reasons and, in short added up to “a newspaper owner who seeks to kill off a story”.
- 7.22 Kahanovitz suggests that there should be insertion of an explicit term in contracts of employment that the editor was required and expected to observe journalistic ethics and editorial independence, failing which the employing publishing house should publicly espouse adherence to the principles of a code of ethical conduct which form part of the rules of the workplace.

Views on editorial independence from owners, management and journalists

- 7.23 Johnny Copelyn believes that “an owner has to hold back”. A good owner does not solely identify with media as a way of making money, because the owner is not neutral and may have a political message, which means the owner would never appoint certain people. But once that is done, the proprietor must trust those who have been appointed in that “there must be a meeting of minds between the owner and editor and senior leadership”. People who are taken on to work for eNCA, he suggested, should be “slowly drawn into a way of thinking”, such that the station has “coherence” in presentation, world view and content.

- 7.24 Brown was unapologetic in her view that “boards have the right to go to editors and say that the figures are no good and something must be done about it”, and that it was editors who must meet targets to maintain or sustain listenership or readership and must act on this. However, she did not support interference by Boards in editorial matters.
- 7.25 Another eNCA editorial staff member was of the view that “editorial staff and station managers cannot just wish owners away”. This journalist believed that “owners ought to ask questions about coverage” and could ask, “are you sure this is the right way to cover a story?” making the point that not only does “editorial need to engage with owners”, but that there should be some oversight to ensure that “journalists/editors should not take low-hanging fruit”.
- 7.26 Another journalist did not “mind the stakeholder engaging with senior staff re: the direction to be taken”. But one could not, this respondent suggested, have rogue figures setting up interviews and directing what journalists must do. It was suggested that “clear rules of engagement between editorial and boards” were needed. The problem was identified as the liberal paradigm in South Africa, where there was “lack of clear articulation and things are not clear and are grey”. There were differences, this informant pointed out, between lobby groups with a clear agenda to advance and news media organisations. There were also, however, media outlets with a clear agenda, including what the informant characterised as local language and culturally identified papers, attached to an ethnic group and existing to “look after their interests”. All that was required was that every media outlet should be “clear about the agenda”. It was suggested that “the English media does not come out and say, ‘this is my position’”, unlike the Gupta media sites.
- 7.27 One current manager was of the view that “we are a commercial business and so interference is justified.” This person noted that: “when a station manager and presenter disagree, this is not automatically censorship. After all, someone has to be accountable. The overall picture has to be taken into account. Presenters are not autonomous, and are given a framework. It is not prescribed what they should do; just what strategically needs to be done.”
- 7.28 Dasnois was very clear that “information is a public good. Producing information is not the same as producing bottles.” For her, the reason for the ‘Chinese Wall’ was that “editors are appointed by a board who thought the editor would be competent,” which is a commercial issue as well, since “the board does not know how to run a paper and needs an editor to have free rein to make editorial decisions”. As she pointed out, in the United States there are newspapers where reporters who write news are not even permitted to write opinion or editorial. This ‘Chinese Wall’ is to protect the readers who “should not be bombarded with stories which have not been professionally weighed”.
- 7.29 Stefaans Brummer of amaBhungane said: “the starting point is developing a public understanding of journalism as a public good and not the exclusive domain of those who produce it. All have responsibility for journalism.”
- 7.30 Adriaan Basson of News 24 was very clear: “I’ve never had a boss telling me what to do... at most making suggestions.” In fact, Basson told the Panel that in the course of the DSTV investigation, emails were found involving Faith Muthambi and the Guptas, which Basson said were used by News24 and “there was no backlash from MultiChoice or Naspers”.
- 7.31 The Maverick stable is somewhat unusual in its combination of resource/ income streams and its combination of shareholders/members/donors, but Branko Brkic said: “In principle it

goes down to what is the media? Should news media be a public service or a business? We at *Daily Maverick* made the decision we are a public service first and foremost so we don't think about ourselves as a business." Insofar as the donors of *Maverick* are concerned, Brkic said some are always worried about the influence of philanthropy but "in our case people can see the result immediately; we come out every day; what we do is in the public domain". Brkic is confident of *Maverick's* independence saying: "if in the ordinary world, someone pays you, then you sing, and if someone pays you to dance then you dance – but we bite your head off."

- 7.32 Chris Roper did not agree with business people managing the media. He said "credibility demands a wall between business and journalism". However, he believed there was a need for a "translator" between business and media languages, which required "a business person who understands those ethical considerations".
- 7.33 Another journalist and media trainer spoke about the importance of credibility for the enterprise of journalism. Any covert influence – wherever it comes from – leading to fabricated stories, praise songs or censorship, erodes credibility and fosters a public climate in which belief in truth itself, and in democracy, are weakened. Explicit declarations of a news outlet's political stance and mission alone are not adequate. News consumers also have the right to know how newsroom checks and balances operate – and how stories are assembled. Some overseas outlets now publish 'How We Wrote the Story' commentaries on their work to this end. Additionally, it is unsophisticated to assume that pressure to make a title more lucrative is simply about ethically-neutral 'business'. If that pressure leads to the title focusing on a narrowed range of trivial, rumour-based, sensationalist or even hate-mongering stories – which may well attract more consumers and thus advertisers and revenue – it changes news values and erodes newsroom ethics.

Measures to secure editorial independence in the newsroom

- 7.34 Certain of the recommendations by Motau SC in the Primedia Report may be of value to all media outlets. They include that Primedia should induct its employees and staff into policies and employment procedures; develop a comprehensive statement of editorial policy that includes the principles of the BCCSA and Press Council Code; improve the channels for audience complaints; revive the position of an internal ombud/complaints officer; develop a set of guidelines for handling complaints, and create an internal mechanism to resolve conflicts over editorial and ethical standards between staff.
- 7.35 Motau SC also 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."
- 7.36 The Thloloe *Report of the Commission of Inquiry into Interference in the Decision-Making in the Newsroom of the SABC* made certain recommendations intended to assist with establishing principles of editorial independence. Although the majority of recommendations were specific to the SABC, some have relevance for all news outlets. For example, the report suggested a new designation of 'Chair of an Editorial Policy and Ethics Committee', who would be responsible for chairing all group executives of information programming; including radio, television, sports, and education. This committee would be the highest point of upward referral by editorial line managers, tasked with upholding the editorial policies and the highest editorial and ethics standards.

- 7.37 Similarly, the Thloloe Report recommended the creation of a News and Current Affairs Advisory Committee consisting of persons such as a retired editor, a person teaching journalism ethics at a tertiary institution, and a retired judge, with the purpose of advising journalists, editors and producers on editorial issues.
- 7.38 Interestingly, the Thloloe Report recommended that all newsroom staff, from the most junior to the most senior, 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.
- 7.39 This Report has already described how News24 has George Claassen as its Public Editor/Ombudsman. The Panel regrets that it was not possible to explore his views on that position and the value which such a person and resource can offer all media platforms. The statute of such an ombud; the expertise both internationally and locally which an ombud has obtained; the possibility of regular input and advice on media practice and ethical issues to the platform concerned; the contribution which could be made to publicising information about the value of the media and its challenges, and many other attributes suggest that such a person and resource could offer much to both the platform and the industry generally, provided news managers heed their rulings.
- 7.40 What is especially valuable about these recommendations is that they embed within official structures policies, advice and training on editorial and ethical policies and standards. Where such policies are officially created and personnel are identified, resourced and heeded, they hopefully become part of the skeleton of an organisation. They offer guidance to management and both protection and guidance to journalists. Their existence also offers reassurance to the media consumer.

ALLEGATIONS AND COMPLAINTS OF OWNER INTERFERENCE

Anonymity and confidentiality

- 7.41 The majority of the non-management, non-editor journalists with whom the Panel engaged were adamant that there was interference to varying degrees. One written submission stated: “Media owners in South Africa are potentially a major threat to media freedom, perhaps as much of a threat as external political parties and incidents of violence and intimidation...”
- 7.42 However, the insistence upon anonymity as to the informants and therefore confidentiality of the details, have prevented the Panel from reporting on more recent or current instances of this interference. Accordingly, what is offered in this Report is of more recent historical interest or without an indication of sources.
- 7.43 This Report has previously commented on the perceived need for the protection of anonymity by so many media practitioners, and that this indicates a perception that journalists who express concern about management and owners would be exposed and vulnerable to punitive action of some sort.

- 7.44 The Panel must immediately note that such desire for anonymity has meant that the allegations heard cannot be raised with those against whom they are made. Thus there has been no opportunity for the objects of complaints to respond, dispose of, or present alternative interpretations. For this reason too, the Report does not detail which owner, management or person allegedly performed which action, but offers these allegations and complaints as exemplars of what may, can, or perhaps has, taken place.

Allegations and complaints of interference

- 7.45 With release of the explosive report on the Vhembe Building Society (VBS) Bank, all news outlets ran stories on the financial and political machinations involved. However, in one media outlet, a written instruction was allegedly sent out by a member of management to say that there had now been a “shift towards a particular narrative” which was apparently the inclusion of senior members of the EFF. Thereafter, the owner, who was close to EFF leadership, held a meeting in which he expressed vehement concerns about the direction that coverage of the VBS scandal was taking saying, inter alia, that managers were “not sponsoring black progress” by their reportage of the VBS saga.
- 7.46 The affidavit of Minister Pravin Gordhan was leaked to the media before his appearance at the Commission of Inquiry into Allegations of State Capture, (the Zondo Commission), and all media outlets covered this, with the result that the Commission expressed displeasure at such leaking of documents. The owner of one media outlet questioned the politics reporter who had obtained the leaked affidavit, and the head of news, on why this leaked affidavit had been covered. It was pointed out to the owner that this action did not represent any violation of the Commission regulations, nor of editorial policy or any media Code.
- 7.47 One informant told the Panel that “Editorial interference and hiring and firing of editors became the norm” at one group and made reference to the departure of Moshoeshoe Monare, Wally Mbhele, Alide Dasnois, Makhudu Sefara and Philani Mgwaba from one title “who all left under a cloud of controversy in what was seen as editorial interference”, while Max du Preez “quit as a columnist after group titles ran an editorial apologising to the president” for an opinion piece in which the president had been criticised. This was cited to the Panel to indicate the cloud of uncertainty under which journalists labour.
- 7.48 A former journalist in the Independent Group commented;
- “In our country where corruption and abuse of power are so pervasive in the face of poverty and deprivation, we need a strong and uncompromised media that is unwavering in playing the proverbial watchdog role, guided by the principles of accuracy, fairness and balance. It is indeed tragic how many journalists have to contend with commercial and political overreach into the newsroom which is destroying their craft and threatening to gut the profession.”
- 7.49 Another journalist from the Independent Group commented that the “media industry is in grave danger” and referred to overreach by owners in the editorial space; interference in story lines and placement of articles on pages. The Panel was told that: “the editor is dictated to by management who sets the agenda and [arranges] orchestration thereof.” It was speculated that “often this overreach is the result of corporate pressure or worse, political pressure”.

- 7.50 When the Panel met with Johnny Copelyn, Chair of the Board of HCI, which owns eMedia, he volunteered that he had contacted the CEO of eMedia to complain about eNCA reporters and cameras covering EFF activities outside the chamber of the House of Assembly instead of covering the State of the Nation address, which was being delivered within the Houses of Parliament. Copelyn stated he felt the actions of the EFF were disruptive and contrary to his political beliefs. What the nation needed, he believed, was to support and show respect for the president.
- 7.51 The complaint was subsequently relayed to the news team on the scene. It is not clear who received the instruction or who implemented it, but Copelyn told the Panel that soon thereafter the cameras moved away from the EFF protest.
- 7.52 Panellists Bikitsha and Mkhondo found this admission by Copelyn most disturbing and startling. The Panel questioned Copelyn as to whether he was not concerned that such an instruction from the highest levels of the enterprise would have a chilling effect on editorial independence and decision-making. However, even when Copelyn was pressed by the Panel he would not be drawn further on this.
- 7.53 It is the view of Bikitsha and Mkhondo that editorial decisions cannot be based on the vagaries and whims of owners punting their political preferences. Editorial decisions must reside with the staff appointed to such positions who presumably are guided by values of newsworthiness and judgement.
- 7.54 Advocate Motau in the Primedia investigation articulated a principle that he believes should guide all news organisations:
- “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.”
- This is most instructive given that eNCA professes to tell the news ‘without fear or favour’.
- 7.55 Copelyn however did state that he considered his personal intervention in this way to be regrettable in that “on reflection I think I broke a principle, broke a boundary”. He said that the owner of a media outlet had to stand back and leave it up to the editor. He explained: “somewhere in the organisation I have to accept diffusion.” If he, as chair of the eMedia Group felt he could take out his displeasure with individual journalists, then “I would be way out of line”. However, Copelyn said he does “feel free to talk to executives who run the news with whom I feel close and well aligned to”. Copelyn felt that his contacting the news team regarding the State of the Nation Address was “inconsequential” because it does not represent: “a view that says the owner will decide what happens on television. It is the people running the news who have a diary meeting, (who) choose what is to be covered, which people to allocate”. Copelyn said that since 1998 he had not once seen a minute of a diary meeting.
- 7.56 There has been an ongoing public narrative in which Dr Iqbal Survé has been accused of using the newspaper titles owned by Independent Media to fight his legal, political, financial, and personal battles, and that the integrity of the news products had always been severely compromised by the interference of the owner. In the course of the Mpati Commission of Inquiry, former AYO Technologies executives gave evidence concerning owner instructions and editorial compliance:

“... his newspapers were used as a mouthpiece for the group. Often instructions would be given to Adri Senekal de Wet to get articles done.”

And:

“You had three non-executive directors that were Independent Media employees, and these are supposed to be independent non-executive directors. Subsequent to that you’ve got Takudzwa Hove who is the Chief Financial Officer of Independent Media, who sits on the board of AYO Technologies; you’ve got the Executive Director for HR of Independent Media, who sits on the board of AYO Technologies; you’ve got all these people who are Independent Media people and of course, the CEO, Mr Howard Plaatjies, is the Digital Head of Independent Media who is now the CEO of AYO Technologies. So, given this very close relationship between the two, it was very easy for Dr Survé and Mr Abdullah, or whomever joined the group to say, Guys we need an article to come out, this is what the article should say, this is what people should be quoted.”

- 7.57 Brown, in her role as political analyst, allegedly had the ear of and access to management of eNCA, and was on an executive WhatsApp group (comprising the CFO; the COO; the CEO; the CEO of HCI; the marketing manager; the MD, and station manager of eNCA – and Karima Brown). If she was not assigned to a story then the executive member of HCI on the Board of eMedia Holdings, Yunus Shaik, was said to enquire why she had not been assigned, making it clear that Brown had approached management, to which she had access.
- 7.58 The Panel was approached by a number of people who wanted to make submissions about the Fees Must Fall campaign and media coverage thereof. Few eventually did so. However, one journalist told the Panel that after students had shouted at the Minister of Higher Education very publicly, there were suggestions made to the newsroom that the story should be retracted and the media outlet should apologise. However, the minister was approached and apparently told that he could write a formal complaint; the outcome was that a follow-up article presenting him in a more favourable light should be prepared. This predicament is seen to arise from “media owners being too close to politicians,” with the result that this “impacts negatively on operations” because “owners take sides and align with factions and are entangled in factional politics”.
- 7.59 The Panel heard that at a strategy session to discuss the coverage of the EFF, the executive member of HCI on the eMedia Board, Yunus Shaik, allegedly said, “I hate your channel; you give Julius Malema free rein.” When the Minister of Communications was to be interviewed, the COO, Mark Rosen, allegedly gave the journalist a list of questions to ask the interviewee. The comment was made to the Panel that, “the COO has no business making editorial suggestions, which has a chilling effect on journalists”.
- 7.60 On the other hand, when the Panel met with senior editorial staff at eNCA, all expressed their mindfulness of the need to “reconcile or balance competing interests because as journalists we are aware that eNCA is a commercial broadcaster”. However, each was adamant that, to quote Megan Rusi, “we take final editorial responsibility”, and (Paul Diamond) “[we] are editorially strong”.
- 7.61 Much has been written about what has been called “the circus” at Independent Media, where on one occasion all the editors were instructed to run the same front-page story by the owner, and where an avalanche of independent and experienced editors and journalists fell into disfavour with the owner himself and then departed. It was pointed out to the Panel that the

Survé relationship with the Independent stable “is reminiscent of an earlier era when owners were editors and vice versa”.

- 7.62 One news manager spoke to the Panel about “executive overreach” and described how management at board level asked for details of the diary and comparisons with another media platform.
- 7.63 Another manager was told by senior management to hire a particular person as a talk show host, notwithstanding that the manager felt that this proposed employee did not fit the demographic of the audience, would be too expensive for the budget and that it was unethical to pay one person a higher salary than others in the same position. Of course, the manager felt undermined in their position as a manager, particularly when dealing with this employee, who did not hesitate to remind the manager that it was board level management who had made the employment decision.
- 7.64 Employees at a radio outlet knew that one person was being paid – over and above their salary – additional amounts for conducting interviews with politicians. This, the panel was told, was perceived as not only unfair to other employees but also inconsistent with an approach that did not pay anyone to interview business persons.
- 7.65 More than one person told the Panel that members of the board had always asked questions about commercial decisions, but were now also asking questions about editorial decisions such as how diaries were arranged and how personnel were allocated to stories or interviews.
- 7.66 It was made clear to the Panel that most editorial staff now have KPIs which deal with revenue. One manager commented: “I shouldn’t have such a KPI – I have to make decisions on what we cover based on money.”
- 7.67 There was a complaint that, “[XYZ outlet] has always been a commercial business but we were able to manage the tension between business and editorial quite well.” Now, however, arguments were arising between management and editorial “based on commerce” and this “has an impact on the kind and quality of content”. There was also regret that “shareholders are not interested in the story of [the outlet] and our role in building a democratic South Africa.”
- 7.68 The Panel was told about one outlet where: “board members have a favourite and so they make approaches to ask about the work they are doing. And board members have a view on operations and some think they can interfere with operations.”
- 7.69 *Paper Tiger* by Dasnois and Chris Whitfield sets out instances of management and owner interference in the reportage and editorial work of titles in the Independent Group. In a review of the book, Rebecca Davis quotes two previous editors within the Independent stable in terms of why they left. Both cite the lack of editorial independence they experienced, with Moshoeshoe Monare saying that he tendered his resignation as *Sunday Independent* editor “when it was very clear that my independence as an editor was compromised”, while 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”.
- 7.70 There were complaints about eNCA that “once Marcel was gone, Johnny and SADTU (the

South African Democratic Teachers Union) felt emboldened to phone.” One instance cited was when an invitation came from the South African Jewish Board of Deputies (SAJBD) for a reporter go to Israel just a month after an invitation had been accepted to go to Palestine. Editorial staff made the decision that the journalist going to Palestine would be the one to go to Israel, for comparative purposes. Those informing the panel believe the SAJBD escalated a contrary view, proposing their own choice of journalist, to the chair of the board. Editorial objected, and as a result the trip did not happen.

- 7.71 Further allegations abounded in what the Panel heard. As noted above, the chronology of interviews, issues of informant anonymity and time constraints all made it unfeasible to pursue each allegation or offer everyone involved the opportunity to respond. The Panel cannot vouch for the correctness of these tales but offers them as an indication of the atmosphere within which those who approached the Panel believe they work.

CAPTURE AND INFLUENCE: INTERVENTION BY OUTSIDE INTERESTS

Financial vulnerability or political power broking?

- 7.72 The financial vulnerability of certain media in South Africa opened up the eventuality of capture by individuals who saw no difference between the aims of a media organisation and the self-interest of the owner or the owner acting as the instrument of a political party.
- 7.73 After all, as Nielsen wrote:
- “Whenever a news organisation is run at a loss, it is always worth asking whether owners might be covering those losses through gains made elsewhere, perhaps in politically sensitive business areas like arms manufacturing; extractive industries; government contracts; real estate development; telecommunication, or the like. Losing a few million a year on a newspaper may be a small price to pay if the influence (real and perceived) that owning it can help bring in tens of millions elsewhere.”

Unacknowledged advertorial

- 7.74 In a change of geography, Raymond Joseph told the Panel of the valued “Berlin Wall between advertising and editorial” but commented that editors nowadays have to be business-minded and do things that editors have never considered doing before.
- 7.75 Such financial vulnerability enables commercial and political pressure to pierce the valued wall between advertising and editorial, with the result that “advertorial” (material generated by commercial entities themselves) is unacknowledged or cannot be distinguished through presentation on the page from real editorial, or is presented as news. What is now known as “native advertising” is created within the media entity, as is “sponsored content”, and the danger exists that this is not always identified as such and the audience is unable to distinguish self-interested, paid-for communication from genuine news.

- 7.76 The Panel was told that one radio station had an arrangement with a provincial premier, whereby the station provided broadcast facilities for community outreach events hosted by the premier and were paid for so doing. However, it was then required that news reporters cover these events for which the station was paid, but without disclosing to listeners that payment had been made for such news coverage. In the absence of a clear editorial policy on this issue, this “advertising” was effectively presented as “news”.
- 7.77 The Panel was told of another media outlet, where there was constant pressure on the editorial team to “go easy” on certain brands, or incorporate them into editorial output. The general manager at the same media outlet wanted to partner with an advertising agency on an interactive tool. Journalists were asked to create “an editorial environment” for this interactive tool. This involved, among others, axing an article on successful and unsuccessful brand advertising, because criticism of any brands would negatively affect the opportunity for the media outlet to obtain advertising from those brands that would be negatively mentioned. The campaign won awards, one in the “native advertising” category.
- 7.78 The Panel was told by Raymond Joseph of the response by the National Lotteries Commission (NLC) to the investigations by himself and other journalists into mismanagement of monies by the NLC. The NLC response included approaches to media outlets or placement of actual advertising or advertorial with media outlets, including *Sunday World*, *Mail & Guardian*, eNCA, Power-FM 98.7, Newzroom Afrika, and others, which, in some cases resulted in the outlets abandoning any investigation of the NLC or the projects it was supposedly funding. Joseph is cautious in his allegations, but suggests that the case studies he presents are “examples of the dangers of commercial power in using advertising to influence news”. Joseph did not suggest that “silencing of criticism was bought. Rather, it seems to me that this is an excellent example of how advertising can subtly influence coverage.”

The Guptas, ANN7 and MultiChoice

- 7.79 The most blatant instance of the use of media for political and financial networking, influence peddling, financial enrichment and unashamed corruption of the machinery of the state for personal gain, has been the ‘State Capture Project’ of the Gupta family.
- 7.80 In part, their use of the media is dealt with under ‘fake news’ in the next chapter. In part, it also emerges through accounts of the MultiChoice- ANN7- SABC arrangements, which allegedly impacted on the intended digitisation of pay-TV.
- 7.81 Commercial considerations motivated the saga of state and regulatory capture by the private media. The accusation is that MultiChoice entered into a deal with the SABC so as to influence the SABC to support unencrypted set top boxes, in defiance of an ANC resolution. Quoting News24, Harry Dugmore reported on:
- “... the apparent collusion between South African-based multinational Naspers, by far the biggest and oldest media house, with Oakbay Media, the newcomer media operation of the Gupta/Zuma family, which owned TV channel ANN7, and the newspaper. In exchange for airing ANN7, Naspers appears to have sought a change to government policy on encrypted set top boxes as part of the transition to fully digital TV transmission. The changes sought will help protect Naspers’ lucrative DStv service from competition, E-Media Investments.”

- 7.82 The outcome was that an ANC decision to require encrypted set top boxes, which would have enabled broadcasters other than MultiChoice to easily implement pay-TV, was overturned by then Communications Minister Faith Muthambi. In a testimony before the Zondo Commission, one of the many Ministers of the Department of Communications, Yunus Carrim, testified that what he said was “regulatory or policy capture” by MultiChoice had been behind the inexplicable decision by Minister Muthambi.
- 7.83 Carrim outlined the “digital dividend” that South Africa would have received from completing the digital migration process in the way he had envisaged: broadcasting spectrum space would be released to produce more channels in different languages; pay-TV would get cheaper; and radio frequency spectrum would be released to players in the mobile sector, which would bring down data costs. Instead, MultiChoice continues with its monopoly.
- 7.84 The statutory commission of inquiry chaired by Judge Lex Mpati into certain matters at the Public Investment Corporation (the largest fund manager in the country and custodian of the retirement funds of millions of government employees and pensioners), also enquired into funding from the PIC into Ayo Technologies and thus Independent Media. Although the commission found irregularities in this funding decision, Independent Group titles published stories declaring that it had ‘cleared’ group entities completely.

ETHICAL CODES AND POLICIES

- 7.85 This Panel does not have information on how many, or which, print, broadcasting or online publishers, have made a commitment to an editorial code of ethics, or have an editorial policy that clarifies, for both themselves, journalists and the public, their views and practices on issues such as censorship; management-journalist-producer-presenter content practices, and other practice issues pertaining to ethics. The Motau report on the Brown complaint discusses at some length the absence of a consolidated and clear set of principles and guidelines on these important issues. This Panel was similarly confounded by a lack of transparency or knowledge in this regard from senior editors or managers it interviewed, as to whether such guidelines existed or not.
- 7.86 At the end of the day, owners provide capital to fund a media project to accord with the owners’ judgment on both the message and the medium. This is implemented by the journalists and other media practitioners employed by the owner. However, implementation must accord with certain accepted practices as to fairness, accuracy, and balance, and should be situated within a clear code of ethical practice, such as that expressed in the South Africa Print and Online Media Code.
- 7.87 It came as some surprise to learn from many informants that statements of editorial policy are not always publicly known or understood by many in the newsroom. This means that reporters, journalists and editors cannot rely upon such explicit standards, when there is any untoward or unacceptable tension with management over matters reserved for editorial discretion.
- 7.88 As Dasnois pointed out, everyone has an ideological bias but the “ethically most egregious mistakes come from those with agendas.” Dasnois suggested that one safeguard against untoward interference by interested parties is having either an editorial charter or an editorial advisory board. Chris Roper stressed the need for news organisations to “have their editorial independence policy published and available”.

CONCLUSION

- 7.89 The current financial predicament, and the possible fate, of the media industry cannot be viewed independently from the general South African economic and political environment. Not only has the South African economy been performing poorly relative to world growth trends, but has also been stretched by the need to begin implementing some responses and remedies to the State Capture project.
- 7.90 News media is under financial pressure from technological change and changing consumer habits that threaten the future existence of individual news providers and the diversity of news.
- 7.91 Consolidation in the print industry, and the closure of newspapers that this will entail, seems unavoidable. In the long term, broadcasters may lose revenue to digital disruption which will affect their news operations, though in the short to medium-term they seem entrenched. The continuing dominance of the television triopoly may only be challenged in the future by organisations trespassing on TV and radio news through VOD and podcasting.
- 7.92 One complaint that could be made about the media is that the concerns of low-income communities who form the majority of South Africa's citizens are not more prominent in the news, and that the concerns of poor people in remote areas are hardly covered at all. By pooling information on a co-operative basis, as well as by original reporting, the South African Press Association (SAPA) provided something of a counterbalance through wider national coverage. Its closure was prompted by financial pressure as well as abuse of the co-op model, and according to the last editor, presaged a vicious fight for survival among the big press groups. In the vacuum created by its demise, some news groups hoped that their own stories might earn syndication revenue, another signal of the increasing commodification of news.
- 7.93 Community newspapers seem to be mainly survivalist operations at best, beset by the same pressures the big print groups face, but with fewer resources. At local level they compete with the freesheet "knock 'n drops" – essentially, collections of advertising supplements wrapped by very few pages of local reports, often dominated by supplied copy and highly vulnerable to pressures to publish ever more advertorial. These are in a better financial state.
- 7.94 While in the past government interference may have seemed to represent the biggest threat to the news media, the present threat is how publishers adjust to the realities of the digital age.
- 7.95 As Harber told Dugmore for the *Paying the Piper* report: "Our newspapers are failing to rise to the challenge presented by online and social media, still living in an age where they could define and control the news flow. They are dull. They are not telling us much beyond the surface of what is happening in our country today. They are failing us as citizens and failing our democracy."
- 7.96 On the other hand, digital-only publications have blossomed, not only donor-funded and membership operations such as *Daily Maverick*, *GroundUp* and *New Frame*, but also a tightly paywalled business press targeting the wealthier sections of the of the population. In business news, the audience is spoilt for choice. Among the business news media, all pursuing the same elite niche subscribers (this is not an exhaustive list) are *BIZNews*; *InceConnect*; *Business Insider*; *BusinessTech*, and *bizcommunity.com*, as well as *BusinessLIVE*, the online website of

Business Day, the Business Times; the Financial Mail, and Moneyweb.

- 7.97 In this context, debates about the extent to which owners should intervene/interfere in newsrooms, ostensibly in the interests of enhanced financial viability, are likely to intensify. Judge Satchwell – an outsider who has never been involved in any form of journalism, and who therefore came to these questions without knowledge and without bias – considered the arguments for editorial autonomy. Absent any requirements for the claim of professional status – qualification, training, membership of a professional body with supervisory or disciplinary functions – as found with other recognised professions ranging from educators to accountants, healthcare providers to engineers – it may be beneficial to those practising the craft of journalism to individually subscribe to those Codes of Practice and Ethics issued by the various media regulatory entities as a means of identifying those media practitioners who do subscribe and adhere to and champion certain ethical practices and standards of practice.

CHAPTER EIGHT: THE SUNDAY TIMES INVESTIGATIONS, ARTICLES AND APOLOGIES

MAIN POINTS OF THE CHAPTER

This chapter traces and analyses the events around the publication and subsequent retraction by the *Sunday Times* of certain news stories. It does this by:

- **Considering the role and status of, and pressures on, the paper's Investigative Unit;**
- **Describing the sequence of stories and the alleged and actual events to which they related;**
- **Examining how other news media responded to the same events;**
- **Reprinting the associated rulings, retractions, apologies and rights to reply which appeared over time;**
- **Setting out the submissions made to the Panel by affected persons, other media practitioners and several of the journalists involved;**
- **Exploring the findings of a previous inquiry into newsroom practice at the same paper; and**
- **Drawing conclusions highlighting inadequacies around story production and checking processes as well as the eventual remedial actions, and the implications of all these.**

CHAPTER EIGHT: THE *SUNDAY TIMES* INVESTIGATIONS, ARTICLES AND APOLOGIES

INTRODUCTION

- 8.1 This chapter covers the debacle of the disavowal of, and apologies for, the series of stories written by *Sunday Times* journalists and published by that newspaper, which has been the catalyst for this Inquiry. The chronology of events up to the advent of the apologies is set out, followed by comment from the subjects, editorial management and reporters. The section concludes with commentary from media practitioners and others, as well as by the Panel. Subsequent chapters extend the analysis to broader complaints about the media; an analysis of the work of the Press Council and the BCCSA; and discussion of the reasons for journalistic and media malpractice.
- 8.2 The *Sunday Times* issued retractions and apologies in respect of the work done by its Investigations Unit on a series of articles which covered what came to be known as the ‘Cato Manor Death Squad’ and the ‘South African Revenue Services (SARS) Rogue Unit’, while the coverage of ‘Zimbabwe Renditions’ became tarred with the same brush. These stories made money for the journalists as well as for the *Sunday Times* and its owners; presumably furthered the personal and political ends of those by whom the *Sunday Times* eventually claimed to have been manipulated; destroyed careers and harmed the lives of the subjects of the stories and some of the journalists involved, and damaged the credibility of – and faith in – essential state institutions: the South African Revenue Service (SARS), the South African Police Service (SAPS) and the Department of Home Affairs. At issue in this Inquiry is the damage done by one newspaper and its Investigations Unit, which reverberates throughout the rest of the media industry and the political discourse of this country.
- 8.3 The Panel has already made it clear that this Inquiry is a private project of SANEF, without public funding or state power, and has no authority to compel the production of information by or the cooperation of those persons involved. It therefore cannot hope to obtain access to the complete and unabridged versions of all that took place and can only gain a limited overview of events and motivations. The Panel does not attempt to delve into the lawfulness or otherwise of any of the activities which were the subject matter of the *Sunday Times* articles and does not claim to have uncovered any truths. Such claims would not only be outside our terms of reference, but also infringe upon the work of the Nugent Commission into SARS, the Zondo Commission into State Capture, the Mpati Commission into the PIC and the Mokgoro Commission into the National Prosecuting Authority (NPA). This Panel is constrained to investigate only the journalistic practices which gave rise to the concerns of SANEF and the media industry.
- 8.4 The Panel collated a full set of the articles as they appeared in the *Sunday Times*; met with Johann van Loggerenberg and Lauren Richer; received written submissions from Adrian Lackay and Peter Richer; received submissions from and met with Mzilikazi wa Afrika; Rob Rose; Stephan Hofstatter; Malcolm Rees, and Pearlie Joubert, who were among the

journalists involved in this debacle, and some of whom required that the Panel would protect all our sources by every means necessary and would not distribute [written submissions] to any third parties. The Panel also met with then editor of the *Sunday Times*, Bongani Siqoko, and legal editor, Susan Smuts. In addition, the Panel has heard from a number of interested and informed persons who have shared their views on the ethos of the *Sunday Times* and its Investigations Unit and the breaches of professional journalistic practice that took place.

- 8.5 This Report cannot do full justice to the hundreds of pages of documents and online submissions received, or the hours spent with the persons involved and so does not attempt to summarise all the information and views received. The Panel thus offers a brief overview of the issues on which comment on journalistic practice is based.
- 8.6 What must be remembered is that the Panel was told of a world of smoke and mirrors, intrigue and suspicion, disloyalty and factionalism, intimidation and fear, unlawfulness and naivety, state and underworld power. Some of those involved had been or remained public or undercover operatives for intelligence, police or defence services; some were former struggle veterans or high-profile political persons; others were legitimate or underworld businesspersons. Journalists operated in an atmosphere of whispers and menace and were themselves sometimes threatened. It was, as Judge Robert Nugent stated in regard to the Investigative Unit of SARS, a murky world and it is only possible for this Panel to present what Judge Nugent said could only be an incomplete picture of what might have lain under these events.

THE INVESTIGATIONS UNIT AT THE SUNDAY TIMES

- 8.7 The Investigations Unit at the *Sunday Times* was exactly what its name describes. Journalists either worked fulltime for the Unit or were brought in because they had been, or were, working on a particular story which merited further in-depth investigation, or because a story was linked with other ongoing investigation
- 8.8 However, the journalists who have been most publicly linked with this Unit are Stephan Hofstatter; Pearlie Joubert; Piet Rampedi; Malcolm Rees; Rob Rose, and Mzilikazi wa Afrika.
- 8.9 It should be made clear that Rose was absent at Harvard for some time and was based at *Business Times* and then the *Financial Mail*; he had little involvement with the Unit and left at the end of 2011; he was never bylined on the 'rogue unit' stories. Rees was with *Business Times*. Joubert had what she told the Panel was a 'friendship' with van Loggerenberg and felt he was being unfairly treated by the *Sunday Times* and experienced tensions with other members of the Unit. As a result, she dissociated herself quite early on from the Investigative Unit.
- 8.10 The Panel subsequently engaged with two of the relevant editors: Mike Robertson and Ray Hartley whose insights and experiences are discussed below. Despite repeated efforts, using all known contact addresses, the Panel has so far been unable to establish contact with the third, Phylisia Oppelt.
- 8.11 Many media practitioners, both within and outside the *Sunday Times*, have expressed views on the modus operandi of the Investigations Unit of the newspaper. To a certain extent this commentary is now academic since the *Sunday Times* has discontinued the Unit, but

these comments place the Cato Manor/SARS series in context; suggest an explanation of how the epic unfolded; offer some justification for the extent to which journalists, editors and management became so embroiled in the unfolding chronicle; and perhaps assist in ensuring that future such units avoid similar snares. The Panel is especially indebted to those journalists involved in the Investigations Unit who were able to distance themselves and offer critical insights into the manner in which they worked.

- 8.12 The omnibus SARS series of stories began with Rees investigating the tobacco industry for *Business Times* while Rampedi was working with his own sources for the *Sunday Times*. Hofstatter and wa Afrika were brought into the Unit on the grounds that they were supposedly 'more senior'. This is thought by one journalist to have been the first error because this was a complex story and no-one should have entered halfway through the process. The perceived intrusion of a 'senior' also risked creating the undesirable situation where a more junior reporter felt sidelined, creating the temptation to retain parts of a story for him or herself.
- 8.13 The Panel was told by some that what was needed was not a senior reporter but a senior editor, whose presence would have ensured a 'captain' taking control of the line of communication with the national news editor, deputy editor or editor. Without clear lines of authority, it is thought there was diffusion of responsibility, which led to overlap, dislocation, omissions and errors in upward communication about the stories. In short, a formal hierarchy with clear reporting lines was needed. The failure to allocate an investigations editor or a clear, dedicated, story-management hierarchy was explained as partially because of financial constraints. Such constraints impeded the work of the Investigations Unit in other ways: more and more output was expected on the basis of fewer resources.
- 8.14 The corollary of all this, the Panel was told, was that the deputy editor or national editor could hardly have been expected to micromanage what became a complex and octopus-like series of stories.
- 8.15 The Panel was told that over time, the Unit became somewhat distanced from the routine editorial controls of the newspaper, in that its work did not feature on the daily diary, was not overseen by the news editor and reported directly to the editor of the paper. Some journalists told the Panel that the diary of the Investigations Unit had started being leaked, creating real concern that targets would learn what was being investigated and become evasive or take diversionary action. So, by arrangement with the editors (Robertson, Hartley and Oppelt), the news editor was bypassed and the work of the Investigations Unit was removed or concealed from the news diary.
- 8.16 However, the Panel was also told by some of the journalists involved that all work was scrutinised and interrogated by editorial management – deputy editor Marvin Meintjies and legal editor Susan Smuts – before being discussed with the national editor.
- 8.17 Experienced media practitioners have discussed at some length with the Panel the importance of ensuring that there can be no such slippage, because the rest of the news production value chain is needed to perform its functions on every aspect of the story. A story, especially a scoop, should go through 'seven pairs of eyes' (how newsroom veterans refer to the multiple checking processes newsrooms used to implement). Where stories are no longer subjected to this copy-editing, fact-checking and editorial interrogation regime, problems are bound to emerge. These views, as well as guidance on investigative reporting and professional journalistic practice, will be discussed elsewhere.

- 8.18 There was concern that the Investigations Unit should not have been expected to come up with a huge story every week or two, as was increasingly the case. Reporters would be told: ‘The splash has fallen through; don’t you guys have something for the front page?’ which led to the hurried and unchecked generation of sensitive stories. This pressure for scoops and the sensationalism attached thereto will be discussed in light of previous analysis and critique of the modus operandi and ethos of the *Sunday Times*.

THE ZIMBABWE RENDITIONS

- 8.19 The first story about renditions to Zimbabwe was published on 23 October 2011 and, following some twelve or so subsequent stories, the series was concluded towards the end of September 2015.
- 8.20 There were no complaints, threats of legal action, or demands for an apology in respect of the Zimbabwe rendition series and no retraction or apology was ever offered by the *Sunday Times*.
- 8.21 There was no dispute that Zimbabwe security agents and members of SAPS worked together, probably unlawfully, to transport criminal suspects from South Africa to Zimbabwe, where they were allegedly murdered. The issue in dispute is which officials of SAPS were responsible for this collaborative venture.
- 8.22 It would appear that this series has become incorporated into the entire *Sunday Times* chronicle because the stories were written by members of the publication’s Investigations Unit. They overlapped to a certain extent with the Cato Manor and SARS series and there was passing mention of the Zimbabwe renditions in the October 2018 ‘apology’ in respect of the Cato Manor series of stories.

THE CATO MANOR SERIES

- 8.23 The first story concerning the murders in Cato Ridge appeared on 11 December 2011, headlined ‘Inside a South Africa death squad’, and was followed by a further twenty- nine stories, including sidebars, the last appearing on 22 November 2015: ‘Back to the past in tales of death and cover-up’.
- 8.24 Prior to *Sunday Times* involvement, another journalist at another newspaper had, in 2009, investigated and written about a police unit reporting to Major General Johan Booysen, which had killed a taxi driver, Bongani Mkhize, despite Mkhize having gone to court and obtained an interdict against abuse or assault. This story reported that several other persons had been killed by the same SAPS unit. The story was a finalist for the Taco Kuiper award. The Mkhize family had successfully approached the courts. The South African Communist Party (SACP) issued a press release in October 2011 which referred to a ‘Vlakplaas-style’ death squad and called for a judicial commission to investigate the deaths at the hands of the Cato Manor SAPS. This background pointed to a real public interest in reporting on these

developments.

- 8.25 wa Afrika and Hofstatter were provided with information from SAPS sources (not only in KwaZulu-Natal) and contacted by a publicly named source, Mary de Haas, with information. Thereafter they spent months with the families of people who had been killed, meeting with various experts, perusing inquest reports and conducting their investigation. Some of the sources who spoke to the *Sunday Times* journalists were later amongst well over thirty people who were killed by this unit of SAPS.
- 8.26 The first story written by Hofstatter and wa Afrika was headlined ‘Shoot to Kill’ and the series then continued in the vein that the SAPS unit, headed up by and under the operational control of Booysen killed suspects rather than arresting them. Investigations by the Independent Police Investigative Directorate (IPID) and the Hawks followed, and the NPA issued indictments based upon those investigations.
- 8.27 In December 2015 the first complaints were received by the *Sunday Times* from implicated persons in SAPS. A review of the stories was undertaken. Two errors were identified: misquoting an affidavit filed in court and an incorrect caption on a photograph. A correction was published on 27 December 2015.
- 8.28 On 27 December 2015 under the headline ‘Matter of Fact’, the following was published by the *Sunday Times*:
- “This month the *Sunday Times* received complaints for the first time in four years about stories we published about the Cato Manor ‘death squad’. After conducting a review of 28 articles and (...) pictures published since 2011, covering 20 incidents resulting in 30 deaths, we would like to correct two errors.
- In a graphic, ‘The bloody trail of the killer cops’ (December 11 2011), we published a picture depicting people shot by the dog unit and metro police. Although neither the headlines nor caption said they were killed by the Cato Manor unit, the story conveyed this impression.
- In ‘Cop says bribe charge is bid to shut him up over KZN hit squads’ (December 11 2011), we also incorrectly stated that Colonel Navin Madhoe said in a sworn statement that his discs of Cato Manor shootings had not been handed in as evidence. In fact, Madhoe said they ought to have been handed in and if they were not, this would signal a cover-up.
- We regret the errors.”
- 8.29 Some six years after the appearance of the first story, the *Sunday Times* published an ‘apology’ for the full series on 14 October 2018.

THE SOUTH AFRICAN REVENUE SERVICE (SARS) SERIES

- 8.30 The first story concerning the Investigative Unit at SARS was published on 10 August 2014: ‘Love Affair Rocks SARS’. This was followed by a further twenty-six stories (including sidebars) until the 4 October 2015 story headlined, ‘Call to Probe Pravin over SARS Spy Saga’.

Further stories of a somewhat different tenor followed until about April 2016.

- 8.31 A first apology was issued by the *Sunday Times* on 20 December 2015, which apology was confined to Minister Pravin Gordhan. A second apology followed on 3 April 2016.
- 8.32 The story of the SARS unit and the *Sunday Times* is long and involved and an entire book would be needed to cover all the characters, allegiances and activities; one book which begins that exercise was published by Anton Harber as this Report was being finalised. This report cannot go into such full detail, nor is it necessary for our purposes so to do. However, Judge Robert Nugent has remarked that the stories in the *Sunday Times* from 2014 onwards “(were) to do immeasurable damage to SARS and to the lives of many people”.

The SARS investigative unit and the legality of its establishment

- 8.33 A unit came into existence at SARS in about 2008 under the name ‘Special Operations’ to investigate illicit trade in tobacco, liquor, counterfeit goods and so on. It later changed its name to the ‘National Research Group’ and again metamorphosed into the ‘High Risk Intelligence Unit’ (HRIU), which comprised six members. According to the Trengove Opinion on the Sikhakhane Report, the function of what it called the ‘Special Projects Unit’ (SPU) was to supplement SARS’ conventional functions with advanced investigative and intelligence-gathering capabilities required to counteract the sophisticated operations of organised crime syndicates.
- 8.34 The SPU/ HRIU was staffed by former intelligence, law-enforcement, and tax professionals. It conducted investigations using methods, techniques and equipment normally used by intelligence and law-enforcement agencies. It was headed by Mr Andries Janse van Rensburg (known as ‘Skollie’) until 2009, when he was succeeded by Mr Johan Hendrikus van Loggerenberg.
- 8.35 Eventually, what was now known as the ‘Anti-Corruption and Security Unit’, was effectively disbanded in December 2014 and a new structure came to be known as ‘Fraud Investigations’.
- 8.36 At various times, opinions were expressed by government, newspapers, the public, and anyone who had any interest in tax collection, on the legality of the establishment or existence of such a unit. Legal opinions were sought by SARS and others. That issue should have been disposed of by the remarks of Judge Robert Nugent in the Report of the Commission which bears his name:
- “I have not yet found why the creation and existence of the unit was said to have been unlawful, which was how it was consistently and uncritically depicted. I find no reason why the establishment of the unit was indeed unlawful (...) It might be that some of the activities of one or more of its six members were unlawful, but that is something else. If that was indeed the case, it is nonetheless incredible that unlawful acts of one or more of six men led to millions of rand being spent and the holding of repeated inquiries, with continuing damage to the reputation of SARS.”
- 8.37 However, the dispute about the lawfulness or otherwise of the SARS unit itself, as well as some of its activities, apparently still continues in an investigation undertaken by the Public

Protector, who at the time of completing this Report continues to engage in litigation with Minister Pravin Gordhan on this issue.

Reportage on the activities of the SARS Investigative Unit

- 8.38 The focus of much reporting dealt with the activities of the Unit and whether or not some of what was being done was authorised by SARS management or was lawful.
- 8.39 Pravin Gordhan had left SARS when elevated to the National Cabinet and, somewhat controversially, Tom Moyane took over. Under this new management, SARS, rather confusedly, instigated investigations and disciplinary actions against members of staff and of the Unit. Comment at the time suggested the public was both entertained and scandalised by the apparent state of chaos which existed within SARS.
- 8.40 Within weeks of the appointment of Moyane, an article appeared in *City Press* in August 2014 purporting to expose a ‘rogue unit’ within SARS with the headline ‘Sex, SARS and rogue spies’ and making a number of allegations that the Special Operations Unit (SOU) had allegedly employed convicted drug dealer Glenn Agliotti to recruit tobacco smugglers; was trying to reinstate former police crime intelligence head Richard Mdluli; that protection of Mdluli involved a campaign to discredit former prosecutor and now DA MP Glynnis Breytenbach, and that the Unit was working to replace SARS top management. *City Press* claimed to be in possession of hundreds of SMSs, emails and tape recordings dating from 2011 to 2014, which had been forensically tested and handed over to the offices of the then State Security Minister and to SARS top managers. *City Press* also claimed to have a list of about fifteen persons contracted as agents for the SOU, details of a house where they worked, and the technical apparatus which they utilised.
- 8.41 The *Sunday Times* followed suit on 9 November 2014 with a story headlined ‘Blondes, Brothels and Rhinos...’, which claimed to contain the revelations of “former agents of a rogue unit set up by SARS employees to spy on high-profile people”. Those revelations included, among others, the “brothel-owning agent”; psychometric testing of Unit members working as VIP bodyguards for politicians; dismissal for rhino poaching; former employment with the Scorpions; racially determined salary discrepancies; installation of spyware on SARS computers; and the bugging of the home of President Jacob Zuma.
- 8.42 Similarly explosive articles reinforcing this narrative continued on the front page of the *Sunday Times* over the period November 2014 until March 2016. The headlines speak for themselves: ‘Tax Sleuth Sidelined After Love Affair’; ‘SARS Bugged Zuma’; ‘Pravin’s Pal Scores on Early Retirement’, and ‘Taxman’s Rogue Unit Ran Brothel’.
- 8.43 Primary themes were that the head of the Unit was “a former apartheid undercover police agent” who had an affair with a woman, a Ms Walters, who was both a spy for National Intelligence and an attorney, and that he had disclosed information to her about tax affairs; that the Unit had broken into the home of former President Zuma and planted listening devices in his home; had broken into taxpayers’ homes; had conducted lifestyle audits on prominent politicians and newsmakers; had spied on the former national police commissioner Jackie Selebe; had operated front companies, including a brothel; had purchased expensive spy equipment which was used to spy on taxpayers; and had tasked a Mr Peega to infiltrate a rhino-poaching syndicate but when he was arrested by the SAPS, “disavowed” him. Fake names and identity documents were said to be used by member of the Unit in the course of their work.

Official investigations into the legality and activities of the unit

- 8.44 Investigations into the activities of the SPU/HRIU were initiated by the new regime at SARS, which regime would later be the subject of the Nugent Commission of Inquiry. The Kanyane investigation headed by a commercial lawyer and two SARS executives investigated the allegations made by Walters against her former lover at SARS, van Loggerenberg, and found she was neither credible nor reliable. Thereafter, a panel headed by Advocate Muzi Sikhakhane S.C. was established to investigate whether or not any SARS officials had broken the law, including by alleged illegal interception and monitoring of communications. The Sikhakhane findings were made public in April 2015 and were to the effect that the establishment of the Unit was unlawful. Sikhakhane recommended the establishment of either a judicial commission or that the Inspector General of Intelligence investigate the operations of the SPU. The Minister of Finance then appointed an Advisory Committee headed by retired Judge Frank Kroon and in April 2015, the Kroon Committee endorsed the findings of the Sikhakhane Panel that the establishment of the HRIU was unlawful on the grounds that SARS did not have statutory authority to ‘covertly’ gather intelligence. There was also a review by the Inspector-General of Intelligence, Faith Radebe, which found that the Unit and its activities were unlawful. The international accounting firm, KPMG, was also brought in to conduct an investigation and in September 2015 reported to the effect that the ‘rogue unit’ was spying on taxpayers illegally.
- 8.45 During this period, each investigation affirmed the narrative of a ‘rogue unit’ or a Unit gone ‘rogue’, and continuing *Sunday Times* stories and editorials were based upon these results.
- 8.46 Although Advocate Sikhakhane has not disavowed the findings of his investigation, Judge Kroon has since advised the Nugent Commission of Inquiry that he conducted no independent investigation or scrutiny of any evidence and that he now, on unexplained grounds, withdraws his findings. Another report and opinion of the Inspector-General of Intelligence has recently been reviewed and rejected by a High Court ruling. At least two opinions sought and obtained by then Commissioner Moyane, which found no unlawfulness in the establishment of the Unit, were not made public by him. KPMG has also, without explanation, distanced itself from its findings.
- 8.47 In May 2015, the Hawks began investigations into what was now called the ‘Spy Unit’.
- 8.48 During this time, SARS personnel were suspended, notably Johann van Loggerenberg (November 2014) and Ivan Pillay and Peter Richer (December 2014). The Labour Court ordered the reinstatement of Pillay (December 2014) but he was again suspended (December 2014) and subsequently resigned, as did van Loggerenberg and Richer.

Reportage on continuing developments

- 8.49 Throughout this period, the *Sunday Times* and its reporters continued to publish stories on the ‘Rogue Unit’ and its activities but the reportage was predominantly directed towards the investigations and their findings and the internal disciplinary events within SARS, with

headlines such as, ‘Top SARS Sleuth Admits We Ran A Rogue Unit’; ‘SARS Chief Acts on Brothel Claim’, and ‘SARS Spies Confess’.

- 8.50 The *Sunday Times* was no longer informed only by its own sources and documents. The investigations of the attorneys; advocates; accounting firm; Inspector-General of Intelligence, and a High Court Judge who had been brought in to assess the SARS Unit, had become the story. Their findings added further grist to the mill as the story continued to gain momentum. The *Sunday Times* accordingly reported on the work and findings of these inquiries and commissions and ceased to rely upon its own sources and investigations.

THE COUNTER-NARRATIVE OF MEDIA SCRUTINY AND SCEPTICISM

- 8.51 Other media were not only on the sidelines watching the *Sunday Times* scoops and exposés. Analysis of the factional political context within which information was emerging appeared, along with concern about the apparent sources of the *Sunday Times* articles, and suggestions of possible motivations for leaks. Most importantly, other media gave consideration to the import and impact of such stories.
- 8.52 The Editor’s Notebook of 15 December 2014 in *Business Day* reported on an earlier “common conspiracy narrative” involving SARS, former SARS Commissioner Gordhan, a former Operation Vula operative, and now President Jacob Zuma. The writer of this opinion piece was floored to read the *Sunday Times* story about the Rogue Intelligence Unit, which he said had “serious ramifications” for the country. These were identified as the finding by the new Commissioner Moyane that SARS was “corrupt to the bone”, or “hasty and irredeemably dangerous actions by a commissioner whose intentions remain unknown”. The editor went on to ponder serious questions about SARS, the NPA, SAPS and the intelligence services.
- 8.53 An article in the *Financial Mail* on 13 March 2015 reported how the account of the alleged Rogue SARS Spy Unit and the subsequent loss of two officials from the agency had “added fuel to the fire” of possible or potential tax revolt. Non-ANC politicians were reported as saying that they had been aware of the unit since 2009 and “don’t understand why a fuss is being made now”, and the article stated that the Minister and Commissioner “need to unpack the situation to the public”.
- 8.54 On the same day, the *Financial Mail* wrote that the unfolding events had “crystallised into two competing narratives, one of a rogue unit brazenly disregarding the law to catch crooks” and the other that SARS was only doing its job of investigating organised crime, but that a confluence of interests (illicit tobacco; organised crime; competing state institutions (such as Intelligence), and powerful politicians descended on SARS to destabilise it. Much of the story was said to be “contested and remains in the realm of allegation”.
- 8.55 On 1st August 2015, *Noseweek* published a lengthy chronological analysis of the entire narrative involving the attorney-cum-spy-cum-lover at the heart of the saga, Belinda Walters, as well as alleged tobacco smugglers, SARS employees, practicing advocates and attorneys, tape recordings and mislaid memoranda, complaints to the Press Council and withdrawals, resignations and termination agreements. Central to this analysis were the writings of the *Sunday Times* reporters and editors and critique of their work.

- 8.56 It would appear that other newspapers offered critical comment on the revelations of the official investigations and reports; remained mindful of the need to be aware of various perspectives and motivations involved in these investigations; were sceptical of the *Sunday Times* acceptance of the official narrative of the investigations, and were critical of the *Sunday Times* focus on the Unit gone ‘rogue’ or described as a ‘Rogue Unit’.

RULINGS BY THE PRESS OMBUD

- 8.57 A number of complaints were made to the Press Council in the latter half of 2015, resulting in rulings by the Press Ombudsman (Pravin Gordhan ruling, 15 December 2015; Ivan Pillay ruling 16 December 2015; Johann van Loggerenberg ruling 16 December 2015). Little purpose is served by summarising the complaints, the evidence and the argument leading to each ruling. The consequence was that the *Sunday Times* ended up with rulings which criticised both the procedures it had followed and the content of its stories. These rulings are dealt with in some detail because the Panel was told by the *Sunday Times* editor and legal editor that these rulings were instrumental in the public apologies tendered by the newspaper.
- 8.58 Pravin Gordhan complained about a front-page story of 4 October 2015 headlined ‘Call to probe Pravin Gordhan over SARS spy saga – KPMG report confirms our story, piles pressure on ex-finance minister’ and also an editorial headlined ‘Keep shady doings in SARS out in the open.’ The Ombud found that:
- a. The *Sunday Times*, in its articles, presented a draft finding (which was changed by KPMG or may even be rejected by SARS) as a final finding. This was inaccurate, misleading and unfair and was in breach of the Press Code.
 - b. In light of his finding on the status of the so-called KPMG report, the Ombud also found that the editorial comment was in breach of the Press Code in that the newspaper had not exercised care and consideration in matters involving dignity and reputation, and that comment had not been on facts truly stated.
 - c. Questions had only been asked of Gordhan on a Saturday, for publication the next day, and he had not been provided with a copy of the KPMG summary, nor had he been asked for his views on certain comments. The *Sunday Times* was found in breach of the Press Code, which requires that the views of the subject of critical reportage should be sought in advance of publication and that reasonable time should be afforded for a response.”
- 8.59 These breaches were considered by the Press Ombud to constitute Tier 2 ‘Serious Breaches.’ The *Sunday Times* was ordered to retract all the texts in dispute – both stories and editorial – and to make public apologies for failing to provide Gordhan with a copy of the summary when asking his views on the contents of that document, failing to give him reasonable time to respond; and failing to exercise care and consideration regarding his dignity and reputation.
- 8.60 Johann van Loggerenberg and Ivan Pillay complained about a series of texts published in the *Sunday Times* of 4 October 2015, headlined, ‘Call to probe Pravin Gordhan over SARS spy saga – KPMG report confirms our story: piles pressure on ex-finance minister’; ‘Bid to keep

report under wraps'; 'Taxman's braai with prostitute "not a brothel"' – SARS official denies running sex club as part of spy operation', and 'Keep shady doings in SARS out in the open'. They also argued that the articles in dispute should not be read in isolation from others dating back to 10 August 2014. The Press Ombud found:

- a) The *Sunday Times* had, in its articles, identified as a final finding by KPMG what was only a draft report (later changed by KPMG or even rejected by SARS). The Press Ombud found that this was inaccurate, misleading and unfair and in breach of the Press Code.
- b) The subheading was comment and should have been presented as such, in compliance with the Press Code.
- c) The newspaper should have provided van Loggerenberg and Pillay with a copy of the summary of the KPMG report in advance. Without this, it was unfair to expect meaningful comment. This, too, was in breach of the Press Code.
- d) Neither the editorial nor the story were justified in presenting 'findings' as fact and comments and stories were not based on facts that were 'true or substantially true' and thus were not 'fair comment'.
- e) The 'brothel story' was found to be a rectification of earlier reports in that there was denial of such involvement and van Loggerenberg's name was not mentioned, but the newspaper should have corrected the fact that he did not run a brothel.
- f) Complaints about failure to verify the information contained in the KPMG document and how the information was obtained were dismissed.

- 8.61 The breaches were all determined to be serious Tier 2 offences and the *Sunday Times* was directed to retract all the texts in dispute and to apologise for not having provided copies of the KPMG summary as well as for unnecessarily tarnishing the complainants' reputations.

COMPLIANCE BY THE SUNDAY TIMES WITH THE RULING OF THE PRESS OMBUD

- 8.62 Consequent upon the Ruling by the Press Ombud, the *Sunday Times* published the following on 20 December 2015:

"Apology to Minister Pravin Gordhan

"Press Ombudsman Johan Retief has ordered us to apologise to Finance Minister Pravin Gordhan for failing to give him the right of reply in 'Call to probe Pravin over SARS spy saga' published on October 4.

Retief said we were in breach of the Press Code for not giving Gordhan enough time to respond to questions about the findings in a KPMG document on which we reported. We also failed to ask him to respond to comments made by former South African Revenue Service commissioner Oupa Magashula. Magashula said Gordhan should take the blame for the 'fruitless and wasteful expenditure' incurred by the SARS rogue unit.

He also said Gordhan, who was finance minister at the time, told him deputy commissioner Ivan Pillay wanted to join his family in the Netherlands and that SARS could not afford to lose him. 'Pravin suggested that I approve his early retirement and then offer Pillay a three-year contract which he, as [the] minister I was reporting to, was going to approve. It was Pravin who approved everything.'

We accept we were in breach of the code in this regard, and apologise to Gordhan for failing to seek his comment ahead of publication.

Gordhan has since pointed out that neither KPMG nor any other panel that has investigated the unit in question ever interviewed him, and he had not seen the KPMG report. He also objected to any suggestion or insinuation that he knew of any illegal activity on the part of the national research unit.

Retief made several other findings against us, which we intend to appeal. Visit press-council.org.za for the full finding."

- 8.63 To the disgruntlement of several of the journalists involved, the *Sunday Times* did not pursue the appeal to which it referred. Piet Rampedi's letter of resignation deals with this in great and agonised detail.
- 8.64 It should be noted that the rulings by the Press Ombud were not required and did not deal with the truth or otherwise of any content in any reports. The rulings were purely procedural in nature, a draft finding by KPMG was presented as a final finding; the findings by KPMG were presented as fact; there was a failure to offer a summary of the KPMG report to the complainants in advance of asking for response; and comments on the KPMG report were not presented for a response.

RESISTANCE TO THE SUNDAY TIMES REPORTAGE

- 8.65 Many media practitioners with whom the Panel was in contact, whether or not employed by the *Sunday Times*, told of pressure being placed on the *Sunday Times* management by, among others, Robert McBride, Paul O'Sullivan, Colonel Booysen and ANC politicians. What was told to the Panel may not be entirely accurate, but the Panel would be remiss if it did not disclose the contextual explanation offered. Some of what was told has been confirmed by developments and by the *Sunday Times* editorial management and these accounts may go some way to explaining the inexplicable.
- 8.66 It must be made clear that Booysen made no submission to the Panel. O'Sullivan did make a written submission and the Panel attempted to arrange meetings with him but he advised that he was overseas and unavailable and by the time he finally made contact with the Panel to indicate his availability, the time periods allowed for consultation had long since expired.
- 8.67 However, in his written submission, O'Sullivan wrote to the Panel: "I have said plenty about the shocking state of affairs at the *Sunday Times*. The story is most informative. In October last year, I gave them a seven-day ultimatum to come clean or face the music." It seems that this ultimatum relates to the Cato Manor/SARS series of stories. Not one of the very many complaints of media misinformation and malevolence to which he referred in the written document have been presented to this Inquiry.

- 8.68 Apparently Booysen was about to publish a book which might have provoked hostile publicity for the *Sunday Times* and raised political issues which would not only be unfashionable in the newly emerging political climate, but damaging to the *Sunday Times* brand. Booysen was thought to be a protégé of now Minister Bheki Cele. Cele was thought to have been a central figure in the events in KwaZulu-Natal, which had not only involved members of the Cato Manor squad but others engaged in land and commercial dealings. It was rumoured that Cele wanted Booysen to be appointed as head of the Hawks.
- 8.69 The Panel was told that the activist organisation, AfriForum, had funded the legal costs of certain of the criminal and civil litigation to which Booysen had been a party. AfriForum had commissioned a booklet from O'Sullivan, a private investigator who campaigns against corruption. It was suggested to the Panel that O'Sullivan has links with many members of SAPS, with whom he works closely, and relies on them for information as well as having connections with persons alleged to be involved in the Zimbabwe Renditions articles. O'Sullivan alleged in the booklet that the *Sunday Times* journalists had been bribed to write some of their stories. The editor of the *Sunday Times*, Ray Hartley, investigated these allegations of bribery and found no substance therein.
- 8.70 One *Sunday Times* story headlined 'Private Eyes Spied for Robert McBride's Unit' had cast aspersions on O'Sullivan. O'Sullivan then wrote that this was part of a dishonest bid to silence him and was leaked by a dishonest former head of the NPA. He stated that he planned to "permanently close the doors of the *Sunday Times* (...) to make you pay". O'Sullivan continued with his campaign against both the *Sunday Times* itself and its journalists. He persisted in making allegations of bribery on the radio and in other media, and spoke loudly and publicly against the paper and the journalists.
- 8.71 O'Sullivan issued public statements. He was interviewed by Alec Hogg on BizNews, and demanded an "unequivocal retraction of all three fake news stories: 'The SARS Rogue Unit'; 'Zimbabwe Renditions', and the 'Cato Manor Death Squad'". O'Sullivan demanded from the *Sunday Times* an admission that "your journalists and editorial team were 'captured' and therefore played a significant role in State Capture". Should the *Sunday Times* fail to make such admissions, O'Sullivan threatened that: "Forensics for Justice will start canvassing ALL advertisers that buy space in the *Sunday Times*, with a formal request for them to boycott the *Sunday Times* until it admits its facilitative role in State Capture and takes steps to remediate the situation." The *Sunday Times* was given: "seven days to climb down off your high-horse and do the right thing or prepare for a revenue boycott. I will gladly pay for an articulated clerk to sit at the offices of Forensics for Justice and drive Tiso Blackstar shareholder value into the ground."
- 8.72 O'Sullivan's actions and threats are all a matter of public record and the impact these had on the newspaper and its management was confirmed to the Panel by *Sunday Times* editorial management, who said that O'Sullivan had given the paper a specified period to "get its house in order".
- 8.73 Van Loggerenberg wrote to members of the board of the Times Media Group and also to the editor, presenting lengthy and detailed documents and demanding meetings, which were held. Van Loggerenberg told the Panel that he contacted the Board of Directors of the *Sunday Times* and met with and addressed the chairperson and members directly. A journalist told the Panel that Moshoeshe Monare had told him that shareholders were complaining to the board and to management.
- 8.74 The Panel was told that O'Sullivan had meetings with board member and CEO of Tiso

Blackstar, Andrew Bonamour; Deputy Managing Editor for Tiso Blackstar, Moshoeshoe Monare, and the new editor, Bongani Siqoko, who had been brought in to “clear up this mess”. Van Loggerenberg and Booysen were also included.

- 8.75 Contemporaneous with these pressures, the political situation in the country had changed. The Deputy President, Cyril Ramaphosa, was thought to be a contender in the forthcoming ANC elections. President Zuma and his faction were now seen as the architects of ‘state capture’; SARS Commissioner Tom Moyane was perceived to be his crony and pawn and to have been used to discredit Minister Pravin Gordhan, while Booysen was known to be a friend of Bheki Cele, who was returning to favour. In this climate, the Panel was told that there was a meeting at Luthuli House to which Andrew Bonamour and Moshoeshoe Monare were invited. There, they were allegedly told that the *Sunday Times* was going to lose government advertising and that “your investigation unit is a thorn in our flesh”.
- 8.76 In this context, the Panel heard that it was understandable that “upstairs made it clear we don’t want to lose the Group over this” and so apologies were now contemplated in respect of Gordhan, Pillay, Booysen and van Loggerenberg.
- 8.77 One view the Panel heard was that the board and management of Tiso Blackstar succumbed to political pressure, since the political climate was changing and the *Sunday Times* had for the past years been backing the horse in power, which was now limping towards the finishing line. One wit commented to the Panel that, at the very least, the tag of “social legitimacy” should now be applied to the *Sunday Times* “instead of state capture”.
- 8.78 There is a belief, offered to the Panel, that the owner, Tiso Blackstar, had already made a decision to dispose of its interest in the *Sunday Times* and that it was necessary to resolve the tension which had developed and regain favour with the resurgent wing of the ANC. The *Sunday Times* needed to be seen to abandon its apparent support for those who were part of the ‘state capture’ project, whether the Guptas or Moyane or others. This would have to be done before finalising negotiations for any sale. Ultimately, Lebashe bought the operation and Tiso Blackstar became Arena Holdings. This was presented to the Panel as a purely commercial decision to deal with the political embarrassment of a series of articles and the financial inconvenience of the responsible journalists.
- 8.79 Some of this narrative is hearsay; only some is confirmed. However, it suggests why the series of apologies was so publicly offered and why their content is somewhat obscure and nebulous. It appears that a decision was made, in the main by Bonamour and Monare, to find issues in respect of which apologies could be offered which would satisfy O’Sullivan, Gordhan, Pillay, van Loggerenberg and Booysen.
- 8.80 It is common cause that the apologies that followed were made with input from those who had been the subject matter of the series of articles. Van Loggerenberg informed the Panel that he had contributed to the apology issued by the *Sunday Times* editor, and Booysen told the Zondo Commission of Inquiry into Allegations of State Capture that he had been given the opportunity by the editor, Bongani Siqoko, to edit the *Sunday Times* apology.
- 8.81 The journalists involved were all of the view that they had not given any, or sufficient input, into the content of those apologies, that correct facts were withdrawn and processes were inaccurately described. Some of them felt that their sources were ignored or discredited while facts were simply expunged.

- 8.82 The editor, Bongani Siqoko, told the Panel that the final product was his decision to make as editor of the newspaper.

THE SUNDAY TIMES APOLOGIES – 3 APRIL 2016 AND 14 OCTOBER 2018

- 8.83 On 3 April 2016, the following was published with the preamble, “Finally we agree to lay to rest the controversies surrounding – SARS and the *Sunday Times*”.

BONGANI SIQOKO: *Sunday Times* Editor:

“The SARS story has given us an opportunity to take a closer look at our news-gathering and production. We have found serious gaps.

An amicable settlement was reached between the *Sunday Times*, Ivan Pillay and Johann van Loggerenberg in respect of various matters currently before the Press Ombudsman. In terms of the settlement between the parties, all Press Ombudsman matters will be withdrawn by all parties. Van Loggerenberg had indicated his intention not to institute any civil claims against the *Sunday Times* and the Times Media Group. The settlement is considered full and final and on this basis no further actions will follow.

The *Sunday Times*, which is celebrating 110 years of existence this year, is known for its excellent recording of our country’s complex history. We have not only exposed South Africa’s dark side, but we have led in celebrating its beauty and excellence.

When I took over as editor at the beginning of the year, I made a promise to continue the paper’s long tradition of accounting and service to readers with ethical and professional aplomb. This is the reason I am writing today, as part of my commitment to account to you on some of our major stories. Our investigation into the South African Revenue Service, which defined our coverage for most of last year, is one such story.

Two years ago we started looking into claims that SARS was running an unlawful, covert intelligence unit. We were told that it had been illegally set up, had been spying on prominent taxpayers or offenders, and had bugged the offices of state institutions and taxpayers.

It was not until six months later that we published the first of more than 30 stories about the unit and its activities.

The integrity of SARS is a matter of obvious and unassailable public interest. Allegations of the existence of a ‘rogue unit’, operating contrary to its legal mandate, would be a scandal in any country.

No newspaper of integrity would look the other way when such allegations and claims are made. When investigating, however, we are expected to ascertain the facts and afford the affected parties a fair and reasonable right of reply. It was our reporting of this story — as well as on the Gupta family’s undue influence in public life — that has lifted the veil on at least some of the reasons behind the hostility between President Jacob Zuma and former SARS commissioner and now Finance Minister Pravin Gordhan.

The team of reporters who worked on the SARS investigation have a long track record

of exposing wrongdoing in high places. They have an exemplary record as investigative journalists who have won numerous prestigious local and international awards. Notwithstanding this, no one is infallible. Did we get everything right with our SARS story? No. Did we get everything wrong? Again the answer is no.

Today we admit to you that we got some things wrong.

It is clear that SARS received approval to set up the National Research Group within the National Intelligence Agency from then finance minister Trevor Manuel. The unit was not in the end set up within the NIA but became a unit within SARS.

In particular, we stated some allegations as fact, and gave incomplete information in some cases. In trying to inform you about SARS, we should have provided you with all the dimensions of the story and not overly relied on our sources. Granted, it is our responsibility to build, sustain and protect a relationship with our sources, but we should have allowed you to make your own judgment based on all sides of the story.

In a front-page story headlined 'SARS bugged Zuma', published on October 12 2014, we stated that a former SARS official, known as Skollie, blackmailed SARS into paying him R3-million to keep quiet about how members of the unit broke into Zuma's house and planted listening devices. The story and headline stated as fact that members of the unit broke into Zuma's home and planted listening devices there. It should have been made clear, both in the headline and in the story, that this was an allegation, not a fact. The allegation was also not properly attributed.

Our sources did not give us an exact date, although they were adamant the bugging was done by the unit. One source with direct knowledge said it was some time after Zuma was acquitted of rape (in May 2006) and before the ANC's Polokwane conference when he was elected ANC president (in December 2007). The story could have given readers the impression that this could have been around 2005 or 2006, whereas the SARS unit, according to documents in our possession at the time of writing, made it clear that the unit was set up only in February 2007.

Former SARS deputy commissioner Ivan Pillay, in his right of reply, which we publish today, claims we refused to publish a statement by a former SARS official denying he ever told us he was bribed to leave SARS and stay silent about an alleged bugging of Zuma's home. It is true that the official sent an e-mail to our reporter denying ever making the claim. This is the e-mail that he then sent to SARS. But Pillay is not aware that the official later sent us another e-mail confirming our off-the-record interaction.

In another front-page lead, 'Taxman's rogue unit ran brothel', on November 9 2014, we again wrongly stated as fact in the headline and in some parts of the story that the unit had set up its own brothel. In fact, this was an allegation from a former member of the unit. The member had claimed that one of his colleagues had set up a brothel. This was not strong enough to report the allegation as fact.

In another article in the same edition, we reported incorrectly that Johann van Loggerenberg had written a 'confession' letter to SARS commissioner Tom Moyane admitting that he had indeed run a 'rogue unit'. The document contains no such confession. It was, in fact, a denial.

More errors were repeated in other reports, such as 'the infiltration of politicians as bodyguards', 'breaking into homes and conducting house infiltrations', 'running front companies' with secret funds of over R500-million, and 'spying on taxpayers and top cops'.

The SARS story has given us an opportunity to take a closer look at our news-gathering and production processes. We have found some serious gaps.

Efforts are being made to close those. Our news desk — made up of a team of section editors — is being restructured.

In strengthening our quality assurance and editorial testing processes regarding our major and front-page stories we have deployed one of our most senior editors to strengthen our news-editing process. We are also recruiting for an investigations editor to help manage all investigation projects — not just for the *Sunday Times*, but for The Times, *Business Times* and digital.

In the interim, Andrew Trench, an experienced and well-respected investigations and digital editor, will act as investigations editor. He brings with him vast experience both within and outside the Times Media Group — he is a former editor of the *Daily Dispatch* and now head of digital content.

This new structure will allow us to focus even more on investigations. However, we will do them differently — investing more time, money and other resources.

These changes are necessary and long overdue as the *Sunday Times* has become an important institution and a crucial part of this great nation of ours.

As our motto says, we are the paper for the people and this statement is what must forever define our value.

- 8.84 The right of reply accorded to Ivan Pillay, former SARS deputy commissioner, was published as follows on the same date:

“The ‘rogue unit’ narrative was a great disservice to public interest, and made up of lies and distortions - Allegations about a ‘rogue unit’ only surfaced ... after the appointment of the new SARS commissioner

In time, the full measure of the damage caused to the South African Revenue Service arising from false news coverage will manifest itself in a tarnished reputation, questionable independence and lower levels of compliance with tax and customs law. Make no mistake. This is about far more than us losing our jobs.

At SARS, we were mindful that it would take extraordinary effort to build South Africa. Pravin Gordhan reminded us that our work served a higher purpose: to build a constitutional democracy. Contact between citizens and the state must build mutual trust. We strove to build a non-racial, non-sexist future in tandem with our mandate.

We continuously explained why all should pay tax. We made it easy to comply with the law. We wielded a credible enforcement capability. We established a clean and fair administration. You were assured that your monies were safe with us.

Enforcement units of a tax authority are a legitimate matter of public debate. It is proper and necessary to inquire about government bodies that intrude on their lives. But, when doing so, we have a responsibility to sustain the institutions that underpin the work of the government.

The ‘rogue unit’ narrative was a great disservice to the public interest. One error would be understandable, but the persistent lies and distortions, and the pattern by which allegations were reported, lead to one conclusion — the news reports were not motivated by public interest.

The pattern has been consistent. Internal documents are leaked by people in SARS and the State Security Agency to certain journalists at the *Sunday Times*. In turn, facts are distorted or falsified. SARS then responds by feigning shock and surprise and launching an 'investigation' (a 'probe', in the media parlance). The reports, arising from these 'probes' by lawyers or auditors - which repeat the allegations - are leaked to the media again. This generates further news coverage.

During all of this I and other affected SARS officials were legally precluded from responding to the allegations or protecting our reputations.

In the latest instance, a report from KPMG with blatantly false allegations was leaked to the media. Among its 'findings' was an allegation that Ronnie Kasrils had been favoured unlawfully. A few days later, the taxpayer published his tax accounts, proving this a lie. This allegation was never retracted or corrected. It's anybody's guess whether KPMG corrected its 'finding'.

Another example: a former SARS official was reported to have been bribed to leave SARS and stay silent about an alleged bugging of President Jacob Zuma. The official had denied this in writing and explained the circumstances of his departure from SARS to the *Sunday Times*. This did not stop the paper from writing that he 'did not comment'. This is not shoddiness. It's a deliberate lie.

It is no secret that tax authorities make many adversaries. They range from ex-employees and influential persons to criminals. There have been many attempts to discredit SARS investigators in the past. They often come as 'intelligence dossiers' that purport to reveal the 'truth' by 'insiders'.

When allegations surfaced in 2009, we invited the National Intelligence Agency to investigate. We co-operated fully. Since 2010 I have repeatedly asked for the report on the investigation, to no avail.

The Muzi Sikhakhane panel was instituted by me to investigate specific allegations against my colleague Johann van Loggerenberg. There was no reference to a 'rogue unit' at that stage. I have publicly criticised the Sikhakhane report for its errors in fact and law. Because a full critique of the report is likely to be a matter of future litigation, I limit my comment here. Sikhakhane contended that SARS should not be in the business of investigating 'organised crime'. This is a dangerous notion that contradicts international trends. Virtually every revenue authority worldwide has capabilities to combat organised crime. The illicit economy is a very serious threat to any country.

When I appeared before Sikhakhane in its last days, no question was raised about a 'rogue unit'. Most of the allegations that became central to the report were never raised.

Despite that, I submitted a full description of the formation of all the various enforcement units, operations and an explanation for equipment that was claimed to have been 'discovered'. The equipment is commercially available and was never acquired by the unit in question.

The input of my colleagues and myself was dismissed as a 'well-rehearsed narrative'.

The report claims nobody volunteered information about a National Research Group or other units. Yet the report thanks me for my initial conversation with the panel in September 2014 in which I explained the formation of this unit.

Allegations about a 'rogue unit' only surfaced in the media in October 2014, after the appointment of the new SARS commissioner. Unbeknown to us, the unit became the

centre of the 'probe'. Thereafter, Sikhakhane never engaged with anybody affected. I can only conclude that he had already decided to disregard my views.

Sikhakhane, without any facts or proof, simply asserts that the unit could have unfairly influenced settlements. The report is littered with assumptions ... [presented] as if fact. The Kroon advisory committee later merely rubber-stamped this flawed report. The less said about Kroon the better.

Following Sikhakhane, KPMG was appointed. It now claims that SARS did not allow it to put its allegations to us to answer. More worrying: KPMG uses the same loose words and phrases of Sikhakhane's report, suggesting we are devious and corrupt. KPMG's is not a forensic report.

Some, styling themselves 'investigative journalists', failed to spot even basic mistakes, determine elementary facts (whether a KPMG report is final or not), or refer to contradictory information, available publicly.

Over many years SARS built public trust based on professional service, integrity, fairness and commitment to our constitution. The *Sunday Times* reportage did a great injustice to all of this."

8.85 The right of reply accorded to Johann van Loggerenberg on the same date was as follows:

"Since 2014 I have had my name vilified in the media and been accused of criminal acts, including salacious ones such as running a brothel. I was subjected to the humiliation of a succession of 'investigations' during which none of these allegations was ever put to me to answer.

Yet, 'findings' emanating from these 'investigations' consistently found their way into the media without me ever having been formally afforded sight thereof. Throughout, I was never allowed to publicly defend myself.

Ironically, one of the allegations against me is that I have leaked 'confidential South African Revenue Service information' to the media. My accusers and the journalists who repeat this allegation see nothing wrong in perpetrating the same 'crime' they accuse me of. Most of these headlines featured an investigative unit of SARS, seditiously terming it 'covert' and 'rogue'.

I wish to thank the editor for allowing me this opportunity to put certain facts to the public. For my entire adult life, until my resignation last year, I served the country in the police and later at SARS with an unblemished record. I am proud to have been part of building the enforcement capability of SARS.

All units that I managed at SARS were established lawfully and functioned so. None was 'rogue' or 'covert'. One such unit was established to confront the illicit economy, in partnership with the intelligence services. The plan ultimately did not materialise. I was assigned to convert it into a proper SARS unit.

Its mandate was to support SARS enforcement of tax and customs laws. At one point the unit had offices, but members were ultimately given leeway to work from home to ensure their safety and that of their work. The model was borrowed from international tax authorities. Revenue and customs agencies worldwide have units like this.

I became manager of the unit in March 2008. I ensured it operated lawfully throughout. At its height, it comprised 26 people. By 2010, this number had come down to only six.

The public may wonder why such a small group of people has commanded the attention of national media for so long.

They did not ‘break into homes’ or ‘plant listening devices’. They did not ‘bug people’, did not ‘intercept telecommunications’, did not ‘spy on cops’ and did not operate ‘secret funds’. They did not ‘operate front companies’ or brothels, did not ‘infiltrate politicians’, did not ‘eavesdrop on conversations’ and were never involved in tax settlements. These units never acquired or used equipment attributed to them in recent public statements.

Officials in these units served South Africa with distinction. They did so under difficult circumstances and certainly stepped on a few toes. Their work yielded excellent results, even if I cannot discuss these publicly. The disbandment of the unit is a loss to SARS as its investigations would have yielded much to the fiscus.

I have read the Muzi Sikhakhane report and can show how flawed it is on facts and in law. The Kroon advisory board issued a statement endorsing this report without bothering to ask me any questions. The KPMG report has been disclosed to the media but not to me. Had any of these bodies afforded me a fair hearing, they would not have dignified the allegations as, or elevated rumour to ‘findings’. They have wronged not only me, but caused immeasurable harm to many innocent people.

People in the shadows are fomenting allegations about the unit, intent on undermining one of the most effective institutions in the country for nefarious ends. Many South Africans are waking up to how far they are prepared to go. They used an ill-fated romantic relationship with Ms Belinda Walter to discredit years of good work. When I met her, I was unaware that, as a lawyer, she not only did work in the tobacco industry, but also for the intelligence services. I came to discover this during and after the relationship. I gave my word not to discuss her publicly and have kept to that.

If the Hawks investigation is conducted as it should be, I have no doubt that the truth will out. I’ve no doubt that the courts or any other independent forums will find no wrong with the work we did.

To former unit members: hold your heads high; we did nothing wrong. Recall the times I reminded you that a day may come where we would have to account for our work and therefore must do things properly. That day has come. Co-operate fully wherever required and remember that truth is informed by fact, not media leaks.

To other former colleagues: thank you for the messages of support. It was a privilege and honour to have served with you. To my family and friends, thank you for believing my side of the story.”

- 8.86 On 14 October 2018 the *Sunday Times* published an apology in respect of the Cato Manor series:

“We got it wrong, and for that we apologise

BONGANI SIQOKO: *Sunday Times* Editor

“We have spent the past few weeks reflecting on our reporting of allegations of police killings in Cato Manor in KwaZulu-Natal and the illegal deportation of Zimbabweans to face execution in their country — known as renditions. These stories were written by a team of senior journalists and published in this newspaper in 2011.

As reporters and editors we have an ethical and journalistic duty to interrogate suspi-

cions of abuse of power, accusations of wrongdoing, and any other incidents that are in the public interest. We did just that in these stories, basing our decision on news value, professional judgment and the public's right to know.

We were in pursuit of nothing but the truth and we were not motivated by political, commercial or personal interests. We stood to gain nothing from reporting on these issues but merely fulfilled our constitutional obligation to inform you.

But we admit here today that something went wrong in the process of gathering the information and reporting the Cato Manor, SARS and Zimbabwean renditions stories. This is after we engaged constructively with all key parties involved in the stories.

What is clear is that we committed mistakes and allowed ourselves to be manipulated by those with ulterior motives.

I will first deal with our mistakes.

Take our headline on the first story about the Cato Manor unit as an example. It labelled the unit a death squad. We were not qualified to label it as such, and in our body of work we certainly presented the stories as allegations. Our headlines overstated the contents of the reports.

We had grounds to believe that the concerns raised by human rights activists and other sources that there were suspicious police killings in the area warranted investigation. Of the 45 deaths that occurred as a result of the actions of the Cato Manor unit, we considered 18 suspicious and we based our reporting on these.

But at the time of gathering the facts and reporting on these cases we were made aware that the courts had already ruled on at least six of the killings and found them to be justified. Even though we had this information, we failed to present it in a prominent way that would have resulted in a balanced and fair piece of journalism that reflected both sides. We have reported on the outcome of some of the killings, but the decisions regarding the rest are still pending.

We also created the impression that Gen Johan Booysen was operationally in charge of the unit and by association was directly and personally responsible for the killings. The unit was indeed under the ultimate command of Booysen, and we made this clear in our reports. However, the tenor of our reports suggested that there were no other commanders between him and the unit. We also never vigorously questioned the role and responsibility of the section and unit commanders who were operationally responsible for the unit.

Booyesen has told us he was not directly involved in the operations of the Cato Manor unit. We have no reason not to accept his version. We should have made it clearer that he accepted responsibility for the unit in the capacity of provincial head.

While we were interrogating, investigating and reporting these stories, there was clearly a parallel political project aimed at undermining our democratic values and destroying state institutions, and removing individuals who were seen as obstacles to this project. We admit that our stories may have been used for this purpose. It is this project that also tarnished our reports on SARS.

There was ferocious infighting within state institutions, and warring factions were prepared to use state organs to settle scores. In the process, villains became heroes, and heroes fell as the tectonic loyalty plates shifted violently, as we have seen in the case of former Hawks head Anwa Dramat and Gen Shadrack Sibiya of the Gauteng Hawks, and

SARS officials who became targets of this political project.

That we allowed our stories to be abused for this purpose, we apologise.

Were we aware of this parallel political project? The answer is no. But we should have joined the dots. We should have paused and asked more questions. This is our duty as journalists. Were we manipulated by our sources and some of those who were part of this parallel political project? Perhaps. Were we complicit in ensuring the achievement of their goal? No. But as a consequence, our stories might have given them grounds, reason and motive to achieve their objectives.

For that, we failed you. We failed South Africa. We deeply regret it.

This does not necessarily mean these forces could have been stopped had we not written these stories. Should we have ignored these stories upon uncovering a parallel political project? No. There was, and is, a middle path that we should have taken. We should have reported on these incidents but with caution and care, aware of the hidden hand, the manipulation and political machinations at play. We should have been more balanced in our reporting. We should have been fair and reflected all sides. We should have interrogated our sources more intensely.

As journalists we have our own verification tools and we should have used them better — after all, journalism is nothing more than the discipline of verification.

Had we been more rigorous in our approach, this could have at least changed the tenor of our articles, added a new dimension, provided us with a better perspective and helped us uncover this parallel political project. In that regard, again we failed you.

We failed you by inadvertently allowing sinister forces, who were hell bent on destroying our institutions, to abuse our trust and use some of our stories to carry out their objectives. We unintentionally tainted our stories by narrowly focusing our reportage on incidents without reflecting a broader picture of the factional battles and political wrangling behind the scenes, within the ANC, in the government, state institutions and law enforcement agencies.

That could have allowed us to report on these incidents while reflecting on the implications and political consequences of our reports. That could have allowed us to understand that the truth was a casualty between warring factions battling for political power.

As we said two years ago, our systems, structure and processes led to our failure and we have no excuse but to acknowledge that and apologise.

Having apologised for such failures, this does not necessarily mean we will in future not report any stories that are tainted by a parallel political project. We will continue to carry out our duty to investigate, report the abuse of power and hold the powerful to account. But we promise extra vigilance, honesty, caution and exercise of care.

If this means that we must bring in external expertise to look at how, in the face of such powerful manipulators and peddlers of fake news, to navigate such a terrain in pursuit of the truth, we will.

Our journalists worked very hard on these stories despite their shortcomings. They won awards in professional competitions that were adjudicated by leaders in the industry. However, on reflection and given the circumstances and the manner in which our reports became entangled in the parallel political project, I believe it is only just and fitting for us to humbly reconsider our decision to accept such prestigious awards. We felt a

sense of pride when accepting recognition from our peers, but accepting such accolades will be a negation of a higher journalistic ideal. It is for this reason that we will be returning all the awards and the prize money.”

8.87 The right of reply accorded to Johan Booysen on the same date was as follows:

“I am grateful to the current *Sunday Times* editor, Bongani Siqoko, who has shown great courage and leadership to address wrongs that happened under his predecessors’ watch.

On December 11 2011 the first in a series of articles written by three journalists, Stephan Hofstatter, Mzilikazi wa Afrika and Rob Rose, were published in the *Sunday Times*. The articles told of a ‘rogue’ police unit at Cato Manor in Durban, which under my command was responsible for a number of extrajudicial killings. Terminology such as ‘assassinations’, ‘death squad’, ‘hit squad’, ‘bloody trail of killer cops’, ‘murderous’ and ‘Vlakplaas’ were accompanied by gruesome pictures of dead bodies that conjured up images of apartheid-era murders at the hands of police assassins. These articles were followed by similar ones written by the same journalists over several months.

Before the articles were published, I had heard that Hofstatter and Wa Afrika had met rogue elements within crime intelligence, some of whom were being investigated for looting the secret services account controlled by Richard Mdluli, former head of crime intelligence. I knew from one of the investigators, Col Vas Soobramoney, who worked under my command, that Mdluli had once travelled to Ballito, near Durban, from Gauteng in an effort to get Soobramoney to stop investigating by threatening him. He succeeded in intimidating Soobramoney, who moved to Johannesburg.

False allegations

I contacted the *Sunday Times*’s then editor, Ray Hartley, and demanded to be heard in terms of the audi altarem partem (listen to the other side) rule before the articles were published. Hofstatter arrived at my office at Durban SAPS headquarters and we had a recorded teleconference with Wa Afrika.

I made it clear to them that many of their allegations were false and contained inaccuracies. I informed them that on a number of points I had a completely different version and directed them to the National Prosecuting Authority (NPA), the SAPS Air Wing and Durban Central Police Station, where my version of events would be corroborated. Moreover, I told Hofstatter that some photographs he had of dead suspects had nothing to do with Cato Manor. I also informed them that their sources — who were known to me — were being criminally investigated by the Hawks.

But when the articles appeared a week later it was patently evident that no effort had been made to verify facts with the institutions I had referred them to. Instead, the versions of the suspects under investigation were published.

Although I told Hofstatter that some of the photographs had nothing to do with Cato Manor, a gruesome picture of five dead bodies was published with the articles. As it turned out, the deceased persons were shot by the dog unit after robbing butchery (*sic*) in Durban. The article also falsely implied that Cato Manor killed a group of people, though they were actually shot by the Inanda police.

Colluding with suspects

It would emerge that Hofstatter and Wa Afrika had not only abrogated their obligations as investigative journalists in checking facts and their sources, Wa Afrika had also ac-

tively colluded with one of the suspects, Thoshan Panday. Intelligence, obtained by Col Brian Padayachee from crime intelligence revealed that Wa Afrika told Panday to obtain a certain police docket that would reveal how I had intercepted a suspect in a helicopter so that he could be killed by Cato Manor detectives. Acting on Wa Afrika's instruction, Panday had requested a captain at Mountain Rise police station to surreptitiously obtain the docket. The policeman was unable to locate it.

On another occasion, Wa Afrika flew to Durban to meet Panday to obtain photographs on a CD disc that would implicate me in murders. But when Wa Afrika met Panday at the Gateway shopping complex in Umhlanga Rocks, Panday told him that 'the disc had been sold to Carte Blanche'. This was denied by Carte Blanche.

The truth is that neither the CD nor the incriminating docket existed. But this didn't stop Hofstatter and Wa Afrika writing that I had landed 'victoriously' at the shooting scene 'minutes' after the shooting. In truth, I got to the scene 90 minutes after the shooting, by which time many of KwaZulu-Natal's media were already there. It was part of an elaborate scheme by individuals who had an interest in discrediting me because of my investigations.

Tainted sources

Susan Smuts of the *Sunday Times* later admitted in correspondence to the press ombudsman that an intelligence officer, Col NH Sing (now deceased), had been one of their sources. Sing was himself under investigation for looting the slush fund, along with Md-luli, Maj-Gen Solly Lazarus, whose family went on a trip abroad; Gen Manoko Nchwe, who was gifted an Audi Q5; and the erstwhile minister of police, Nathi Mthethwa, who had a R190,000 fence built at his private home.

After the *Sunday Times* 'exposé', Mthethwa wielded undue political pressure on prosecutors to arrest and charge me and the Cato Manor detectives. According to minutes of a meeting on March 8 2012 between prosecutors and Mthethwa, he exerted pressure on the prosecutors. Information that SAPS had at its disposal in the first place was used to neutralise me and the unit. Why did it have to be 'leaked' to the *Sunday Times* before the police could act?

It later became apparent that criminal elements within crime intelligence, corrupt businessmen and even politicians used the same reporters — Hofstatter, Wa Afrika and Piet Rampedi — to peddle false stories. Among these stories were those of the South African Revenue Service (SARS) 'rogue unit' saga and the allegations of illegal rendition against the Hawks head and my boss at the time, Anwa Dramat.

The fallout of these invented stories was that dedicated officials within the Hawks and SARS were ostracised, suspended and worked out of the system — people like Dramat, Shadrack Sibiyi, Johann van Loggerenberg, Ivan Pillay, Adrian Lackay, Yolisa Pikie and myself were neutralised. Robert McBride and Pravin Gordhan became secondary victims. High-level investigations were consequently compromised as detectives and SARS officials were arrested on bogus charges.

Fodder for cabal

The articles provided fodder for a cabal in the National Prosecuting Authority (NPA) that persecuted those who investigated their corrupt masters, which in turn effectively shielded their masters from prosecution.

The aftermath of these articles cannot be measured in monetary terms. The Hawks and

SARS became dysfunctional and lives were ruined.

On a personal level, I had to endure the indignity of being arrested and handcuffed like a dangerous criminal in full view of my staff, while Cato Manor detectives were arrested at home in front of their families. Many are shadows of the top detectives they once were. Their personal lives are in tatters and most are cash-strapped.

On a positive note, thanks to the *Sunday Times*, I wrote a bestselling book, 'Blood on their Hands', something I never thought I would do. I was informed by prosecutors that Thoshan Panday and his police accomplices are finally going to stand trial for attempting to bribe me. Mmamonye Ngobeni, the KZN provincial commissioner, who had links with Panday, is suspended and facing an inquiry into her fitness as a police officer.

Shaun Abrahams (NPA) and Berning Ntlemeza (Hawks) have been removed by the courts. Col Rajen Aiyer, who was used by the NPA to falsely implicate me in criminal offences, was arrested and charged with perjury by the Independent Police Investigative Directorate. He was dismissed from SAPS. I have been approached to testify at the Zondo state capture inquiry as to how the Hawks, SAPS and the NPA were captured. Many sycophants, especially within the NPA, are still pursuing this nefarious agenda. I am confident that they will be exposed as others have been.

I am grateful to the *Sunday Times* editor, Bongani Siqoko, who has shown great courage and leadership to address wrongs that happened under his predecessors' watch. Journalists in our country must never again be used to promote the agenda of criminals and corrupt politicians. If they are, proper gatekeeping ought to be in place at editorial level."

VIEWS OF THOSE INVOLVED: SUBJECTS, THE SUNDAY TIMES AND THE REPORTERS AND EDITORS

- 8.88 The Panel did not meet with all those involved. Some journalists did not respond to our approaches; some subjects made no approach, notwithstanding publication by SANEF that all interested persons should approach the Inquiry; others, such as O'Sullivan, sent in written documents but were simply unavailable, while there seemed little point in pursuing every member of the *Sunday Times* board and management.

Subjects of the stories

- 8.89 Some of the prime subjects of the *Sunday Times* series of stories (van Loggerenberg, Pillay, Booysens) were given the opportunity of writing a full article or column as a public right of reply in the *Sunday Times* itself. Others, perhaps less central, less influential, or less persuasive, did not have this opportunity of public vindication, and have not received any personal apology from the journalists or the newspaper for whatever wrong has been done to them. They too, deserve the opportunity to articulate their views on this journalism.

- 8.90 The consequences of apparent political factionalism; internal politicking at SARS; investigations; exposés, and of course, the *Sunday Times* articles, were personally hurtful and financially damaging to a number of people.
- 8.91 With a background in the National Intelligence Agency (NIA), Peter Richer was employed by SARS over the periods August 2003 until July 2006 and again from July 2009 until May 2015, when he was the Group Executive for Strategy, Planning and Risk. During these periods he was involved in the establishment of a variety of strategy, planning, research, information processing and risk management functions.
- 8.92 Richer was not involved in the establishment or management of the SPU/HRIU or any related unit dubbed by the media as ‘rogue’ which was, to the best of his knowledge, lawfully established. Yet, he was repeatedly denounced by the *Sunday Times* as having originated or managed these units which were alleged to be not only illegal and therefore ‘rogue’ but also to have undertaken a range of nefarious actions including running a brothel, bugging the home of the President/Deputy President and producing false identity documents.
- 8.93 At no point was Richer contacted by any of the journalists involved in the research, writing or production of these stories. He was given no opportunity to clarify clear factual errors. On only one occasion was he contacted by Piet Rampedi for comment on his suspension from SARS on 5th December 2014. At the time, Richer explained that he was prohibited by his conditions of employment and conditions of suspension from SARS from making any comment. This response was incorrectly reported as being ‘no comment’ which has an entirely different meaning and import.
- 8.94 Richer was never given the opportunity to give input to the Sikhakhane panel, the KPMG investigation or the Kroon investigation, nor was he given the opportunity to respond thereto. Yet Richer is the person who was erroneously implicated in the establishment of an unlawful unit within a statutory entity and with having some managerial responsibility for the alleged criminal or civil wrongdoings of that unit.
- 8.95 Richer points out that not only did the journalists involved fail to seek his input or comment on any of their reports which specifically named him, but they failed to give fair balance to the official comments of SARS during this period; did not take into consideration that public servants are bound by secrecy provisions in their conditions of employment (particularly in SARS and NIA) and that they are therefore limited in their ability to defend themselves and generally rely on the official statements of their employers. They did not bother to check basic facts (such as Richer’s employment record), and did not seek independent legal opinion on matters that were clearly of a complex legal nature, such as the lawfulness or otherwise of the so-called ‘rogue’ unit.
- 8.96 Richer was suspended from SARS purportedly on the basis of the Sikhakhane Report but he was never mentioned in that Report and Richer believes that it can only be on the basis of stories published in the *Sunday Times* that SARS took action against him.
- 8.97 Richer and his family have suffered deeply as a result of these reports. His employment was ended amidst a flurry of baseless and vile reports which impugned his loyalty, character and professional ability. The financial consequences have been immense.
- 8.98 Lauren Richer described to the Panel the experience of being the subject of repeated headlines and stories over 24 months where the subject had not been given the right of reply to stories

which were not true:

“I can’t tell you of the dread which built up every week. By Saturday, one was feeling ill, feeling so powerless, a sense of powerlessness and fear, loss of dignity. We have three girls, eldest 30, others mid- to late- twenties. They had colleagues who would ask questions: How could they? How could they spy on the president, run a brothel etc? It was a horrible, horrible time.”

- 8.99 Adrian Lackay was employed as spokesperson for SARS until his resignation as “a direct consequence of an obstinate and persistent campaign of disinformation and lies, carried out by the news reportage of the *Sunday Times*, from around October 2014”. The reporting of Rampedi, wa Afrika, Hofstatter and Rees was, says Lackay, intended to “promote the reign of Moyane as the new SARS Commissioner”. These reporters were given exclusive access to confidential SARS information pertaining to employees or disciplinary processes or the outcomes of SARS meetings.
- 8.100 Whilst Lackay gives no indication that his professional or personal integrity was impugned in any way, it is clear that his treatment by Moyane and the way in which he believes Moyane used these journalists, offends his ethical standards. It is his opinion that these journalists did not “practise a form of credible or ethical investigative journalism in the public interest or for the public benefit”, but “wilfully ran a disinformation campaign and became complicit to efforts to capture the Revenue Service”.
- 8.101 Lackay comments that the news reporting by this group of journalists was “flippant, malicious, and at times, patently false”. He states that the *Sunday Times* would approach SARS at the last minute for comment (usually midday on a Friday or even a Saturday morning) before going to print, seeking comment or information about events that were more than five years old. Written official responses, explanations, or denials, which Lackay provided on behalf of SARS, would either be completely ignored, manipulated, or perverted, to suit a specific headline or to demonstrate that SARS was indeed approached for comment. In this regard he cites, ‘SARS BUGGED ZUMA. Tax authority paid agent R3m to hush up illegal spying operation’, *Sunday Times*, 12 October 2014, and, ‘Taxman’s rogue unit ran brothel. Secret outfit also posed as guards for ANC heavyweights, spied on top cops and acted for SARS bosses’ friend’, *Sunday Times*, front-page lead, 9 November 2014. Articles that were published without seeking any comment from SARS or affording the institution the right to respond included, ‘Tax U-turn on the cards, Report on rogue spy unit in SARS casts doubt on huge deals’, *Sunday Times*, 21 December 2014.
- 8.102 On most occasions, no attempt was made to seek or obtain comment from people directly affected by their reportage. By way of example, no questions were ever put to Lackay or SARS or anyone else as to whether or not ‘SARS broke into the home of Mr Jacob Zuma, planted listening devices in his home or operated a brothel’.
- 8.103 In short, it is the experience and view of Lackay that comments which were sought were “mere pretence and extremely limited and not reflective of the main thrust of most of the articles”.
- 8.104 Further, these journalists knew that Moyane had issued an order for those affected by the *Sunday Times* headlines not to engage with the media, but the journalists did not indicate the reason for their inability to rebut or respond to the articles.
- 8.105 Van Loggerenberg made submissions to, and met with the Panel. Essentially, he repeated

much of what he had written in his published right of reply. He affirmed that the voices of the members of the SARS Unit were never reflected in any meaningful manner in the series of stories. The Panel is cognisant of the fact that legal and employment restrictions would preclude this. Van Loggerenberg recapitulated that sources were anonymous; content was sometimes projected as fact when it was not; innuendo was used, and reliance was placed on the reports of Sikhakhane SC and Judge Kroon, which were incorrect.

- 8.106 Van Loggerenberg spoke at some length about his relationship with Belinda Walter (attorney and spy for more than one agency), and complained that she was a source for the journalist Rees and had even quoted from a letter which van Loggerenberg had marked 'private'. He further complained that Walter had allegations against Rees which should have meant that his credibility was impugned.
- 8.107 Van Loggerenberg was particularly distressed and angered about the way in which he was described by the *Sunday Times*, after his interview with Rees, as a former apartheid undercover police agent. He told the Panel that none of this was true and that it was defamatory. However, in the course of discussion with van Loggerenberg, he said that he had been a police agent; had operated undercover: had operated from October 1993 onwards, when the minister responsible for his unit was one Hernus Kriel of the National Party, and had ceased to do so in November 1998. Despite this, his perception was that the way in which he was described in the paper implied that he was a member of the 'security police' during the years of apartheid, and this was false.
- 8.108 Van Loggerenberg made it clear to the Panel that he had entered into an arrangement with the *Sunday Times* that he would not sue the newspaper in exchange for the retraction which was made by the editor. He could not explain, however, why the "most important defamation" that he was "a former apartheid undercover police agent" had neither been retracted nor mentioned in the *Sunday Times* apology or in his own right of reply.

The Sunday Times written submissions

- 8.109 The *Sunday Times* made written submissions to the Inquiry. The full document is available on the SANEF website.
- 8.110 In sum, the submissions take collective responsibility on the part of all those involved for shortcomings in *Sunday Times* journalism, as well as editorial accountability. The *Sunday Times* acknowledges that the credibility and integrity of the newspaper have been tested and that questions have been raised regarding the "use of sources and their motives, verification processes, fairness, balance and objectivity". The submissions themselves offer an overview of the "myriad threats" facing the newspaper industry, which include restructuring; retrenchments; loss of knowledge in the industry; fewer journalists doing more work, and changes in both writing and readership occasioned by online news. The *Sunday Times* affirms its commitment to "publishing news in the public interest" and to "performing its duties within the parameters of the Press Code and the Constitution".
- 8.111 The *Sunday Times* states that, as the state capture project became clearer, so it became more apparent "that some of our reporting had played into the interests of some of the main players". This resulted in the retraction of stories and offers of rights of reply to some of the

subjects of the *Sunday Times* reports.

- 8.112 A period of introspection and change in the newsroom followed, during which common elements in the lapses in *Sunday Times* reporting were identified. These include:

Overstating allegations as fact;

Failing to investigate facts that contradicted the *Sunday Times* narrative;

Failing to investigate the facts upon which the *Sunday Times* relied;

Failing to reflect on the political context in which the stories unfolded;

Becoming attached to the narrative the *Sunday Times* was reporting;

Suffering from confirmation bias;

Pressure to produce front-page stories led to stories being published before they were ready;

Organisation of the newsroom also contributed to lapses in reporting and included:

- The investigations unit was a separate team, housed away from the rest of the reporters and with a direct line to the editor or deputy editor;
- An overreliance on the Investigations Unit for front-page stories, which put them under pressure to deliver stories which would have benefitted from more time for further investigation; and
- The investigations unit's stories were seldom discussed by the senior editorial management, which led to stories not being subjected to scrutiny by other managers.

- 8.113 As a result the *Sunday Times* newsroom has been restructured in a number of ways which include: the disbanding of a separate investigations unit; the appointment of three assistant editors instead of one deputy editor, with one assistant editor in charge of news and investigations; testing of information across various camps and interest groups; reviving and updating editorial codes of conduct; developing training to assist in identifying the motives of sources and ways for reporters to protect themselves from manipulation; routinely selecting stories for special scrutiny by a senior editor; and news editors asking to see the questions reporters plan to send to subjects.

- 8.114 The *Sunday Times* has renewed its focus on basic journalism, including asking the right questions; giving people adequate time to respond; publishing the responses; testing new information; not taking sides, and not having vested interests.

- 8.115 The *Sunday Times* states that even if these interventions had been in place at the time of its earlier reports, "we would still have investigated and published the stories", but we "would have taken more care to verify all the facts; been slower to publish stories that still needed verification, and paid more attention to the context".

- 8.116 In the course of meeting with the *Sunday Times*, the chronology of the disquiet concerning the narrative about SARS and the Cato Manor murders was discussed. The Panel was offered a scenario of a series of meetings with disgruntled subjects of stories; meetings with third

parties with supposed power; negotiations involving the subjects and third parties, and some interaction with the journalists involved. There was denial of political pressure from Luthuli House and no clarity at all on the supposed ‘manipulation’ which occasioned the series of stories.

- 8.117 The Panel was told of meetings with Johann van Loggerenberg of the SARS Investigative Unit, who complained about details in the stories (the brothel run by or frequented by members of the SARS Unit could not be identified); the lack of right of reply throughout; threats to go to court and to the Press Ombud, and allegations that there was an agenda by crime intelligence to use the *Sunday Times* investigations unit to collapse SARS. The meetings attended by van Loggerenberg were with Siqoko and senior members of management. There were also meetings with Pillay and Lackay.
- 8.118 The Panel was told of meetings with Booysens, who similarly complained about inaccuracies and speculation. The photograph of him landing by helicopter was not before certain shootings and he did not do so “victoriously” or “congratulate” the members of SAPS involved, and no right of reply was given.
- 8.119 The Panel had been informed by other sources of the central involvement of O’Sullivan, described above. This was confirmed at the meeting with the *Sunday Times*. O’Sullivan had also encouraged another journalist, Alec Hogg, to publicise his cause and was perceived to be damaging the publication’s brand. The Panel was told that senior members of the *Sunday Times* management encouraged the editor to meet O’Sullivan. Accordingly, van Loggerenberg was enlisted by the *Sunday Times* editor to contact O’Sullivan and persuade him to cease his negative campaigning and a meeting was arranged with O’Sullivan through van Loggerenberg to this effect. He was told that the *Sunday Times* was dealing with the issues involving Booysen and van Loggerenberg. O’Sullivan’s response was that he would give the *Sunday Times* five months and if they did not resolve these various issues, “the axe would fall”. The Panel understands that O’Sullivan continued his campaign and told the meeting with the *Sunday Times* management that “other media houses were giving him space for stories on the *Sunday Times*”. The *Sunday Times* then made contact with Booysen and told him that O’Sullivan continued to threaten a boycott and had therefore “gone back on his word”.
- 8.120 The Panel had previously been told by a number of sources that there had been minimal and disjointed discussion with editors and management about corrections to one or more of the stories, which had been written and published by the investigation unit. The Panel was now told that discussions were taking place about the journalists being unable to give convincing details of sources or a factual basis for certain allegations, and that as editor, Siqoko had decided to email apologies to van Loggerenberg and others.
- 8.121 The Panel had been told by other sources of meetings of board members and senior management with ANC leadership at Luthuli House. Siqoko and Smuts had no knowledge of this and both stated clearly that “never once did the bosses on the fourth floor tell us what to do about these stories”. The Panel was also told of the active involvement of two members of the board (Bonamour and Monare). It was confirmed that they took a great deal of interest and that the board had asked two persons to investigate the entire issue but that Siqoko and Smuts had no knowledge of Luthuli House involvement.
- 8.122 The public apologies of the *Sunday Times* referred to manipulation and the paper’s submission to the Inquiry referred to the state capture project. The *Sunday Times* submission states that “some of our reporting had played into the interests of some of the main players” and the Panel was told “we began to see our narrative had played into it”. However, no details of any

such “manipulation” were identified or spelt out in any of the public apologies or in these written submissions. The Panel asked which parallel political project had manipulated the *Sunday Times*: how, and by whom? No answer was given.

- 8.123 The Panel enquired whether or not any of the journalists involved in writing the stories were invited to accompany editors or management to the various meetings held with van Loggerenberg, O’Sullivan or Booysen. The answer was that they had not been invited.
- 8.124 The Panel was informed that matters came to a head with the ruling by the Press Ombud in the case of Gordhan and Pillay, and the resulting correction by the newspaper.
- 8.125 Apologies were issued. Van Loggerenberg, Booysen and Pillay were given space in the *Sunday Times* to produce their own responses to the series of articles. Van Loggerenberg did not then need to proceed with his litigation or approach to the Ombud.
- 8.126 The Investigative Unit was closed. One journalist had long since moved to another title; another resigned, and two others had their contracts paid out with non-disclosure agreements signed. New contracts were not negotiated.
- 8.127 Agreements restricting the disclosure of the terms of any separation and/or amounts paid have become a contentious issue in the media industry. Many see it as absolving potential wrongdoers of any accountability. For example, Rehana Rossouw, who held various positions at AVUSA, Times Media Limited and Tiso Black Star and was Commissioning Editor for *Business Day* prior to her departure, described incidents of “bad treatment” of journalists and “shocking working conditions” (for example, casualised month-to-month contracts entailing no leave and no salary increases) “leading to mental health issues and attempted suicide”. She has asserted that NDAs hide scandals and described “big pay-outs” for Mzilikazi wa Afrika, Stephan Hofstatter and Piet Rampedi, accompanied by NDAs. Rossouw described how Hofstatter “had boasted” that he had received a ‘huge pay-out’ to leave but had refused to state the amount because of the NDA. “Some journalists, including Mzilikazi, have moved from one job to the other after being relieved of duties. In all those jobs an NDA was signed and we will never get to know the findings of his disciplinary hearings and how much he was paid. NDAs mean no-one gets to know the truth. Root out NDAs,” she said.

Individual Sunday Times journalists

- 8.128 The Panel heard from and engaged with Rees, Rose, Hofstatter, wa Afrika and Joubert, and presents their comments from an overall perspective. Obviously, opinions differed and were affected by the manner in which the journalists departed from the newspaper. However, it must be said that there appeared to be an honest attempt on the part of each journalist to interrogate what had happened; what went wrong; how things could have been done differently; and what learnings could be taken into the future.
- 8.129 Firstly, headlines (normally the work of sub-editors) had “sexed up” stories: from the repeated use of the phrase ‘rogue unit’ (which did not distinguish between the contestation over the lawfulness or otherwise of the Unit itself and of its activities), through to references to the “Love Affair” between the “Spy and the SARS Sleuth”, which referred to the affair between van Loggerenberg and Walter. (Although the responsibility for headlines does customarily

lie with sub-editors, the Panel is aware that other senior newsroom role-players sometimes intervene when a story is judged to be of high commercial value to a title and a headline change might enhance that. The Panel received no submissions about who took the headline decision on these specific stories.)

- 8.130 Secondly, there were errors in the headlines (again the work of sub-editors). Two egregious examples are a story based on a memorandum written by a SARS employee about a member of the SARS Unit frequenting, or inveigling sources into, a brothel (which then became headlined as the 'SARS Brothel') and a story naming Kuben Moodley as a 'Gupta Pal'.
- 8.131 Thirdly, journalists acknowledged there were errors in the series of stories. A photograph of three bodies in the back of a bakkie was attached to a story but these were not people killed by the Cato Manor police unit – and a correction was later published. An affidavit from SAPS official Navin Madhoe was misquoted in a sidebar. Another story said Booysen arrived at the scene of two of the murders contemporaneously, whereas it turned out Booysen arrived only 90 minutes later.
- 8.132 Fourth, language was used which was purely speculative and misleading. Booysen was described as being "victorious" and "congratulating" his team after they had killed some of the Cato Manor victims, which was gratuitous and without any foundation.
- 8.133 Fifth, allegations were not always distinguished from fact and some journalists conceded that there was probably some "desire to elevate allegation to fact". One such example was the existence of the SARS memorandum referring to the operation of a brothel and the fact that van Loggerenberg had confirmed expenses for entertainment; this then became a brothel run by the SARS Unit with taxpayers' money.
- 8.134 Sixth, the example described above was one in which journalists acknowledged that reporters can become too close to sources (of whatever persuasion or faction) and fail to interrogate both the sources and themselves as journalists for confirmation bias. More than one journalist spoke of the need to spend time interrogating issues; making allowance for contrary facts; seeking sources for both stories and counter-stories; seeking counter-stories themselves, and properly contextualising. The Panel was told that in the world of "spooks and cops and political factions" there is always "one group feeding journalists and another group feeding others" and "there is almost a civil war fuelled by spooks and cops and the agenda is not in the public interest but in the interests of those who fund them". In short, all those to whom we spoke expressed awareness of the difficulties in retaining distance from sources and a critical overall perspective on the multiplicity of narratives. They all acknowledged that they had sometimes failed to do so.
- 8.135 In this spirit, none of the journalists was of the view that they had failed in their task as investigative journalists. Forty-five people were killed in the Cato Manor jurisdiction. IPID, the Hawks and the NPA found sufficient evidence to formulate criminal charges and prosecute members of the SAPS unit. The *Sunday Times* unit did have sources (some of whom were killed). At least one *Sunday Times* source publicly criticised the apology given by the editor of the newspaper to Booysen. There was a unit within SARS found to be of questionable legal status in investigations conducted by the Inspector-General of Intelligence (Faith Radebe); an attorney (Khanyane); an advocate (Sikhakhane SC); a High Court Judge (Kroon), and a firm of accountants (KPMG). None of these factors was a fiction created by the journalists. There were also love affairs and pillow talk with other agencies (van Loggerenberg and Walters), and there was expenditure on sleuthing materials.

- 8.136 But the journalists did acknowledge that there was a lack of contemplative and critical distance occasioned by over-reliance on leaks and whistleblowers; the pressure for scoops; the need for speed in going to print; and the lack of finance to simply stand back and take time to comprehensively interrogate detail and take a broader view of the overall picture.
- 8.137 At least one journalist was adamant that stories were subject to careful scrutiny by the newspaper hierarchy; that the journalists were asked how many sources they had and whether there were any ulterior motives; and that possible legal comeback was discussed. The Panel was told that each story on the SARS Unit was sent through the news editor; the internal legal advisor; the deputy news editor (Marvin Meintjies, who would sign the accuracy test), and the editor. On the Cato Manor stories, the right of reply was always given and the process of checking was always done by those editors who ultimately took responsibility for the publication thereof.
- 8.138 Understandably, none of the journalists involved was happy with the apologies given by the *Sunday Times*. First, they felt that factual errors should have been corrected in the normal manner: with an apology. Second, the powerful and politically connected were enabled to meet with board members and management and editors to changes stories, while vulnerable Cato Manor families had no such recourse although they were the persons most affected by what had actually happened, and the subsequent denial of those events. Third, the decision to retract a portion of stories and to apologise for a portion of stories was made by management and the journalists themselves played little, if any, part in the documents that were published. Fourth, the editor had his say and those who had pressured the management had their say, but the journalists were given no right of reply in this destruction of their skills, professionalism and integrity. Fifth, the Panel would add that the opprobrium the stories attracted may have ensured the issue is not now revisited by any media, despite the compelling testimony of community members and human rights activists unconnected with the *Sunday Times*.
- 8.139 The Panel was told that ‘the winds of change’ meant that the management of the *Sunday Times* had to “take a different side in factional politics” and took a “calculated position”.
- 8.140 One journalist, Malcolm Rees, completely abased himself, with regard to the description of van Loggerenberg as a “former apartheid undercover police agent”. He repeatedly stated that he had understood from van Loggerenberg that this was defamatory and he was adamant that he had not inserted the phrase into the first story about SARS and van Loggerenberg but that this was the decision of the then editor, Phylcia Oppelt. However, he had had numerous interactions with van Loggerenberg and had made both private and public apologies with regard to use of this phrase which, whilst factually correct, might have been suggested that van Loggerenberg had been a member of the Security Branch of the South African Police.
- 8.141 Another journalist, Piet Rampedi, with whom the Panel had no interaction, wrote in his very lengthy and angry letter of resignation to the *Sunday Times*, dated 8 March 2016, that there had been “capitulation of the newspaper to enter into a deal ... when the occasion presented itself” and that the *Sunday Times* had engaged in what he “considers to be unethical conduct” in its underhand deals with the persons whom he had been investigating for two years:
- “The deal is to the effect that there will apparently be a truce between disputing parties, the suppression of ‘negative stories’ about former SARS officials, and the suspension of the Press Council Appeal process... and in so doing to impugn my personal and professional integrity by implying I could not be trusted because I lacked integrity.”

Comments from other media practitioners about Sunday Times practice and processes

- 8.142 A comprehensive set of comments is set out by the 2011 review of *Sunday Times* editorial processes in the Fray, Harber, Kruger and Milo report.
- 8.143 In 2008, following a number of earlier high-profile story retractions, a four-person panel was asked to review the *Sunday Times* editorial processes. The review took place over November and December 2008, but looked back as far as incidents from 2007, and was completed in December 2008. Both editorial process and story management were carefully followed over weeks, and difficulties were identified. The report is lengthy, detailed and replete with recommendations to “enable the *Sunday Times* to produce bold, incisive journalism that maintains the utmost credibility with its audience”. However, for reasons that were not explained, the report was not made public until June 2011. A redacted summary appears below.
- 8.144 The 2008 panel found that the paper’s stature and a string of successes in previous years had led to complacency, and that over time some policies, practices and structures had become inadequate. The organisational structure had become top-heavy and thin on the frontlines of news generation, with a lack of clarity on roles and responsibilities, particularly among the proliferation of senior editorial managers.
- 8.145 There was no chief sub-editor – regarded as the vanguard for quality control. There was a need for resources to be redirected to the start of the process: story generation. The weekly Johannesburg newsroom diary meeting seldom took place and too many decisions were being deferred to a large conference. Many had expressed unhappiness with the process of rewriting a lead story into a splash. Internal communication was seriously inadequate. Staff development was also identified as an essential issue, not just in terms of induction processes but also ongoing training that would help minimise potential errors and, most importantly, the rewrite process.
- 8.146 The *Sunday Times* used an ‘Accuracy Check Form’, which was designed to ensure reporters meet accuracy and fairness requirements. There was, however, no consistency in the use of the form and few consequences for not using it, or for getting facts wrong. There was criticism that the form had been reduced to a bureaucratic formality. It needed to be supplemented with a more comprehensive system of quality-monitoring, with firm checkpoints and clear responsibilities for signing off stories.
- 8.147 The 2008 panel believed that the paper’s approach to sourcing was a crucial flaw in the then *Sunday Times* policy and practice. There was an urgent need to return to the conventions of attribution customary in journalism. The *Sunday Times* had a set process for stories that raised potential legal issues, yet high-profile stories that were retracted were not sent for external legal advice.
- 8.148 The 2008 panel believed that secrecy around investigations should be kept to an absolute minimum. When secrecy was required, a small team of senior people should be assigned early in the process to guide the project.
- 8.149 Among the key recommendations were the implementation of a structured induction process; a proactive newsroom-based training programme; a review of the Accuracy Check

Form, and incorporation into a more comprehensive system to ensure editorial integrity.

- 8.150 The 2008 report set out in detail issues pertaining to editorial processes and international best practice and examined four case studies with implications for investigative journalism. Clear guidelines were given about a series of checkpoints at which individuals with clear responsibilities should take responsibility for ensuring that a story was accurate, fair and balanced. The reasons and need for a known policy on sourcing and its content, were emphasised.
- 8.151 In short, the Fray/Harber/Kruger/Milo Report published in June 2011 is well worth reading and its critique of *Sunday Times* practice prior to June 2011 appears to remain as relevant to practice at the time of production of the SARS and Cato Manor series in subsequent years. It is not feasible here to repeat every identified problem and suggested solution; the complete report warrants study and application by all managers, editors and journalists seeking to avoid repeats of the events that led to the writing of this SANEF Report almost ten years later.

Comment by other interested parties

- 8.152 The harshest critic of the *Sunday Times* and its investigative journalists has been veteran investigative journalist Jacques Pauw. He has written that the work of the *Sunday Times* was “not just sloppy reporting or journalism that got it wrong but was manufactured journalism that was meant to disinform and to ultimately damage our law-enforcement agencies”.
- 8.153 One editor commented that the *Sunday Times* is “too much up their own arse”, a comment which seemed to reflect an industry-wide attitude towards what was also called the “hubris” of the *Sunday Times*.
- 8.154 Adriaan Basson told the Panel of the “incredible arrogance” of the *Sunday Times*, which paper always seemed to believe that “if a story was not in the *Sunday Times* it didn’t happen”. Another editor said that there was a “culture maintained by the bosses and editors that they are a cut above the rest of us”. Several informants cautioned that they were not convinced that the hubris was gone.
- 8.155 More than one informant who had been working on other papers or online publications as the series of stories broke, claimed to have had “another side of the story”, which included that the SARS unit was going after Zuma and his allies, which was why they were targeted, and that there had never been any brothel, but that what anyone else reported was ignored. One commented that “it is all about hubris [and] untouchability, and very sad”.
- 8.156 More than one person to whom the Panel spoke had heard that there was serious legal pressure on the *Sunday Times*. Basson said, “It was my understanding that there were some serious legal implications coming from van Loggerenberg, Pillay and Booysen”, and that the new editor was sent in “to clean up and set the paper on a new path”. By this stage it was thought that it was “also pretty clear that their reportage was wrong”. Said one interviewee, “it was now a new dawn” [in the political firmament] and “the *Times* was about to expose other ANC colleagues”.
- 8.157 Without exception, the senior journalists and academics with whom the Panel met identified

a series of cumulative difficulties with the modus operandi of both the Investigations Unit and the *Sunday Times* itself.

- 8.158 First, media houses must learn how to handle those ‘star’ or investigative reporters who “hunger for glory” because journalists “must not become so big that they are no longer edited”.
- 8.159 Second, investigative units are expensive to maintain because they draw reporting resources out of the main newsroom, and so are required to justify their existence. This results in pressure to produce leads and splashes every week, leading to quick, rushed, sometimes shoddy and often unchecked stories.
- 8.160 Third, in such circumstances there is slippage because the rest of the value chain – which should be the proverbial ‘seven pairs of eyes’ – does not pick up difficulties. Certain stories are no longer subjected to the appropriate professional and editorial regime.
- 8.161 Fourth, journalists must remember that every source has a motive – either public interest or personal advantage – and interrogating sources: searching for corroboration and disclosing everything relevant to editors, are all very important. Such actions protect both journalists and editors as well as the paper and the public.
- 8.162 These points were considerably elaborated to the Panel, all in the context of the debacle at the *Sunday Times*. Interestingly, all of them had already been made in the Fray/Harber/Kruger/Milo report discussed above.
- 8.163 While the *Sunday Times* has conceded it was manipulated by unnamed forces with their own agenda, no evidence has been produced to suggest that the journalists – or even the newspaper – were knowingly complicit therein and intended to disinform and cause damage. Indeed, no one has indicated what the manufactured reportage was, or been able to expand further on the identity or purpose of the manipulating forces.
- 8.164 The earlier Fray/Harber/Kruger/Milo report identified the same problems and concerns within the *Sunday Times* as have been found in this instance, but made no such aspersion of manipulation, manufactured journalism or malevolent intent.
- 8.165 Paul Hoffman of Accountability Now not only commented that the debacle around the *Sunday Times* series of stories “calls into question the state of the setting of the moral compass of the fourth estate in South Africa”, but suggested that an accountable media would have not only revealed the sources of the *Sunday Times* but also would have collaborated with the criminal justice administration in the prosecutions which: “should follow nefarious fake news of the kind in question. Instead, the editor chose to protect the fraudsters who duped his reporters.”
- 8.166 This view presupposes that there was both criminal action and intent in what Hoffman has called “fraud to the extreme prejudice of the public weal”. Hoffman may be correct that journalists in the employ of the *Sunday Times* were duped but, as noted, the nature and extent thereof has never been clarified.
- 8.167 Hoffman had much to say to the Panel on the *Sunday Times*. “We were manipulated without saying how and by whom,” he said. It then becomes an open question of whether the public would assume it was “spies or disinformation peddlers persuading over-eager journalists

to publish a crock of nonsense, or whether clever journalists persuaded editors to publish figments of their imagination”. He concludes that “as a consumer of the work of the *Sunday Times*, I am not happy with the answer that ‘we were manipulated’ without knowing by whom and for what purpose”. He repeated his view that only an investigation by the Hawks or SAPS would clarify the situation, because at the moment the *Sunday Times* “has undermined the credibility of the press as a whole and the title in which false information was published”.

- 8.168 In a written submission, O’Sullivan of Forensics for Justice, claimed that: “The media played a significant role in this capture of the criminal justice system, because there are too many journalists and editors that do not know the difference between a scoop and a planted story, and quickly fall into the trap and then proceed to destroy good people’s lives.” Unfortunately, O’Sullivan failed to provide details of the planted stories and who did such planting. Further, O’Sullivan wrote: “The same proceeds of crime has been used to pay off journalists, such as those at the *Sunday Times*, to help bring the country to its knees by clearing the path for evil in the criminal justice system,” but again without providing any substance to the allegation that any journalist in the employ of the *Sunday Times* received any funds or other financial inducement to write or slant any story or cover up any story.
- 8.169 In the course of this inquiry the Panel spoke with many media practitioners, all of whom had views on the *Sunday Times* and the manner in which it operates. Their succinct comments give an overview of what may have gone wrong in ethical practice during this particular series of *Sunday Times* stories, but the comments are also applicable in the section on newsroom standards and practice.
- 8.170 The Panel heard: There has been an “accumulation of issues with the *Sunday Times*”; this is “all part of the *Sunday Times* organisational culture and systems”. These stories had the impact they did because “the *Sunday Times* decides what is important and a lot arises from the influence of the organisation being full of itself”.
- 8.171 More than one commentator described the existence of a “discourse which deliberately undermines trust and credibility in the media”, and suggested that using the *Sunday Times* fits in with that agenda. Everyone to whom the Panel spoke confirmed that the *Sunday Times* retraction and apologies had done enormous damage and that the credibility of, and trust in, the media industry had been severely undermined.
- 8.172 Simon Pamphilon repeated something said or implied by everyone with whom the Panel engaged: “People do not know!” A number of persons asked the Panel whether or not the *Sunday Times* had held an investigation into its investigations unit and the stories which had been published and if so, when the investigation took place and by whom it was conducted. The Panel asked the editor, Bongani Siqoko, if there had been any such investigation and was informed that there had not. Anton Harber commented that the process followed by the *Sunday Times* was unlike that followed by the *New York Times* after the Jayson Blair embarrassment (when the journalist was discovered to have plagiarised and fabricated stories). The *Sunday Times* made the mistake, says Harber, of a quick apology.
- 8.173 “The *Sunday Times* has to come clean on exactly what happened,” said journalism teacher and researcher Anthea Garman. Her historical perspective reflected that we have “gone through the apartheid era in the newsroom” where there were spies and agents and “shadowy agendas”. Garman asked, “Did the editor of the *Sunday Times* think that we were in bed with spies and can control it?”

- 8.174 An informant using the nom-de-plume 'Oliver', asked: "Why did no other journalist pick up that these are lies or that the writers were playing with the facts, with the truth?" He wrote, "I find it near impossible that the parties involved did not speak out to rectify the lies; surely this should have been followed up?" He ended by asking: "Who are we, the public, meant to believe?"

Comment by Sunday Times editors

- 8.175 The Panel held meetings with two persons involved with the editing of the *Sunday Times* during the period concerned, Mike Robertson and Ray Hartley. Repeated attempts were made to contact a third, Phylicia Oppelt, using all known contact addresses, but no response had been received by the time the Report was finalised.
- 8.176 Mike Robertson, a former editor of the *Sunday Times*, was Managing Director (MD) of all titles, magazines and websites in the Johncom Media, Avusa Media and ultimately Times Media stables over the period 2002 – 2015, which tenures together covered the setting up of the Investigation Unit, the authorship of the original *Sunday Times* Accuracy Test (an idea inspired by practice at the UK *Guardian*) and later the publication of the Rendition and Cato Manor series of stories.
- 8.177 Robertson set up the Investigations Unit when a series of stories all requiring deep investigation emerged. Although he asserts "all journalism must be investigative", a separate unit was required because such work "can sometimes take years". The unit initially comprised four people under the then Deputy MD; its work was always sent through to the Deputy Editor for scrutiny. When he edited the *Sunday Times* during the Arms Deal investigations, he "knew every single source"; stories were immediately edited on completion but always held back a week for further scrutiny. Fact-checking, from the basic level of the spelling of names, was conducted.
- 8.178 Robertson described his time as continuing "a hands-off tradition of non-interference by management". He recalled only one occasion on which he had raised with Oppelt social media challenges to the Cato Manor story and received assurances that a response was being prepared.
- 8.179 He described the Cato Manor stories as "seriously bad journalism" [in the midst of] a power battle going on", exacerbated by "arrogance on the part of the journalists (...) a number of people on the *Sunday Times* had a sense of hubris." He dismisses suggestions the stories were run to improve circulation, noting his belief that the stories were not particularly interesting for most *Sunday Times* readers.
- 8.180 Whether as editor, publisher or MD, Robertson experienced "absolutely no political pressure". He felt, as MD, that it was his job to protect editors. However, he did perceive the management of Times Media talking directly to journalists and believes there was interference in the work of the investigative unit. He suggested to the Panel that management was vulnerable to outside interference because the owner had taken on debt, sold assets and needed the support of the Public Investment Corporation (PIC). He suggested that the "changing political climate" and the PIC were equally relevant to the various apologies issued.

- 8.181 During a meeting with Oppelt and others, which he convened to deal with Pravin Gordhan's complaint about the lack of right of reply on SARS stories, Robertson told the Panel he was informed there was no investigation but that "stuff was being dropped off on Thursday or Friday and then just published". Other senior editors, he said, described this as "factions playing off one another". He says that Oppelt at that meeting cited as her sources [the on-therecord utterances of] Moyane and Sikhakhane. Robertson believes the journalists involved should have "been a little wary of the battles going on in government [and should have asked] why are these people telling me this?": the first question in his Accuracy Test. But Robertson told the Panel he was equally critical of those journalists accepting everything uttered by opponents of the Moyane narrative as fact: "Nuances were missed by all."
- 8.182 Ray Hartley worked at the *Sunday Times* from 1993 until leaving to start the Times in 2007. He returned to the *Sunday Times* as editor in 2010, when he was told that circulation was in freefall; there had been multiple apologies, and he was to come and "sort it out". He was editor from 2010 - 2013 when Oppelt took over and he went to edit *Business Live*. However, he says he was also told: "At least you've got this great asset: the industry leader" (the investigation unit).
- 8.183 Hartley told the panel there was a belief in the organisation that not just anybody could work investigative stories. The unit was successful: it "nailed down stories and won awards". As a consequence, unit reporters became "full of themselves [and] resistant to being subject to newsroom standards".
- 8.184 When Hartley arrived, the investigation unit was neither part of news conference, nor on the diary and worked out of their own room. He brought the unit into to the conference, although they still did not attend other regular news diary meetings.
- 8.185 Hartley concurs with Robertson that the Cato Manor stories were not written for circulation reasons and were of minimal interest to the *Sunday Times* readers of those years. He told the Panel the stories were newsworthy in the context of Police Commissioner Bheki Cele's exhortations to police to 'shoot to kill'. The victims of the ensuing wave of "extra-judicial violence" were predominantly poor, unemployed, young, black men whose families had no other voice to challenge their children's deaths.
- 8.186 Hartley told the Panel: "There were months before it could be said that we had a story". He believed that Booysen's request to be better represented in the story was dealt with: he sent a journalist to follow up; included Booysen's comments, "but not at the top or front"; and the stories did not say Booysen ordered the killings only that he "was ultimately in command".
- 8.187 Hartley conceded there were story errors, but noted the Cato Manor series won the Taco Kuiper awards, which made the Investigations Unit and Hartley feel they could and should defend them.
- 8.188 Hartley described to the Panel an attempt made by another major news group to "poach" the Investigations Unit, offering to double reporters' salaries, just before he left the *Sunday Times*. *Sunday Times* management retained the unit by also doubling salaries and giving it more autonomy, so that it now reported only and directly to the editor. Hartley told the Panel he "would not have kept them: I don't think there should have been [a] doubling of salaries – this makes a statement about relative importance which puts you above your peers and so at news conference [everybody else is] less inclined to be critical."

- 8.189 Hartley suggested to the Panel that the apologies resulted from the *Sunday Times* “feeling exposed” by stories that did not have a solid foundation, during a period when the title seemed to be “imploding” because of declining advertising (including the loss of some particularly lucrative contracts) online competition, threats from Paul O’Sullivan and a “collapse of the wall between editors and upstairs”.
- 8.190 Hartley described the internal meetings that ensued, in which the need for apology was related to the need to improve advertising revenue. He had no idea whether any meetings with external political role-players had taken place. He said the reaction from journalists was defensive; that he was prepared to accept blame for mistakes but believed the Cato Manor stories had foundation. While waiting for management to return with a draft apology, he heard that the apology page had already been laid out.
- 8.191 When Hartley heard that Booysen had been offered an 800-word ‘right of reply’, he requested the same, but was refused. He wrote his own response, which he circulated to friends, to assure his peers “I was not part of the State Capture Project”. He requested the response not be published, but it entered the public domain when News24 did publish it. Hartley told the Panel he wanted people to know “there was a genuine story, mistakes had been made but Booysen had never been accused of ordering these killings (...) if someone had abused the investigation ... for political ends, this was not something we (the paper)) could control”.
- 8.192 However, in retrospect Hartley now says: “I wish I had listened to the recording of the interview of the journalists on the Cato Manor story with Booysen – journalists have an interest in the story and may not be as open as the editor.”

Ethical lessons drawn by the editors

- 8.193 The two editors believed ethical lessons could be drawn from the events of which they had knowledge. They suggested editors should also engage with primary sources to “make sure for yourself” and should attend, rather than becoming defensive, when rival media raise questions about a story.
- 8.194 The editors stressed the requirement for ethics training at all levels, including training at senior levels in ethical decision-making. Inexperienced journalists who were poorly-paid, and perhaps naïve about circles in which they had never previously operated, needed support to be more courageous about interrogating evidence and testimony – which they do not receive in current “denuded” newsrooms.
- 8.195 Robertson suggested more scrutiny should be given to issues around ownership and newsroom interference. His own contract, he said, had specified that the paper should be broadly supportive of a free market economy. But while he felt it was legitimate for owners to suggest areas of coverage that might enhance readership/advertising, and to ask questions about editorial quality: “It is not legitimate for owners to disallow publication of a true story – kill a story – or require publication of an untrue story. There must be people [editors] on the ground who know what is going on. Owners must make a judgment that those people can go ahead and do the job.”
- 8.196 Hartley pointed out to the Panel: “SA journalism focuses on such a narrow bunch of topics.

There is much news that does not see the light of day. The view should be: what is in the listeners' interests; what is important to the reader?"

CONCLUSION: COMMENT BY THE PANEL

- 8.197 There can be no doubt that there was repetition of the exact same errors identified by Fray et al, prior to this series of stories.
- 8.198 Headlines, which are the purview of sub-editors, expressed allegations in stories as fact and certainly overstated the content of the reports: 'Inside a Police Death Squad' or 'SARS Bugged Zuma'.
- 8.199 Stories that referred to 45 deaths in three years associated with the Cato Manor police squad, of which the newspaper had classified 18 as suspicious, failed to indicate that at least six of the killings had been ruled upon by inquest courts which had found them to be not unlawful.
- 8.200 Where it was headlined that, 'Taxman Rogue Unit Ran Brothel', there was a failure to indicate that this was no more than an allegation made by a former member of the SARS Unit that had neither been investigated nor corroborated.
- 8.201 Even when correctly stating that Booysen was in ultimate command of the Cato Manor Unit, the journalists failed to point out that he was not personally involved in any of the killings and that there were intervening commanders.
- 8.202 Most egregious was the description of van Loggerenberg's denial of wrongdoing to Moyane as a "confession", when it was never an acknowledgment of any wrongdoing but exactly the opposite.
- 8.203 There was definitely pressure to produce multiple stories and splashes and a rush to print that disallowed subjects enough – or any – time to respond, as the Press Ombud found in the rulings discussed earlier. Contextualisation and counter-narratives were ignored, with no discussion of the wider political agenda that was emerging and which appeared in other newspapers.
- 8.204 However, the retractions and apologies of the *Sunday Times* raise more questions than are answered. It is not clear to the Panel what exactly was retracted: some individual facts or entire stories.
- 8.205 If some facts only are retracted, then a correction of fact and apology would be the usual route to be followed by a newspaper. Thus, if Booysen was in ultimate command but not actually involved in the work of his team, then the newspaper could have made such a correction with clarification that Booysen gave evidence in court and in defence of his team during the Mkhize litigation on the basis of his personal knowledge and responsibility. Thus, if the love affair between the head of the SARS Unit, van Loggerenberg, and the attorney and supposedly triple-spy, Belinda Walters, was true, it is difficult to see why the headline, 'Love Affair Rocks SARS' was objectionable since it had implications for tax collection in the

tobacco industry with which Walter was associated.

- 8.206 It is unclear from the *Sunday Times* retractions and apologies, however, whether entire stories or series of stories were now retracted. The editor did not make this clear. The reader is left in doubt as to what was correctly reported and what was incorrectly reported. The sources upon which the reporters relied in the Cato Manor stories have not been discredited and one of the prime sources, Mary de Haas, has publicly confirmed her information. More than 40 people are dead and the Hawks and the NPA all conducted their own investigations resulting in prosecutions. These were not figments of the imagination of the journalists involved. The Khanyane, Sikhakhane, Kroon, Rathebe and KPMG investigations all found the SARS Unit to have been unlawfully established, which meant that the journalists were reporting on what – at the time, although their status has since changed – were considered authoritative findings on a matter of considerable public interest.
- 8.207 The crux of the *Sunday Times* apologies was that there was “a parallel political project aimed at undermining our democratic values and destroying state institutions”, and that there was “a hidden hand of manipulation and political machination” in respect of both the SARS and Cato Manor series, since the Cato Manor apology also refers to the SARS officials as targets of such project.
- 8.208 Does this mean that all, or just a portion, of the series or the stories are incorrect? Is all the *Sunday Times* reportage and publication an entire fabrication by unknown nefarious persons or entities – or is only some of that which was reported incorrect or untrue? At the end of the day the reader is left uncertain whether the manipulation of the newspaper resulted in pure fiction or exaggerated or ‘sexed-up’ tales.
- 8.209 It is in this context that the *Sunday Times* believes that their journalists should have exercised greater “caution and care and joined the dots”. But it is difficult to see how the individual journalists could have been expected to uncover this parallel political project unknown to anyone save those involved in its conception and execution, or how individual journalists could have been expected to know that there were even dots to be joined. After all, attorneys, advocates, accounting firms, a High Court judge, the Inspector-General of Intelligence, IPID, the NPA had failed so to do. Should the journalists have accused all of them of being part of the parallel political project or just stooges thereof? After all, the dots which the *Sunday Times* believed should have been joined were published in 2011 when the Gupta involvement was hardly underway.
- 8.210 The manipulations to which the *Sunday Times* refers are potentially myriad and cannot be disentangled. There were the tobacco interests, involving Belinda Walter, and possibly a tobacco underworld which had an interest in disposing of the investigations of van Loggerenberg and the SARS Unit. There was a newly introduced faction at SARS in the person of Tom Moyane and his acolytes, whose nefarious activities have been dealt with in the report of the Nugent Commission. There were the interlinking power-brokers in KwaZulu-Natal and elsewhere, which allegedly involved now-Minister Bheki Cele; numerous high-ranking members of SAPS and the Hawks, and individuals in business and the underworld, who had their own reasons for discrediting each other in the public arena. The speculation is endless. But what is clear is that the *Sunday Times*, in its apologies, has identified none of them and given no indication of who the puppet masters of the newspaper and its investigative unit were, and how and why they operated.
- 8.211 This is worrying because it effectively negates the value and import of the corrections and apologies. It is a case of saying, ‘so sorry, someone else is to blame: but I can’t tell you who.’

What the reader knows is that these are unnamed sinister forces hell bent on destroying our institutions and that the *Sunday Times* failed to realise and report on “factional battles and political wrangling within the ANC, in the government, state institutions and law enforcement agencies”.

- 8.212 Among the greatest failures of the *Sunday Times* in fulfilling its obligations as a dispenser of information is also its failure to offer analysis and commentary. Where were the political editors, analysts, journalists, and columnists who could or should have been offering context and insight on what the investigative unit was reporting and the sub-editors headlining? Perhaps, if there had been such thoughtfulness, care and dissection of the reportage, there may have been an earlier understanding of what was making the headlines in the *Sunday Times* over a lengthy period of time.
- 8.213 The *Sunday Times* failed to indicate that there had been lobbying, threats and discussions that resulted in the apologies. The apologies were not simply the result of reflection and merely settlement of litigation. The actions of Booysen and van Loggerenberg were understandable because they were central to the stories. But the campaign publicly orchestrated by O’Sullivan, who made threats of financial pressure (which threats were acknowledged to the Panel by the *Sunday Times*), is less understandable, and the power he apparently exerted in these matters is difficult to fathom. It is unclear for whom, if anyone, he acted as proxy.
- 8.214 It is a matter of some concern that the journalists involved all claimed that they were excluded from discussions held with board members, management and editors on the situation with O’Sullivan and others. They were left out of discussions of their own stories and reputations. It is of even more concern that a right of reply was given to van Loggerenberg, Pillay and Booysen (some of whom used that right of reply to attack Sikhakhane SC and others, and not the journalists) but the journalists were given no such right of reply. Perhaps this suggests that journalists were, to the *Sunday Times* management, mere employees without professional commitment to their work or reputations.
- 8.215 There is no suggestion by the *Sunday Times* that the journalists involved were anything other than highly motivated, hardworking and experienced. There is no suggestion that they received bribes or inducement to investigate, research and write the stories which they did. Nor is there any suggestion that the editorial teams at the *Sunday Times* were similarly compromised.
- 8.216 Hindsight, it is said, is 20:20 vision. All actors and observers in this saga are now aware of various allegations of and even evidence of ‘state capture’ and the political and business maneuvering which went on in pursuit thereof. In retrospect, many persons and entities – including an international firm of accountants and auditors, KPMG; a High Court judge who had sat in the Constitutional Court, Judge Frank Kroon; a senior advocate of the Bar, Musi Sikhakhane SC; and others – may have been caught up and beguiled by various aspects of what took place. It may then not be surprising that the journalists and editors of the *Sunday Times* pursued these stories and events with the same eyes. Perhaps these journalists and editors were insufficiently critical or gullible, or were knowingly part of the “manipulation” now understood to have taken place.
- 8.217 But it should be noted that the judges of the Taco Kuiper Award were also, at the time, appreciative of the *Sunday Times* reportage on the Cato Manor stories and did not even query how the stories had been assembled, despite many journalists who have spoken to the Panel saying they had at least suspicions about the political undercurrents then apparently operating. As the editors note above, the Award itself reinforced the unhampered continuation

of a climate of sloppy reporting and impunity.

- 8.218 This Panel was tasked with investigating allegations of “ethical” malfeasance in the media industry. It must be categorically stated that no ethical malpractice on the part of Hofstatter, Rees, Rose or wa Afrika has been suggested to the Panel.
- 8.219 No bribery or malevolent intent has been shown. The *Sunday Times* apologies spoke of journalists in pursuit of the truth who had a “constitutional obligation” to “inform” the public. The newspaper explicitly stated that the journalists were not complicit in the agenda of unnamed shady individuals. No one has suggested that the journalists should have ignored these stories, which were very much matters in the public interest.
- 8.220 The *Sunday Times* has conceded headline errors, which are not the task or responsibility of reporters but of sub-editors, errors of emphasis, and a failure to see the wider political picture. But the *Sunday Times* has made no allegation of ethical failures, personally or professionally, on the part of Hofstatter, Rees, Rose or wa Afrika. Other media practitioners have identified and acknowledged the structural reasons for media and journalistic failures.
- 8.221 Of course, the subjects of the stories with whom the Panel has engaged – van Loggerenberg, Lackay, and Peter and Lauren Richer – have had personal distress and harm visited upon them by the work of these journalists and this newspaper. Both the Richers would like a personal apology from the journalists. The Panel believes they are correct when they say that the errors of the journalists were so egregious that they amounted to ethical malpractice. Van Loggerenberg did not make a confession but a denial and the two are obviously contradictory. To ignore the difference is to cast a serious slur on van Loggerenberg. Peter Richer was not the founder and manager of the ‘rogue unit’ and he was incorrectly tainted by association with, and responsibility for, unlawful activities. That is a repetitive series of untruths which are morally repugnant and thus amount to non-ethical journalism.
- 8.222 It is noted that the veracity of the stories constituting the ‘rogue unit’ and ‘death squad’ narrative was never tested in the Press Council. The only approaches and rulings were procedural in nature. The Press Ombud did not scrutinise or pronounce on the truth or otherwise of any story. This is a transparent process with an open result that enables the public to see the self-regulation of the media and so have faith in the process. The subjects of these stories chose another route: of private discussion, lobbying and threats, to all of which the *Sunday Times* succumbed. This is undesirable. Complaints have not been formulated and aired and adjudicated; the public has not seen the media being held accountable for errors; neither have journalists nor print and online publications been able to respond and defend themselves; and politico-financial considerations have triumphed over the truth of journalism.
- 8.223 This process of ignoring the Press Council and doing private deals followed by public apologies may well have been a “bold move” as the editor of the *Sunday Times* claimed, but it did not draw a line under the events which had preceded it. Questions still remain and will always remain. Nothing has actually been resolved.
- 8.224 Of greater concern is that the *Sunday Times*, which subscribes to the Press Code, has enabled avoidance of the use of the Press Ombudsman process and perhaps given support to entities such as *Nosweek* and Independent Newspapers, which have chosen to withdraw from the self-regulation of the Ombud Process. This may contribute to sending a message to the reading public that the print and online media is not, and will not, be held accountable for

the work it does. The mechanism set up to give the public greater confidence in journalism has been undermined.

- 8.225 Journalism and the media industry themselves are the poorer for the process adopted by the *Sunday Times*. Commercial, political and other considerations may have prompted the 'retractions' and 'apologies' but they also prompted the shaming of journalists and termination of contracts. Only time will show if journalists feel free and supported by their employers to embark on complicated, difficult, challenging or questionable investigations, which may offend powerful people. Only time will show if journalists feel that the publications for which they work and write have their backs when the going gets tough.

CHAPTER NINE: THE PRACTICAL APPLICATION OF NEWSROOM ETHICS

MAIN POINTS OF THE CHAPTER

This chapter considers the threats to ethical reporting behaviour posed by the practical working context of journalists. It:

- **Considers the mission of journalism in a rapidly changing newsroom environment;**
- **Examines the impact on ethical conduct of pressures ranging from lack of time, resources, fact-checking skills and institutional knowledge, to pressure for sensationalist content;**
- **Traces the development of newsroom training programmes for young journalists and the current diminished provision;**
- **Explores the implications of journalists becoming prominent as ‘personalities’ and on social media;**
- **Discusses the impact of job precarity and casualisation on journalists, including the ‘revolving door’ with the public relations industry;**
- **Describes submissions to the Panel concerning journalists’ lack of critical distance from stories and subjects, and their lack of a repertoire of appropriate skills for tasks such as interviewing; and**
- **Considers solutions including recourse to external fact-checking services and the appointment of internal ombuds.**

CHAPTER NINE: THE PRACTICAL APPLICATION OF NEWSROOM ETHICS

INTRODUCTION: THE CALLING OF JOURNALISM

Definition

- 9.1 The primary work functions of journalists are generally understood to entail the conceptualisation, investigation, gathering, compilation and packaging of news and information and its distribution via print, broadcast and online platforms. A detailed expansion of these functions may be consulted at the website of the current national journalism qualification: <https://www.qcto.org.za/index.php/journalist>. This broad description of editorial staff distinguishes them from others employed in media companies who provide administrative, advertising or other support.
- 9.2 Of course, there are material differences between the processes and personnel involved in the generation and publication of news on different platforms: involving different job titles and roles, and facility in a more diverse range of skills. Media houses may or may not choose to have all news-related roles staffed by journalists. Panel informants who had worked as reporters made it clear that they did not necessarily consider talk-show hosts/presenters/anchors who read advertising, opinion writers and other such enablers of information to be journalists. However, news consumers often do not draw such distinctions. Many such roles are filled by working journalists, and further, it ill-serves the purposes of this Report to disparage or exclude any who consider themselves such.
- 9.3 Stefaans Brummer comments that: “a journalist should not simply be a stenographer but should always try and understand what is behind the story and why... no journalist should be excused the duty to probe and question”.
- 9.4 Today, there is convergence of different media platforms within single media companies, which often publish print, digital, broadcast and social media versions of the same news and information content, which is why the national qualification has dispensed with rigid, platform-bound categories. Further complexity arises from the emergence of journalism-like digital activities outside the ambit of any media house, including bloggers and vloggers.
- 9.5 In contrast to these descriptive definitions, an existential or essentialist definition of journalism considers the normative parameters of the profession in relation to a perceived mission. Several seasoned journalists, amongst them Pippa Green and Reg Rumney, reminded the Panel of certain fundamental principles of journalism:
 - “Journalism’s first obligation is to the truth
 - Its first loyalty is to citizens.
 - Its essence is a discipline of verification.

- Its practitioners must maintain independence from those they cover.
- It must serve as an independent monitor of power.
- It must serve as a forum for public criticism and compromise.
- It must strive to make the significant interesting and relevant.
- It must keep the news comprehensive and its coverage balanced.
- Its practitioners have an obligation to exercise their personal conscience.
- Citizens too, have rights and responsibilities when it comes to the news”.

Training

- 9.6 Some of the Panel’s informants argued that the best journalists were “born not made”, since the professional prerequisites are an enquiring mind; an interest in people and events; a passion for digging beneath the surface; a belief that information can be understood and acted upon by rational people; a love of ideas and words; and much else besides. Great journalists have not necessarily studied at famous universities or undergone professional training courses. Many have learnt ‘on the beat’ and in the newsroom.
- 9.7 Today, South Africa offers nationally-recognised qualifications for aspiring journalists – most are more or less relevant to the field, practical, useful, extensive in subject matter, up to date and comprehensive.
- 9.8 The Sector Education Training Authorities (Setas) under the Department of Labour (DoL) initiated the process of developing journalism-related qualifications that were integrated into the South African National Qualifications Framework (NQF) in 2004 and which, therefore – unlike earlier craft and trade qualifications – could create a career path that dovetailed with, or was equivalent to, other post-school further and higher education qualifications.
- 9.9 Initially this was the responsibility of the MAPPP (Media Advertising, Publishing, Printing and Packaging) Seta and several other Setas involved in both cultural and paper-related industries. Consolidations and mergers by the DoL created successor Setas to assume those responsibilities: currently the MICT (Media, Information and Communication Technology) and F&PM (Fibre, Processing and Manufacturing) Setas. These provide a range of industry-based qualifications including, for example, a National Certificate: Radio Production and a National Certificate: Radio Station Management (MICT Seta), all based on a Department of Trade and Industry job categorisation, which divided media functions by publishing platform and did not accommodate the journalism aspects of converged media.
- 9.10 Responsibility for all workplace-related journalism training, in a single qualification across all platforms, now rests with the QCTO (Quality Council for Trades and Occupations) under the Department of Higher Education. This does not supersede higher education journalism, media and similar degree studies; QCTO qualifications are intended explicitly to bridge the gap between, in this case, tertiary education and the workplace and provide workplace-relevant training inputs. Nor does it negate the Seta-provided technical qualifications in skills such as radio production, which remain highly relevant.

- 9.11 SANEF told the Panel it has worked consistently with all the relevant Setas and with the current QCTO in updating the national journalism qualification. The FP&M Seta – to which, for historical reasons, many large media houses remain affiliated – has been SANEF’s partner, supporting materials development towards implementing the current QCTO qualification. The curriculum has an extensive section on media law and ethics, supported by a compulsory written examination.
- 9.12 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 this new National Certificate in Journalism, under the QCTO. Discussions with the FP&M Seta to add any necessary additional and part-qualifications to this foundation are ongoing.
- 9.13 In addition, SANEF was awarded an FP&M Seta discretionary grant to empower women in the media and support their 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 Fray Intermedia.
- 9.14 The QCTO is now the regulatory body for all new qualifications formerly administered by the Setas alone. The next few years are therefore likely to see a decisive shift of control over qualifications from the Setas – and thus the DoL – to the DHE, the policy implications of which are yet to be unpacked.
- 9.15 There are university and college courses dedicated to media studies and journalism such as B.A. (Media Studies), B.A. (Journ) with languages or media studies or journalism as major subjects but also with economics, history, politics, accounting, sociology, law and philosophy as major or minor subjects. Some courses and qualifications (for example, B.A., B.Com., or even LL.B.) do not encompass media studies but qualify the graduate to work in media organisations, where they may well end up playing a role in news creation or management. Additionally, some media houses have recruited specialist writers from other educational backgrounds, for example in economics. Both these situations underline the need for workplace bridging programmes to ensure some familiarity with the processes and principles of journalism.
- 9.16 Some novice journalists enter newsrooms straight from university or college; some, after working in other environments. In the past, opportunities existed to enter a formal in-house training, cadet, internship or learnership programme to transfer university learning to a practical work context and acquire new journalism knowledge. However, media house budget constraints, together with a very protracted process of transfer between the previous Seta qualifications and the new QCTO qualification have both drastically eroded employer investment in in-house journalist induction or training. Very little survives at the time of completing this report, with the bulk of media house training investment now allocated to the technical skill aspects of publishing on digital platforms.
- 9.17 Some criticism was expressed to the Panel of “an erosion of critical thinking skills of journalists” with the need to “review or even streamline curricula at universities so that they [journalists] are more critical, and stronger at subjecting stuff to questioning, criticism and necessary scrutiny before publishing”.
- 9.18 Notwithstanding that ethical practice is addressed in higher education and workplace journalism training (in university or college studies, the Seta learnerships and the new QCTO programme) the view was expressed to the Panel that: “solid ethics [must] be reinforced in

the newsroom”. Experienced trainers and educators told the Panel that students entering the newsroom are initially interested in the ethical component of their newly chosen profession: “They are predominantly eager to learn about the law and ethics that govern their work and equally eager to act ethically.”

- 9.19 But trainers Paddi Clay and Gwen Ansell cautioned that ethics should not be conflated with simply having a Code of Professional Conduct or ‘knowing the law’. Foregrounding such aspects leads to a focus only on what can be formally taught and examined, whereas ethical conduct requires “a complex ability to make and apply ethical decisions to an infinite variety of dilemmas that crop up every day, across a whole journalistic career during which both production context and prevailing public and professional ideas of what constitutes ethical behaviour constantly shift”.
- 9.20 Janet Heard of the *Daily Maverick* was of the view that: “We have a strong ‘Young Maverick’ programme – 8 intern mavericks – we are committed to developing young voices, and writing skills have advanced so that is sustainable to build a new generation of writers. This is not easy doing fast news. Training is incredibly hard. We need to build experience. People become experienced in the field.” Heard opined that: “There is no media house in the country developing young reporters. The rest of the industry is not developing strong levels of training. We have a retention strategy but our reporters are poached and go elsewhere in the industry.”
- 9.21 Concern was expressed by everyone with whom the Panel engaged that retrenchments, loss of senior staff, ‘juniorisation’ of the newsroom and consequent loss of potential mentors, skimping on spending and greater demands on newsroom staff for a multiplicity of reasons, had led, as Nathan Geffen described it, to a situation where “mainstream media is not training”. All the curriculum contents discussed throughout this chapter as skills deficits among journalists are contained within the qualifications discussed above. Geffen’s point is key: mainstream newsroom training in all but the technical skills related to online news is almost extinct.

THE CHANGING ENVIRONMENT OF THE NEWSROOM

- 9.22 SANEF has identified for the Panel the national context within which print and broadcast newsrooms are now operating, and which affects South African media practice and ethics, undermining “the quality and accuracy of news”. As Mapi Mahlangu additionally noted, this context is not unique, reflecting global developments.
- 9.23 SANEF expressed the view that the increasing attacks on the credibility of the media are linked, inter alia, to relentless, sustained assaults by populist leaders; structural shifts in the economic health and sustainability of the media; and technological shifts. A crisis exists around the funding for quality journalism, caused in part by a shrinkage in adspend for print and broadcast, as advertising migrates online to Facebook, Amazon, Netflix and Google (the ‘FANGs’). Media organisation experiments with other funding options discussed in earlier chapters – paywalls, membership models, donor funding and crowd-funding – have met with mixed success. Even online media are experiencing funding difficulties, as evinced by the closure of online news sites such as the *Huffington Post* and the announcement by strong online player Media 24, in its audited financial, of “deepening year on year losses, despite growing online audiences and engagement”. Only four years after buying legacy media house Avusa (formerly Times Media) and despite implementing aggressive cost-cutting measures,

the Tiso Blackstar Group sold a portion of its print and broadcasting assets to the Lebashe Investment Group. Meanwhile SABC, the public broadcaster, struggles to pay salaries, creditors (including many independent production companies) and signal distribution costs, and maintain its ageing broadcasting infrastructure and buildings. An ongoing series of financial crises has brought the institution to its knees.

- 9.24 Community media (print and broadcast) have not found sustainable funding models. Facing the same challenges as the commercial sector, Chapter Five described how they have become vulnerable to manipulation from state structures such as municipalities, commercial interests and local power-players through over-dependence on open and covert funding agreements.
- 9.25 In this difficult economic environment, SANEF told the Panel it deplores the waves of retrenchments that have taken place over the last decade and the weakness of trade unions across the industry (though less so at the SABC). The absence of unions has had a devastating impact on journalists; leading to poor pay, poor working conditions, and little or no support around retrenchments. SANEF believes that this has directly undermined cooperative, humane newsroom working environments, which has, in turn, undermined the quality of news.
- 9.26 Toxic working environments have been exacerbated by the difficult political climate in the country. Journalists have to cover increasing volumes of violent crime, unrest and service delivery protests with decreased levels of editorial and resource support. SANEF notes in its submission to the Panel the frequent harassment and abuse of journalists – online and in-person – and the particular abuse of women journalists. All this, it believes, has had a detrimental impact on the physical and mental health of journalists, who suffer from post-traumatic stress disorder (PTSD), depression, anxiety and other conditions that often go undiagnosed and untreated.
- 9.27 As newsroom staffing shrinks, younger journalists can access little or no mentorship from news editors or other senior staffers; the loss of specialist ('beat') reporters with specific content knowledge means staff who lack this knowledge and the time for adequate research, find themselves covering specialist stories. SANEF expressed to the Panel its belief that these issues collectively create an environment that does little to safeguard against inaccuracies and mistakes.
- 9.28 SANEF notes in its submission that alongside these cuts to newsroom resources, major developments on the technology front have also placed editorial roles under severe strain. The immediacy of breaking news, which now has to be published on multiple platforms, the rush to be the first to break that news and the "relentless 24/7 roll" of the online news environment all reduce the time available for fact-checking and other aspects of sub-editing, with a resultant decline in accuracy.
- 9.29 The demand for online audience engagement leads, in the view of SANEF, to the emergence of what has been labelled 'click-bait', where misleading sensationalist headlines are created to attract audiences to stories with a very different content – again undermining credibility and trust. Another aspect of 'click-bait' is the foregrounding of stories whose only value is their sensationalism (whether truth-based or not) – again, eroding credibility and blurring the definition of 'news' for readers.
- 9.30 On the positive side, SANEF expressed to the Panel its appreciation of how, despite this very difficult environment, South African journalists have delivered some outstanding

journalism that has changed the politics of the country. This includes the collaboration of three journalism organisations – amaBhungane, Scorpio and Media 24 – on the Gupta Leaks stories.

PROFESSIONAL VULNERABILITY OF JOURNALISTS AND JOURNALISM

Remuneration and retrenchments

- 9.31 The financial woes of legacy media and their subsequent diversification into areas other than media (such as, for example, events management) have led to the restructuring of newsrooms, the retrenchment of experienced editors and journalists and extremely limited job openings for those wishing to enter the profession. No precise statistics have been compiled of the numbers of journalists who have lost their jobs or left journalism. As of 2018, the *State of the Newsroom Report* estimated that a once 10 000-strong “professional journalist workforce” in South Africa had been slashed by at least half in recent years, as also noted by Glenda Daniels’ 2019 article, *Left Out in the Cold*. One media house, Arena Holdings (formerly Tiso Blackstar, formerly Avusa, formerly Times Media,) retrenched 65 employees in 2019 and declared an intention to retrench a further 52 in 2020. Media24 retrenched 446 people between 2013 and 2014; the South African Press Association (South Africa’s oldest news agency) closed down in 2018; and the litany of closures continues. It is further detailed by Daniels in her 2015 Media and Democracy Project research article *Flux and Fluidity* for the *Rhodes Journalism Review*, and has only intensified with the impact of the Covid-19 pandemic, as discussed in the postscript to Chapter Ten.
- 9.32 Chapter Four has described the financial strictures to which the media industry is currently subject. The impact on journalists – and all media practitioners – has been catastrophic, leading not only to the closures, layoffs and retrenchments described above, but to the widespread adoption of part-time and contract employment for journalists. Such employees are neither subject to the same supervision nor entitled to the same benefits (including training) as full-time employees. Overall, there is general uncertainty about employment and earning prospects, and this acute anxiety has increased the susceptibility of some to cut corners in a variety of ways in the hope of retaining their jobs.
- 9.33 Heard says that: “One must have regard to realities on the ground. If you don’t pay journalists, you don’t respect them. And the more you underpay, the more the industry has been undervalued. Many good journalists and writers have been forced into management or into industry, public relations or government. It is hard to retain really good people.”

Casualisation: the ‘gig economy’

- 9.34 Cutting newsroom employment or making working conditions inhospitable has meant that skilled journalists who continue to work in media may do so as freelancers under short-term renewable contracts, or even paid per word for single stories as (and if) commissioned. The 2018 *State of the Newsroom Report* dealt at some length with this ‘gig economy’ to which

journalists are now relegated. Daniels has described these jobs as “piecemeal (...) a day here and a day there, writing, researching, editing content, creating or hustling”. She quotes one freelancer as saying: “we take whatever we can get really,” and another that freelancers “earn appalling low rates which haven’t kept up with inflation”, and “generally it seems that journalists out in the cold are hustling.” The ‘gig economy’ has in truth become a fashionable euphemism for the often-enforced casualisation of employment. The major development it has fuelled is growth in the membership of the South African Freelancers Association.

- 9.35 Additionally, former journalists have sought employment in public relations (including as corporate or government spokespersons), research, advertising, events organisation, book and magazine publishing, training, and a myriad of other areas, or have returned to the academy as students or teachers. Some have moved into areas of work completely unrelated to their former occupations; former journalists are found selling property, teaching in schools or entering the corporate world in a multiplicity of positions.
- 9.36 Raymond Joseph however, observed to the Panel that such change was a professional constant:
- “I have reinvented myself regularly as it is the only way to stay current and working in an ever-changing world of journalism. Most of what I’ve learned is self-taught by reading, asking questions, playing with tools to work them out, and also using YouTube tutorials to teach myself. While redundancies have decimated journos working for legacy media, who have limited skills outside their areas of expertise, journos with good multimedia storytelling skills are in demand and many are getting jobs. I would hazard an educated guess that there has been a big growth in online and digital jobs, although at a rate lower than jobs that have been lost in newsrooms. I think a big problem with experienced journos who have been retrenched is that they have not updated their skills and instead blame others for their difficulty in finding work. And while management should offer retrenched journos new skills training, it is up to individuals to ensure that they adapt.”
- 9.37 The increase in what is known as ‘churnalism’– reliance on the PR industry to identify and develop stories, which are then often attributed to an anonymous ‘staff reporter’ – accompanied by growing numbers of journalists freelancing as publicists, has had an impact on the relationships between, and the practices of commissioning editors or clients and commissioned publicists.
- 9.38 One publicist told the Panel they had been commissioned to write articles about a judicial Commission of Inquiry. Although it was pointed out to the editor concerned that they were already providing PR representation for one of the interested parties in the inquiry and would undoubtedly write with an emphasis favouring their client, the editor’s view was that the publicist could provide insight available to no one else. The article was published under the byline, ‘staff reporter’.
- 9.39 Another editor commissioned a person self-described as a ‘spin doctor’ to write a leader article on developments around a Foundation representing a former struggle icon because, said the ‘spin doctor’, “[He believed] I could put it better than he could, despite an interest group at the Foundation having requested I try to spin a particular line”. The article was published as the publication’s “editorial comment”.
- 9.40 Two reporters assigned to cover the Telkom Initial Public Offering (IPO), found they struggled with the financial and legal complexities of what an IPO entailed. They asked a freelancer to edit their articles before submission – even though the freelancer was working for the very body that was driving the IPO.

- 9.41 What this adds up to, it was suggested to the Panel, is that former journalists now earning a livelihood as publicists or spokespersons, continue to contribute to the newsroom but in very different circumstances. No longer are they expected to be fair, accurate or independent in their work, because their loyalty is not now to news consumers but to the client by whom they are contracted. Further, commissioning editors are aware of and complicit in this behaviour.
- 9.42 Those practitioners who remain as journalists in the newsroom, the Panel was told, receive insufficient reward or appreciation for their contribution to society. Branko Brkic asserted: “For a long time there has been this idea that journalists should be poor. But this should be a middle-class job. The entire South African society does not understand support of the media. There is no way you can be fully ethical if journalists can’t survive. How can we as a country expect to have a media to deliver on the Constitutional mandate if journalists can’t survive?”

Revolving doors

- 9.43 The pressures described above – uncertainty about employment; pressure in an unwelcoming workplace; lack of appreciation from owners, management and the public; and doubts about the value of the work – comprise the ‘stick’ that propels some journalists out of the newsroom. The ‘carrot’ is the promise of better remuneration and benefits, a more interesting workplace and greater appreciation elsewhere. However, journalists who quit with these hopes often find their new employment equally tough and hazardous, leading them to try to return to their previous, or another, newsroom.
- 9.44 This is the kind of ‘revolving door’ to which the Panel was alerted in an early meeting with Ranjeni Munusamy, when she described her journey from journalist to government spokesperson back to journalist; to publicist for the trust of a politician to website manager for a politician; to public relations officer and back again to journalist. As noted in Chapter Five, the Panel has been offered countless other examples of journalists and public relations (PR) personnel following similar recursive career trajectories.
- 9.45 In this context, conflicts of interest may be only perceived or very real. However, both require discussion and an attempt at resolution if the work of an individual journalist is to be seen as credible and unrelated to any previous or future work in public relations – described to the Panel as an arena of ‘smoke and mirrors’. Otherwise, the public may not understand how the same individual can, credibly, one day extol the virtues of a newsmaker and the very next day critically dissect that newsmaker’s actions.
- 9.46 Where ‘moonlighting’ or ‘playing for both teams’ as described above occurs – when a journalist is on the payroll of people or entities about whom he or she writes – the ethical implications can be extraordinarily serious and sometimes even criminal. The Panel was told of one financial reporter who was moonlighting for a leading financial institution despite his journalistic role requiring him to report without fear or favour on that institution. An informant told the Panel that this reporter had even drafted media releases for the institution, on which he then reported in his capacity as a journalist. The reporter was confronted, denied the accusation, and left the title some months later to work fulltime in PR.

Journalists as ‘celebrities’ and social media ‘stars’

- 9.47 Journalists know and love the written word, they have enquiring minds that uncover, discover and learn – and they are eager to share their knowledge and insights with others. It is therefore unsurprising they publish books, give speeches, sit on panels and generally act as critics of, and advisors to, the nation.
- 9.48 Other journalists, more frequently from broadcasting, become ‘personalities’ who act as compères at banquets and ceremonies, or are seen as public personae independent of their journalism, and feature on the society pages of magazines or as attractions at public events.
- 9.49 The example was cited to the Panel of a journalist who authored a book on corporate crime, was asked to speak for a generous fee at a company workshop, sold a few books there, and in the afternoon returned to the newsroom for ‘business as usual’. The question was asked: how would that journalist have handled reporting on misdemeanours or unlawful behaviour in that company, should it have occurred? Was the journalist not compromised? Did this not raise unnecessary conflicts of interest?
- 9.50 While journalists, radio and television anchors and hosts are entitled to any type of private life (including a glamorous one), it was suggested to the Panel that such celebrity status raises challenges for the credibility of their work. The risk exists of their tailoring what they publish to please their connections and create opportunities for more lucrative engagements. Additionally, although celebrity status and its associated additional income may offer greater financial security in a precarious ‘gig economy’, the boundaries are blurred for news consumers between ‘celebrity’ and ‘journalist’.
- 9.51 The Tweets and other social media utterances of journalists who have become ‘personalities’ attract considerable public attention. The writers may regard their Twitter output as a private activity unrelated to the media outlets with which they are associated. However, Johnny Copelyn told the Panel this was a “sensitive area”, because such Tweets become associated with that media outlet. This may be particularly problematic because of the compressed format of Twitter. As in the cases of Donald Trump or Helen Zille, utterances demanding greater depth and nuance emerge in a crude shorthand form that, for a journalist, may adversely impact on professional credibility.
- 9.52 Alide Dasnois suggested that: “If you want to retain public trust, then report on facts. But then give up being a star on Twitter because you can’t do both.”
- 9.53 Tweets, said one informant, are about a “journalist’s sense of self” and offer “too much commentary and opinion”. This can sometimes result in spats that are “not only undignified and unproductive” but also “dangerous, given the delicacy of public conversation”. Journalists who have assumed celebrity through such activities are thought to have ceased to be journalists. Their work loses credibility as the public loses trust in them as authoritative reporters of fact who are capable of purveying truth and dealing fairly with opposing opinions.
- 9.54 Some of the views above, however, may neglect the extent to which social media, including Twitter, are today widely seen and used as a source of news, and where having some kind of social media presence is often a criterion for journalistic employment. John Perlman felt that journalists could not avoid getting into social media. However, he asked: “Why should journalists commit themselves to a personal opinion?” and questioned if this was because “they want to be involved in the story?” The basic principles of journalism hold that ‘being

part of the story', is antithetical to the ability to employ systematic investigation processes to uncover, evaluate and contextualise facts that are then shaped into a valid and balanced story. As Perlman highlights, it is the type of social media presence a journalist establishes – not its mere existence – that determines whether it is problematic or not.

DISRUPTION IN THE NEWSROOM

New realities

- 9.55 The mainstream media industry is almost another country compared to that which practitioners knew even a decade ago. Heard succinctly summarised her perception of events over past years: “Coming from the mainstream media, the decay was incredible; the stripping of assets, shareholders ensuring that there was cost cutting in editorial. And then there was state and media capture...”.
- 9.56 The impact on the newsroom reflects this, making it too a different place. The Panel heard from many media practitioners about the “revolution” which has occurred. This is well captured by Daniels, and presented in an edited form below:
- “Consolidation’ has, however, been the buzzword with the majority of retrenchments – the same subs’ hubs used for different papers, syndicated copy for different papers in the same group, damaging plurality in the process. Journalists who survived the waves of job losses over the past decade are having to do much more with much less (video making and uploads, writing for online and traditional media, Tweeting and Facebook posts and blogging too); (...) in one paper, digital and print sit together on the assumption that they work together but one journalist surveyed said ‘like as never before, no one knows what anyone else is doing’, and another said: ‘We look like a call centre now.’”
- 9.57 Everyone the Panel met described these different realities as they had experienced them, in terms of their influence on changed approaches to news-gathering; news-writing practice; and the attitude towards the role of the journalist. The overview that follows indicates where specific problems may and do exist, and identifies which informants discussed them in detail.
- 9.58 From a management perspective, Copelyn described how the skillset of the news editor has changed from being a “news junkie” who “jumps onto what is newsworthy” to comprise a “purely management function” where you have to be able to “recruit sensible people, train them, provide professional discipline, get rid of them”.
- 9.59 Trainers such as Paddi Clay and Gwen Ansell described the changing newsroom environment where: “Staffing in newsrooms has been dramatically reduced as a cost-saving measure. There are fewer journalists reporting, fewer copy-editors processing and checking their work, and fewer editors (whose role historically included briefing and mentoring) carrying a much larger range of management responsibilities, many of which keep them out of the newsroom.”
- 9.60 Production processes have also changed. Again, Clay and Ansell explained how:
- “A journalist may now be expected to work on [multiple] stories every day. Cuts to

transport budgets as well as time constraints mean they are often encouraged to write most of these from their desks, using online and phone resources. Reporters are thus less able to test the information they obtain against what they see and hear at the site of a story. Intensive investigation demands more advanced research skills that consume more time; not every story is therefore subjected to these techniques. The emergence of ‘investigative units’ at titles concentrates in a few journalists and stories, an approach that was at one time far more widely diffused through newsrooms.”

- 9.61 Editor Adriaan Basson gave a comprehensive overview of the newsroom from his perspective. He explained that editors today do not only operate under traditional pressures but “under commercial pressures” where “the two international behemoths (...) take up the majority of advertising”. He said: “It’s tough to be an editor in 2020” with the “rebirth of our industry in the digital world”, where an editor oversees a “newsroom of hundreds of people with different skills and speeds. There are reporters, to graphic providers, to digital, to content producers”.
- 9.62 “All newsrooms”, said Basson “have less resources to produce more stories”, because “digital is so hungry”, and reporters have gone from being assigned one to two stories per week to the same amount per day. Sometimes, he said, it could be as many as “three, four, five stories per day and [they also] have to Tweet and shoot video from site.” This, he explained, meant that journalists were more multiskilled: but only some could remain specialists. Adding to this pressure, he outlined how there used to be a press office in the High Court in Johannesburg where every paper had a reporter but that office “no longer exists”. There has been no national wire agency since SAPA “was no longer sustainable”. Regional and investigative reporting has to be done “with a smallish team”.
- 9.63 But Basson remained enthusiastic and energetic, saying that he had “amazing young journalists who are multi-skilled” and who can use digital platforms to “give us more access to improve and enrich our reporting”. Basson aims to “build the next phase of journalism, do the basics right and layer good digital technology”. However, he cautions against: “an avalanche of fake news” weaponised against him and editors through “internal strife in the media industry”.

Loss of experience and expertise

- 9.64 Daniels cites statistics showing that many of those who have been retrenched have been “senior, experienced journalists”, while new junior jobs in the media proliferate. Employees with less seniority can be engaged on lower salaries.
- 9.65 The Panel learned that a significant by-product of this loss of expertise through redundancies has been ‘juniorisation’ of the newsroom. Youth and energy can only benefit any enterprise, and newsrooms need that enthusiasm. But younger – perhaps less experienced – journalists also need mentorship from older and more experienced practitioners, who are no longer employed. The departure of the latter also signifies the loss of institutional memory: both about the practices and mission of the news organisation, and about newsmakers, news stories, news chronologies and news contexts.
- 9.66 One prominent veteran journalist who is now a freelancer commented: “They should reintroduce us old farts back into newsrooms and hope we play a role in providing a bit of historical perspective and wisdom and guidance.”

- 9.67 Clay and Ansell described one result of this “erosion of institutional knowledge” thus:
- “One of the best ways to acquire ethical decision-making skills is to experience real situations that pose ethical challenges and to judge and act in those situations, ideally with the help of a mentor or more experienced colleagues. That is what builds the bridge between curriculum and sustained ethical practice.”
- 9.68 The Panel heard, as one example, how “media houses cite both cost-saving and diversity targets in replacing more experienced copy-editors, who command a higher pay grade, with younger editors who are paid less but who – at least initially – may be less fluent in swiftly checking copy, and may conform more unquestioningly to harsh time limits on their copy checks, especially in the absence of supportive training and mentoring”.
- 9.69 Ryland Fisher saw economic factors impacting on everything, including “the reduction in staff, juniorisation, young inexperienced staff having to do lot of stories on daily basis, in quest of having to produce”. The result, he says, is that “the question of ethics is not at the fore”.
- 9.70 The Panel heard that journalism is increasingly being performed by “younger teams, as well as by lone operators working remotely (e.g. a sole correspondent working via computer from her region; a freelance copy-editor working from home)”, and that many “small – particularly community media – newsrooms can afford to employ only a handful of relatively inexperienced staffers”.
- 9.71 Focusing on ethical considerations, seasoned journalists and trainers Clay and Ansell commented that:
- “These staffers may acquire limited experience of dealing with ethical issues and, in a volatile employment context, have limited opportunities to pass on some of what they have learned to those who succeed them. The lone operator, with no guidance and limited experience, may not even recognise something novel she experiences as an ethical issue. Top media company executives often have expertise in finance or portfolio management, rather than emerging from within the news industry. Thus, at all levels, institutional knowledge about recognising and handling ethical dilemmas in practice is eroded.”

Diminution of training and professional development opportunities

- 9.72 Even only a decade ago, a career in journalism often began as a ‘cadet’: with an organised programme, trainers, seasoned and admired journalists and editors as mentors, and an assured pathway to skills and expertise. Clay and Ansell recalled that: “Programmes such as ‘train the trainers’ to help news managers support younger colleagues continuously used to be a regular feature of the newsroom training landscape.”
- 9.73 Diminished resources mean that these programmes have disappeared. Instead, training resources are predominantly directed towards keeping newsrooms abreast of, and taking advantage of, fast-paced innovation in news creation and consumption. Many such training programmes are highly technical, with results easily quantifiable for financial reporting purposes. Again, Clay and Ansell focused on the implications for ethical practice, writing

that: “Inculcating an ethical approach, by contrast, is a more protracted process whose results are hard to count and often become apparent only in practice, long-term.”

- 9.74 Ryland Fisher commented that media houses will “allocate money for training only because they can reclaim the expense from the ‘skills development levy’”, but added that newsrooms are now so understaffed that “it is difficult for any journalist to take time off to [attend] training”. Fisher also said that, even where internship programmes have survived, job vacancies are scarce, so that many interns (and higher education students who may have done work experience with a title) find themselves unemployed at the end of their internships, with the result that “there is a steady stream of cheap labour for media houses”.
- 9.75 Discontinuing, reducing or limiting in-house training is thought by many with whom the Panel spoke to have resulted in “too much of self and own life experiences”, as opposed to professional distance and control; the lack of a solid skillset in questioning, investigating, research and actual writing or presenting; the absence of real experience in the subject matter under scrutiny; and the inability to prepare and ask the “hard questions”. Stories that might once have been covered by reporting are now sometimes actually assigned as experiential, personal-viewpoint stories: instead of investigating, say, abortion clinics, a reporter will be instructed to go and see if she can get an appointment and write about the experience. Partly this is resource-saving on lengthy research and interview time, but it is also borrowing from the style of popular reality broadcasting. The latter, however, is not always designed as journalism, but to make a dramatic, emotional impact.
- 9.76 Copelyn told the Panel that in the era of print-dominated journalism, aspiring journalists would “write material which would be ‘marked’ by a sub editor and there would be advice and guidance before anything was published. Now we have moved to a situation where skills levels are in shorter supply; [although] there is training on the job, there isn’t time to train. People are sent out with a camera and microphone and they go on air. All thoughts tend to be afterwards (...) an afterthought”, to what was already published, and “a real drawback to the way news has gone”. He suggested that if the focus had to be on speed of publishing, “[we need a] different set of training techniques to promote professionalism”.

Doing more with less

- 9.77 As media houses strive to remain competitive, limited finance and work resources have led, as many informants note, to more demanding work quotas. Fewer journalists face pressure to do the same amount of work – or even more – as the previous larger and better-resourced workforce: more stories, and additional tasks for each story. Resources such as in-house transport, which helped reduce reliance on desk-bound reporting, have been cut. The experienced eye of the photojournalist, whose images were part of the story rather than mere illustrations, has been replaced by one reporter reporting and creating images simultaneously. This must all be accomplished without the guidance and advice of more experienced newsroom colleagues.
- 9.78 Verashni Pillay has documented her experience of under-resourcing and unrealistic targets when she was editor-in-chief at the online Huffington Post South Africa. Her Key Performance Indicators (KPIs: targets) from management required 30 pieces of original content a day. Her requests for additional sub-editing resources, noting the team was under pressure, were denied and she reports being told that the topic was not up for discussion and that “we were

to get out of our ‘print mentality’”:

“The editorial team was vastly under-resourced. At full capacity, while I was editor, we had three junior writers only and were expected to produce thirty pieces of original content a day. This excluded wire copy and republished items from other *HuffPost* editions. It included videos from the video team of three people. To meet this target the General Manager (...) pushed us to aggregate other publications’ content, including those behind paywalls. She also pushed us to publish more blogs from users. She then sent out an instruction that the blogs editor (...) should start writing daily content as well, to add to the content output. This constrained his capacity and ability to sub the blogs that we were being asked to put up. The General Manager noted the intern (...) should process the blogs. She was the one who ultimately vetted the blog and approved it for publishing.”

9.79 Clay and Ansell described how:

“Time constraints are intensified by what newsrooms call ‘digital first’ approaches, which demand that multiple stories are posted as swiftly as possible, on a work schedule that is rapidly approaching 24/7. The schedules – dictated by the new technology and news consumption climate – are not, in themselves, the problem. The problem is implementing them in a context of shrinking staffs and resources. There is a limit beyond which more cannot be done with less.”

9.80 Another journalist told the Panel that: “All these [factors] have affected journalists’ abilities to do their work professionally: they are under increasing pressure to deliver, with fewer resources, which creates a reliance on stories that are quick and easy to develop, require little research and/or no travel, and provide conditions ripe for PR people to develop and shape news narratives.”

Tension in the newsroom between management and journalists

9.81 This Report has already commented on how the majority of informants required confidentiality about what they said or wrote because they did not want the management of their news organisation to know their views.

9.82 In such an atmosphere, journalists are unlikely to feel able to express in the newsroom their concerns about all the pressures and constraints on accurate, ethical work described in the paragraphs above. It is therefore even less likely that journalists would confess to operating in a manner that avoided time-consuming checks or verification processes or failing to follow up to allow for a right of reply. The Panel was told that news journalists are often simply too anxious about their relationships and interactions with management and senior editors to consistently follow standard professional practice and adhere to ethical norms.

9.83 Again, Verashni Pillay described how:

“An atmosphere of fear and intimidation was created in the newsroom, so that it became increasingly impossible to face up to management over ethical breaches. The General Manager (...) would regularly scream at me in particular if I tried to push back against decisions that were detrimental to the product, like the high targets or refusal over additional resources, or editorial interference. (...) and others laid a grievance against

[REDACTED] after I left, over his bullying. Several of the *HuffPost* staff came to me after I left, in tears over the bullying they were being subjected to...”

Hiring and firing

- 9.84 Management told the Panel that organisations prefer to hire in-house personnel in order to recognise excellence and loyalty, maintain stability, and ensure knowledge of systems and culture. According to Copelyn, where it is deemed that insufficient people are coming through the ranks to fill vacant positions, this might indicate that the organisation is “dysfunctional”.
- 9.85 Copelyn discussed recent events at eNCA, where a news editor was appointed from outside who had previously led a political party. That person allegedly then behaved in an aggressive, insulting and demeaning manner towards a junior colleague. Copelyn described the appointment as “an unconscionably bad mistake”.
- 9.86. As with all organisations, morale within media outlets is important. Various eNCA figures discussed the factors related to this within their own organisation. Paul Diamond told the Panel that eNCA had an editorial policy document, but that it had not been worked on or discussed for a number of years. However, he said it was accepted that “senior people make editorial calls” and “decisions are made in the newsroom without discussion”. Norman Munzhelele explained that the editorial team “discuss the angle and the possibilities of any story”. Megan Russi told the Panel that a distinction had to be made, for example, as to whether stories would focus on people or on events, and that this was an editorial issue: “The channel is not top down and everyone in the newsroom is asked that they think.”
- 9.87 At the meeting between the Panel and eNCA editorial staff there was an assurance that there was a sincere desire to “rebuild credibility”. That included making appointments that were “open and transparent [so that people] are not handpicked without knowledge and experience”.

QUALITY OF PRACTICE AND PRODUCT

From creativity and depth, to cronyism and superficiality

- 9.88 All the journalists, editors, readers, listeners and media observers who interacted with the Panel acknowledged and gave credit to what they considered excellent work in news journalism, and to its difficulty. Phil Graham of the *Washington Post* was quoted:
- “So, let us today drudge on about our inescapably impossible task of providing every week a rough first draft of history that will never really be completed, about a world we can never really understand.”
- 9.89 John Clarke praised the “excellent role played by the media in reporting on the Xolobeni

Mineral Sands Project and the struggles of the amaDiba Wild Coast residents against the proposed predations of the Transworld Energy and Minerals Corporation”. The objects of his admiration were the journalists who had reported on the adverse impact on local residents of the proposed SANRAL Wild Coast toll road. He perceived the work of the journalists involved to have contributed to success in litigation which affirmed the protection of communal land rights, commenting: “journalists and other media professionals have shown commitment to their code of ethics despite enormous pressures being put on them to spin false narratives”.

- 9.90 The Panel heard particular praise for the Gupta Leaks exposés. Somewhat extravagant claims were made that it was the journalists and their exposés which had “saved the nation from the predations of corrupt businesspersons and their political cronies”. Scorpio/Maverick, News24 and amaBhungane were applauded for their extraordinary collaborative venture in bringing the Gupta Leaks story to the public.
- 9.91 Pauli van Wyk was commended for her work on the VBS Bank scandal (published in *Daily Maverick* and by Scorpio) where she undertook “extensive work” to verify information from different sources that enabled her to uncover links between EFF leaders and those involved in raiding the bank. Susan Comrie of amaBhungane gathered “unique information”, some of which was thereafter used at the Zondo Commission of Inquiry on the Regiment Capital series. Pontsho Pilane of the *Mail & Guardian* Bhekisisa health reporting project highlighted important health matters and “laid bare the daily struggle countless women across South Africa face to access sanitary pads for menstruation”, and also did highly praised work on autism and children. Qaanitah Hunter, in her reporting on President Zuma and the ‘Maharani meeting’ was described as a courageous journalist “facing a litany of attacks from supporters of former President Zuma, fighting back legal threats and blatant intimidation”. Unusually, she also “revealed her own anxieties in writing and talking”, shared her “fears about mental health”, and urged fellow journalists “to find equilibrium in the demanding and volatile jobs we do” when she “advocated for open conversations”.
- 9.92 It is significant that generally these commendations were for investigative work done over a period of time, and not for stories in the mainstream legacy media.
- 9.93 All journalists and editors with whom the Panel engaged felt there had been a general deterioration in the quality of both journalistic and editorial practice, and the media product emerging from South African newsrooms. There seemed to be consensus that, as Anton Harber noted, South African media had “lost the capacity for daily regular reporting” and that breaking news is simply drawn from social media. There was also consensus that few journalists seemed able to “explain, analyse and highlight” information in “an accurate and hard-hitting” manner.
- 9.94 Everyone to whom the Panel spoke, within and outside the community of journalism, deplored the ‘cronyism’ of the Independent Group. Regrettably, despite requests for meetings, the Panel received no response from the group chairman, Dr Iqbal Survé.
- 9.95 It is, of course, easier to see the stresses and strains that contribute to ethical malfeasance by examining daily newsroom practice and processes. The Report now addresses this issue.

Structures, fact checking, critiques

- 9.96 The Panel learned that the reduction of staff and skills has significantly decreased “cooling-off” time, when editors and sub-editors would check sources. Such cautionary halts may be even more absent on broadcast and online platforms, either because reporters are broadcasting live to camera/ microphone unscripted, or because the resources to conduct them have been cut in the interests of economy or speed.
- 9.97 There was no consensus on whether journalists were working under greater or lesser time pressures (see section 9.121). However, Copelyn deplored the demise of the era when there was a “process in which time was allowed for hearing the other side, checking sources and obtaining corroboration”. Moreover, the Panel repeatedly heard that there is now far less – or no – control and support from editorial and senior staff. Many veterans recalled their experiences of formerly entrenched procedures and roles in the news production hierarchy: the diary meeting; briefing and debriefing; the news conference; the news editor (“a powerful first figure keeping the integrity of the package”); the chief sub “choosing the page”; the assistant editor; the political editor; how the story first went to a deputy editor, then the specialist desk editor, then the news editor who shifted the angle, until a final decision was made by the editor. The Panel heard that an editor used to be someone who knew the field and the big picture; could ask whether or not the journalist had spoken to a particular person; and could generate enough avenues of enquiry so that there would never be a single source. Working on a story without this kind of participation from an editor or news editor was described to the Panel as “the difference between raw and cooked”, in that “the editor reads everything and sees that the story is checked and as complete as can be before being sent to the sub”. Franz Kruger reminded the Panel that “a chief sub is needed to poke holes in a story” – but from every informant the Panel learned that the days of adequate resources for sub-editing are long over in many newsrooms
- 9.98 Brkic claimed that at the *Daily Maverick* every story was still “read by several pairs of eyes, and checked and read again”, because “you need to trust journalists up to [a] point, but have to keep your eyes open”. His colleague Heard spoke about the “pressure as editorial to maintain quality and accuracy. There are errors. There is not a moment that I don’t worry... [or ask]: have we done enough checking to publish?”
- 9.99 Heard said that much of the concern was around the external contributors. “We have an editor’s checklist for contributors. Every contributor has to sign off on a declaration of interest. There are layers of desk editors, who check and rewrite, and [who] then [send stories] to subs, and then to [the] editor who checks again, and then [it goes] to publication. We have to operate incredibly fast.”
- 9.100 All those to whom the Panel spoke lamented the demise of these layers of editorial involvement and the loss of the assurance of integrity provided by an adequately-resourced sub-editing function. The subs, it was said, would “clean up and sort out what made no sense, and throw back what was wrong or defamatory, or [decide] if someone had not been given the right of reply”. Headlines were prepared to “reflect the whole story and not just a sexed-up version”. However, fewer sub-editors with less time per story now means “that stories are not checked, writing is not subbed”, and much of what is written or spoken is “riddled with errors”. In short: “narratives are accepted without testing”. A number of practitioners told the Panel that spelling errors also currently abound in the print media. Alide Dasnois spoke of “the importance of subs in picking up mistakes”, while Mathatha Tsedu alluded to the proverbial “seven eyes” which were formerly cast over the work of all journalists.

- 9.101 The example was cited of a journalist who erroneously announced on radio, on the basis of an unverified email, that Vladimir Putin, President of Russia, was visiting South Africa. As *African Mirror* editor Jovial Rantao pointed out, “All that needed to be done was to check”, because state visits are not announced in that way. Contacting the Russian embassy would have been the appropriate action.”
- 9.102 In the absence of such checks, it was said that journalists sometimes “act like players” and, in so doing, are seen as “taking sides; playing at propaganda”. Some informants suggested there was “a desire for drama” in much reporting that was reflected to adverse effect in both the writing and story. Terminology such as “serious allegations” and “revealed” was cavalierly used, but with apparently “little reflection on what is serious and whether something is actually a revelation”.
- 9.103 Experienced journalists and editors pointed out that research is essential – and involves more than just consulting the internet. If a journalist is writing about Cabinet or the Budget, they should consider, and be able to understand, the impact of budget cuts and seek widely for information on Treasury approaches to, for example, subsidising housing, instead of simply basing the content of the story on reductive headlines.
- 9.104 The Panel was told: “There is too much commentary and opinion and not enough reporting”, and that instead of conducting research, identifying sources and checking facts, some journalists find it easier to simply “write about somebody but not make contact; just write the story under the guise of analysis”, with “the rubric of analysis used [as an excuse] to avoid having to contact someone for a response”.
- 9.105 Writers who had studied in a multiplicity of disciplines such as economics, law, arts and science, or journalists with extensive experience on those beats, were formerly utilised as specialists by news media. Downsizing has meant limiting the fees available for expert writers and reducing the numbers of specialist journalists on dedicated beats, or dispensing with them entirely.
- 9.106 The Panel was told that both reporters and the copy-editors whose historical role has been to ‘catch’ what reporters might have missed, are often set punitive deadlines for how long they can spend working on each story – punitive, because story turnaround is used in evaluating performance against KPIs and may be used in calculating bonuses, pay or even continued employability.
- 9.107 Geffen drew certain broad conclusions about the kinds of mistakes being made in newsrooms, identifying a “hierarchy of kinds of errors” ranging from the mundane to stories designed to attract readers to a front page, irrespective of accuracy or truth, through to the truly malicious:
- “There are those which are daily errors, run of the mill, which may be referred to the Press Council, and the editor recognises and apologises for the error before it even reaches the attention of the Ombud because it is simply ‘part of the normal hustle and bustle of work’. There are errors of ideological preconception which some publications carry to extreme. Experienced editors are usually more cognisant of ideological preconception while others go beyond ideological preconception and engage in malice.”
- 9.108 Geffen suggests that a real difference could be made if there was conscious debate around mistakes of ideological preconception. Journalists and editors needed, he said, to be more

aware of their preconceptions; more sceptical of sources; should scrutinise tip-offs and information volunteered, seek corroboration; and look to run a “fair story”. In a similar context Dasnois acknowledged that: “we all have our agendas and that is where ethically the most egregious mistakes come from”, urging media practitioners to “stand back and let our heads rule, rather than our hearts”.

- 9.109 Errors also arise from inexperience, as well as the South African legacy of inequality where some journalists are products of “a terrible education system (...) [and] have not been taught basic writing skills or critical thinking”. This means “editors have to be extra careful, question our reporters and make sure they have considered all possible angles”. This is not always possible in a busy newsroom, so where mistakes are made Geffen says: “one must try not to be defensive, try not to double down, acknowledge [one has] made mistakes, apologise, and fix it.”
- 9.110 No-one is perfect and no organisation infallible, so it is not unreasonable to expect media outlets to make errors. Mistakes are corrected and there are apologies but the Panel’s informants stressed that there is considerable room for improvement in how South African media houses acknowledge errors.
- 9.111 There has been growth in fact-checking organisations and projects across the world in just a few years. That growth, according to Wits Journalism’s *State of the Newsroom 2017* report is:
“...quite remarkable. The number more than doubled from some 62 initiatives in 2015 to 137 in 2017 – but it remains to be seen whether the idea of it being a genre with identifiable methodologies and characteristics will gain further traction in our newsrooms. Right now, South African newsrooms are mostly dependent on the work of external fact-checking organisations for their fact-checking content.”
- 9.112 Africa Check is a South African organisation of independent fact-checkers, whose work and views are discussed extensively in Chapter Five. Africa Check agreed with the submission by SANEF that “a lack of resources for, among other things, fact-checking and verification, was hampering the ability of the media to provide the most accurate information possible to the public”.
- 9.113 SANEF argued to the Panel that too often the burden of compliance falls upon the journalist and/or editor responsible, “where such journalist and/or editor simply has no resources for fact and back-ground checking or a sub-editor available. In these circumstances we believe that it is the media house which in fact undermines the Code by making it extremely difficult for their journalists and editors to comply therewith”. SANEF has suggested that the Press Code should perhaps be amended to require the provision of reasonable staff and resources to ensure that journalists and editors have the necessary sub-editing and other verification, fact- and background checking resources to provide the most accurate information possible to the public and that possible partnerships with fact checking organisations such as Africa Check should be explored by all media houses.
- 9.114 Africa Check encourages media houses to set up independent fact-checking units, including possibly third-party fact-checkers on social platforms, and recommends a commitment to a transparent national corrections standard. The organisation discusses its own work concerning the Facebook platform (which it calls a “major conduit of misinformation”) as “key in our efforts to identify false claims and present facts”.
- 9.115 Fact-checking units can advance two goals: they can strengthen the fight against

misinformation which continues to hurt media credibility in the country; and the income they generate can be ploughed back into newsrooms.

- 9.116 One rather different suggestion made to the Panel for dealing with many of these shortcomings was made by researcher Taryn Isaacs. She identified the need for introspection on individual and community accountability, and advocated the creation of grassroots media accountability mechanisms. These would move the issues of media ethics and accountability outside public policy and institutional bodies to reside with the creators and receivers of media products.

The right of reply

- 9.117 In research commissioned by this Panel, the most frequent complaint upheld by the Press Ombud was that journalists had not given the subject of a story the right to respond and tell his or her side.
- 9.118 In part, this complaint relates to the lack of newsroom mechanisms to check story adequacy discussed above. The complaint is so often upheld because journalists and newsroom colleagues do not take (or may not have) the time to follow through on every aspect of a story. The resulting errors represent a gross failure in basic journalism skills and ethical standards.
- 9.119 The right of reply is described by Verashni Pillay as “a golden rule of journalism” and one which she claims *HuffPost* repeatedly flouted in its attempts to churn out as many stories as possible. She asserts that stories were “repeatedly” broken with no sourcing and “without getting a right of reply”. She provided examples such as an incorrect claim that a SARS official had resigned. This was posted without seeking comment: an apology had to be published. She referred the Panel to a video of an interview with Winnie Madikizela-Mandela, which the line manager insisted on publishing unchecked, after Mrs Mandela died, and in which those accused by Mrs Mandela of certain activities were afforded no opportunity to respond.
- 9.120 It is interesting to note that Mrs Mandela had referred to a number of journalists, saying that Thandeka Gqubule was negatively disposed towards her; and that the *Weekly Mail*, which Harber edited in the 1980s, was “anti-me and anti-ANC [and] actually did the job for Stratcom”. None of those named were consulted for comment, and this is also relevant to the section below on the personal vulnerability of journalists. The video was published under the leadership of a *HuffPost* senior staffer who was re-hired as a senior editor at News24 when *HuffPost* closed, two months after the video was aired.
- 9.121 The discussion in Chapter Five on the platform unjustifiably provided to science dissidents and denialists presented the other side of the coin, however. There, the point was made by persons including Professor George Claasen, public editor of News24 and Media24’s Community Press, that there is no ethical requirement to offer a right of reply where the reply is demanded to challenge an overwhelming weight of fact-based, peer-reviewed scientific knowledge.

The rush

- 9.122 Copelyn, who chairs a board controlling an extensive broadcasting empire, cited how broadcast news is “a vibrant controversial business flowing at speed of sound”. Rantao, seasoned by

experience in the heyday of print journalism, commented that “the medium changes ... but journalism does not change”. Both Copelyn and Rantao agree on the dynamism and momentum of the news cycle, but most of those with whom the Panel engaged felt that the content of news media has changed to adapt to the speed at which reportage must now take place, and the medium through which it is communicated.

- 9.123 Geffen reminded the Panel that “ethical decisions are made every day often under enormous time pressures” and, to a certain extent, decisions just “pop up out of nowhere. The daily bugger-up is a consequence of fatigue... having to switch attention between multiple stories”.
- 9.124 Roper summarised how ethical issues arise at “the confluence of business necessity, and the necessity of speed. Error comes from a choice with revenue needs (what is covered and the search for click-bait) and competition speed (in breaking news)”.
- 9.125 Clay and Ansell, discussing the pressures under which journalism trainees labour, commented that: “The fast-moving news climate can lead some current entrants – particularly those whose training has emphasised technical facility on digital platforms – to dismiss the ethical concerns raised by journalistic colleagues as ‘old-fashioned’ and incompatible with modern newsroom production imperatives.”

Political pressures and factionalism

- 9.126 In Chapter Five, political issues were discussed in terms of challenges to the media industry as a whole. In this chapter however, the focus is on their impact in the newsroom.
- 9.127 Munzhelele opined (alluding to a poem by Yeats) that the “biggest problem is that the centre is not holding”, adding that the media “must ensure that we build the country”.
- 9.128 Paul Hoffman told the Panel he believes “the ANC sees the media as a powerful player” and “a lever of power in society”. Sometimes it is seen “not as a friend of the ANC” and at other times, as in the case of the Gupta-owned media, as “useful”. Accordingly, the ruling party, and therefore government are ambivalent in their relations with the media. Hoffman said they “want to control the media”, but they also acknowledge the useful role played by the media in the apartheid era.
- 9.129 For the newsroom, this means that real or perceived alignment is attributed to both media houses and journalists. Fisher observed: “One can’t isolate the media from the political battles going on in the country.”
- 9.130 Fisher was further concerned that some journalists “align around political groupings” while some media houses are so identified with a particular group that “journalists do not move from one media house to another because of the association”. This is undesirable in the sense that “we need to go back to the scenario where media groups will poach each other’s staff”. Vuyo Mvoko, Political Editor at eNCA News, told the Panel that “journalists took on the struggles of their owners”. He prefaced this comment by recalling his earlier editorship of *New Age*. He also identified the problem as being “people (journalists) hiding where they stand”.

- 9.131 This “branding of journalists” as linked with factions or groups has happened, Fisher suggested, because some journalists played a role in exposing corruption during the Zuma era and are now branded by the broad camp of Zuma supporters as “Stratcom”. Political fight-back now involves discrediting journalists because then “one can discredit everything that has been written”.
- 9.132 A member of the public, Thumi Atshar, wrote indignantly to the Inquiry that Stephen Grootes had publicly described the existence of a media agreement to limit reporting on and coverage of the EFF to 6%, in proportion to their parliamentary representation. Atshar asked “Is this not tampering with democracy? Is this not misinforming the public?” and also described feeling “betrayed by the Cabal for their narrow interest”, adding that she had “no more confidence in the media”.
- 9.133 When one is, as Fisher said, “lumped into the category of branded journalist” they are “part of a journalism that is personalised to such an extent that you, or this or that particular journalist, is seen as always supporting or opposed to Malema, Gordhan or Ramaphosa”. However, he asserted that journalism is complex. Journalists are supposed to – and do – interact with people of different political views, in order to “reflect what comes from all sides, because it is important for readers to have knowledge of what comes from across the political divide”.
- 9.134 SANEF has concerns about journalists openly aligning with, or taking an oppositional stance to, a particular political party or faction “in a manner that undermines the impartiality and credibility of their reporting”. SANEF alludes to the remarks in *Brown v EFF and Others, Case No 14686/2019*, in which the court declined to order that the EFF pay a fine to a journalist because of “the role Ms Brown herself played in triggering the chain of events and the resulting discord which followed... the strident and political tone adopted by Ms Brown on social media to the EFF, only fuelled the flames of discord”.
- 9.135 As the alignments of political actors and factions change (for example the EFF taking a stance for Zuma, against Zuma, and now for Zuma again), it becomes more difficult for the media to deal with these factions. Thus, a number of informants discussed the attitude politicians have taken in labelling certain journalists and media houses as ‘acceptable’ or ‘unacceptable’ to their faction. The EFF has banned the *Daily Maverick*, amaBhungane and the *Mail & Guardian* from various events with the result, says Fisher, that “the EFF is not fully reflected in the media”. Egbert Boesak of eNCA is concerned that the refusal by the third biggest political party in the country to speak to eNCA “affects our credibility” because it limits the station’s coverage and analysis.
- 9.136 More than one journalist suggested that media houses should stand together and not attend the media conferences of those political parties who conduct such banning, in order to show “that we can cut them off or deny them oxygen”. However, these journalists feared such media solidarity was a futile hope because “the media itself is polarised” and “there are a lot of young people in newsrooms who identify with the EFF and maybe the people on top are scared to give a directive not to report on the EFF”. Others question whether such solidarity itself might not construe self-censorship by the media and how would the public, which the media is supposed to serve, be served by it?

Manipulation and influences on the newsroom

9.137 That the largest and most influential newspaper in the country acknowledged it had been ‘manipulated’ over a period of years has already been covered in Chapter Eight. That chapter has already reported criticism of the complete absence of any detail from the *Sunday Times* concerning by whom, how and why the newspaper was ‘manipulated’ by unidentified forces. In these circumstances, the public is asked to believe that this largest and most powerful newspaper, with all its resources and supposed expertise, is as gullible as any person in the street.

9.138 Self-described ‘spin doctor’ Chris Vick, described how he had:

“...found it increasingly easy to influence media coverage and shape public opinion. The ongoing juniorisation of newsrooms (bringing with it a lack of knowledge and history which is easily manipulated), budget cuts and the changing nature of journalism (particularly due to the impact of social media) have made it easier to drive particular narratives, trade in information and ‘do deals’ with journalists.”

9.139 Vick expressed concern at how easy it was to influence the newsroom. He wondered how many persons were doing so, and therefore “how much of what I read is shaped by society or journalists, and how much is shaped by influencers, agents, spies, people with power, people with money, or people with agendas?”

9.140 Somewhat self-congratulatory, but certainly optimistic and enthusiastic, were the musings of Brkic, suggesting confidence that there would be no such opportunity for manipulation of the *Daily Maverick*:

“We have managed to create and reignite excitement for media for what it delivers for the purpose and role the media should play in society. We have journalists pumped up about it. The element to us that is exciting is that what we do matters, it helps communities and South Africa. There is enormous gratification. We have tried to create the best editorial team in South Africa. Everything is done with a purpose, [it is] not haphazard. We decided people are everything and so we created an environment where people know we have their back. Editors work harder than everybody. We have got really intelligent, great writers to go the extra mile for us.”

Journalists as players

9.141 Many informants affirmed that “journalists who are part of and influenced by whatever happens in society are nevertheless required to “show they can rise above that”, so that they and their work will be respected as “fair and balanced”. As Fisher said:

“It is not possible not to be aligned. All of us have baggage and bring it to the table, so when we use the word ‘objective’ we qualify it by saying ‘as objectively as possible’. We try to ensure that our political and historical and social baggage have as little impact as possible on our work.”

9.142 However, many senior journalists, including Perlman, lamented that journalists now “act like players”. Fisher observed: “We were trained that we should never become the news [but this] is no longer the case.”

- 9.143 The Panel was told that there is often a desire for over-familiarity with newsmakers and an inability to maintain distance from those who are influential or are the source of stories. Perlman expressed disquiet about “the use of first names, as though journalists and politicians are in a club together”, as well as undue familiarity and the use of party jargon, such as calling the leader of one political party ‘Commander in Chief’.
- 9.144 It has been suggested that the use of first names and jargon are psychological slips which reflect lack of appreciation of professional boundaries. The Panel was told by Perlman that: “Journalists confuse being liked with being respected. [Having been] seduced by being close to political players and being taken into their confidence [these journalists end up looking as though they] have taken sides and are playing at propaganda.” Barbara Magagele of GroundUp commented: “People try to be on first name terms with Ministers and the Presidency and so journalists become the story.”
- 9.145 Geffen discussed how journalists think their opinions matter because of the growth in ego-driven journalism discussed above in the section on ‘Journalists as celebrities’. In such circumstances, the ethics of the newsroom can become compromised, the Panel heard. What is told in confidence to a ‘friend’, said Fisher, means that the journalist “won’t want to report negatively on a player [because one will] need to decide that the story is more important than the friendship”.
- 9.146 Chris Vick believes that confirmation bias – not confined only to political figures and issues – is a widespread problem in the South African media where:
- “Journalists are only seeking information that confirms what they’re looking for, and exclude information that doesn’t fit that narrative. We’re now in a media environment where there is much less reporting, and far more opinion. And within that, people aren’t putting forward all the facts, but rather seeking to confirm their story.”

Use of sources

- 9.147 All reporters rely on sources to alert them to a story, to offer details, to pass them on to other informants with deeper or more specialised insight and to provide opinion and analysis. One of the fundamental principles of transparency in journalism is that there must be “clear and detailed identification of sources” since this forms the basis of a more open relationship with the reader or listener or viewer. As Africa Check has written: “A commitment to transparency by South African media houses will strengthen the public’s trust in their work.”
- 9.148 Kovach has written in *The Elements of Journalism* that “the essence of journalism is the discipline of verification”. Consumers of news must be able to ask the “most important question they can in order to screen the credibility of the information they are offered: ‘How do you know that?’”
- 9.149 Brkic told the Panel: “Writers are writing and don’t have to worry about editing while editors are there to safeguard the ethical brand.” He recounted how he had personally “failed” on an Al Qaeda story because he believed the source – in this case the writer – who was largely accurate, but had missed a few really important [points] and invented them. “This was in May 2000 and we retracted it in June 2000,” he said.

- 9.150 Stefaans Brummer of amaBhungane acknowledged staff members develop “certain proximity and closeness to sources”, but said that this was understandable, and that “[When Joe comes to us and says] here is this thing, we say: prove it.” Brummer pointed out that a tip-off was only a tip-off, “and not a story”: something which he asserted much of the media gets wrong. He said: “The starting point is to say: let’s see the evidence,” and went on to describe the necessity of examining that evidence objectively: “go out of your way” to find counter evidence and to have different levels of scrutiny. “With us, stories are thrown around in-team and signed off by both managing partners.” He suggested that such systems should be “obvious” in the professional context, but that they break down because of time pressure, which he described as a “massive part of the problem”.
- 9.151 Ethical lapses can come from closeness to sources, said Brummer, because “we are all human; we all develop relationships with our sources”. If this was not managed, he added, it could prove problematic. Brummer linked this to the issue of newsroom checks and balances, using the example of a situation where political reporters are close to a politician who “keeps throwing scraps” their way, which ultimately means the reporter is “never going to be critical”. He concludes that journalists must therefore not “sit in silos... even if the story is not covered by the team, it must be opened up by the team and discussed and signed off by the editor”.
- 9.152 The right to keep sources anonymous is frequently claimed by journalists. Sometimes this is necessary, because to name a source might place them or others around them in danger, as was the case with activist sources interviewed by journalists under apartheid repression. However, it is good newsroom practice that the editor or the newsroom senior supervising the story must know the identity of all story sources and be able to verify that they exist.
- 9.153 Sometimes news outlets simply do not acknowledge the issue of anonymity, in that the audience is never told whether an explicit decision was made to hide the identity of an informant, or on what basis their identity was hidden. Rantao was adamant that “if a source wants to be anonymous then the journalist must interrogate why”. Similarly, he said that when a reporter is told that commercial information is ‘sensitive’, the journalist “needs to be able to understand why it is sensitive”.
- 9.154 Africa Check writes that “in many instances there is little justification for obscuring news sources”. The organisation advises that “the use of vague descriptions” such as sources who have ‘knowledge of the matter’, or who are ‘close to the investigation’, as well as ‘experts’ or ‘analysts’, should not be “unquestionably accepted by editors or the public”. A core principle of their work as independent fact-checkers is transparency of sources, and the organisation uses only publicly available information. While its parent body, the International Fact-Checking Network (IFCN) of the Poynter Institute, does allow for the use of anonymous sources where safety is a concern, Africa Check avoids doing this. However, the organisation accepts that eschewing anonymity is not always possible for certain types of journalism, such as investigations.
- 9.155 Hoffman told the Panel he believes that the rule against revealing confidential sources has been misused and abused to “cover for fraudsters who trick the media into reporting fake news, false stories and other forms of mischief”.
- 9.156 If indeed the *Sunday Times* was manipulated by ‘sources’ for their own ends, leading to inaccurate reporting, it was suggested to the Panel that the newspaper should “expose such sources to scrutiny, thus sending out a signal that subversive sources can be so exposed and cannot claim the protection of anonymity”. It was also argued that “where it is clear that the journalist has been sold a false narrative by a source, then confidentiality must fall away”.

Paul O’Sullivan agreed that “genuine whistle-blowing sources should and must be protected.” But he suggested that “when a third force agent or plant from the underworld, or dirty cops from crime intelligence deliberately feed a journalist with fake news or lop-sided data with a hidden agenda, then that ‘source’ needs to be outed, and exposed for the role he or she played in attempting to mislead the country anonymously”.

- 9.157 The Panel heard that journalists should be clear and open with sources, and must explain, as Kovacs suggests, that “part of the bargain of anonymity is truthfulness”. Hoffman argued that parameters must be created in which “confidentiality is overridden by the untruth of the source”, because if the source has “gone out to mislead for purposes of advancing a false agenda then steps must be taken against manipulators so that the manipulation is not repeated in future”.
- 9.158 The Panel was also informed that many stories published under the personal by-line of a journalist, or identified as coming from a ‘staff reporter’ are actually sourced from press releases issued in the name of a public relations office, spokesperson, publicist, corporate, or other client. Here, the source is misidentified and the material is falsely presented as being journalism. This deceives the public, who rely on the credibility of the media outlet. Lazy, inexperienced, naïve – or simply absent – editors, the Panel was told, allowed and facilitated this type of ‘fake news’.
- 9.159 SANEF has submitted to the Panel that experts and analysts quoted in news stories should have qualifications and expertise “appropriate for the story”, and that sources should be able to “provide factually accurate information or commentary”. Africa Check has seen instances where experts interviewed do not hold the credentials assigned to them, or are quoted solely for the purpose of ‘false balance’. It was suggested to the Panel that media houses should encourage their journalists to conduct thorough background checks on anyone presenting themselves as an authority or expert.

Lack of preparation, opinion instead of reportage, sensationalism

- 9.160 The discontinuation or reduction of in-house training, the lack of mentorship from experienced journalists, the desire to achieve celebrity and the ease with which some platforms accept writers, have all been named as causes of ethically problematic writing. Some journalists lack any real experience in the subject matter they are covering – or the ability to investigate and research. They also lack skill in asking questions, and in writing or presenting a story. Senior journalists, editors and academics with whom the Panel engaged were highly critical of the capacity and application of many of those currently professing to be journalists.
- 9.161 It was suggested to the Panel that many journalists fail to prepare for interviews, have no plan of what they hope to extract from an interviewee, and do not ask insightful or penetrating questions. It was explained to the Panel that this was not, as sometimes suggested, because these reporters work with a multiplicity of languages. Rather, the Panel heard, it was because journalists were assigned to cover areas about which they had little knowledge. Some journalists, it was claimed, “did not even bother to learn the names of significant people, newsmakers, what the issues are, or the content of the issues – let alone understanding the issue”.

- 9.162 Moreover, there was a lack of understanding about the “complexity of a story”, and no knowledge or appreciation that “there is a past and current context”. Many reporters were said to believe research involved “just clicking on the internet”. For example, the Panel heard that when some journalists covered budget stories, they did not look at the impact of budget cuts on various bodies and parastatals, and did not know how Treasury came to decisions on allocation of funds or how applications are made for subsidies. These critics of current journalistic practice suggested to the Panel that lack of preparation was visible in “moments of panic or silence”, when journalists fell back on “jargon or platitudes”, such as GBV (gender-based violence), White Monopoly Capital, neoliberal capitalism, or coloniality.
- 9.163 Informants expressed concern at the serious decline in interviewing skills. Journalists, they said, were prone to offer “expressions of opinion” followed by “rambling, pointless questions”. Moreover, questions were not put in context, but were often surrounded by “a red mist”. General questions such as: “what do you think?” had replaced the forensically-based pertinent, specific (“hard”) questions needed for rigorous investigation. According to one informant, “when, where, what?” questions had been superseded by “obsequious ‘what do you think?’” questions, followed by “an obsequious listen” to a “public relations drone from an administrator or civil servant”.
- 9.164 Perlman commented that some reports “offer a preamble with no question on the end”; others suggested that interviews were often “like pillow fights with flailing and shouting and feathers in the air where no one gets hurt”, because reporters did not do sufficient research, prepare focused questions, or ask their questions strategically.
- 9.165 Some journalists, the Panel was told, “feel they are entitled to be under-prepared, emotional and rude”. Essentially, “poor questions are asked with fury and cockiness”. Informants further suggested that serious reporting has been negatively influenced by “confrontational broadcasting style” (for example, insisting “We demand answers from you”) where dramatic impact is prioritised over newsworthiness, creating “the appearance of taking a line” but actually achieving little.
- 9.166 The Panel also heard that when a reporter is underprepared, performing for the camera, or for the interviewee, they tend to focus on being sensational. Their sole purpose is to get “a good clip” so that they can tell newsroom colleagues: “I’m on fire!”
- 9.167 The inexperience and lack of editorial support discussed earlier in this Report exacerbates such problems. Often, there is nobody in the newsroom who can advise journalists to “go back and speak to someone else”, or ensure that the writing process is not begun without “planning a chronology, [or] working on the purpose and import of the story”. That there were “no consequences” for such poor reporting was a frequent complaint to the Panel.
- 9.168 Clay and Ansell, who have experience in training interns, and greater understanding of the reasons for genuine mistakes, wrote to the Panel about attitudinal issues, saying:
- “All these pressures (short-staffing, scarce resources, harsh time and performance targets, employment precarity, and isolation) contribute to an extreme sense of vulnerability among all categories of newsroom employees. Further, editors and journalists understand how, in the presence of noisy and vibrant social media, they no longer fully control the news agenda. These concerns are often expressed, sometimes very emotionally, in the trainings we conduct. In the – we underline, rare – cases where an editor knowingly demands, or a reporter knowingly writes, an unethical story, such demotivating factors cannot be discounted as contributory. Far more often, however – and we hear this in

training sessions – a reporter or copy editor will reflect ‘I know I should have...but there was no time/ they were shouting at me for the story/ there was no transport to go and see’...”

- 9.169 Experienced journalists and observers deplored how the complexity of South African society is lost in a journalism that lacks a ‘set of fundamentals’. It was suggested that some journalists do not appreciate the differences in nuance and mission between different media outlets, and that this also contributes to a “lack of progressive revelation and insight”. Moreover, as some informants told Daniels, there are “too few beat specialists” and “a lack of specialised writers”. Other informants complained to Daniels that “there is very little news content, lots of opinion from non-journalists and far too much content from outside sources”.
- 9.170 Brkic said that the *Daily Maverick* makes a clear distinction between fact and opinion with staff writers, and opinionistas who are the opinion makers: “Op-ed is for guys who are not part of our team but have extensive knowledge of the issues.”
- 9.171 There is nothing new about newspapers and broadcasters offering opinion pieces from outside sources. But perhaps their excessive proliferation in the current context and the increasing tendency of journalists as well to offer opinions instead of reporting on facts, is not surprising. The Panel heard how the practice saves money because freelance opinion writers require no office-space, desks, phones, salaries, or medical aid and pension packages paid for by the media outlet. Calling published material ‘opinion’ provides an excuse for any shortage of facts, inaccuracy, bias or malign agenda. Opinion pieces further allow outside experts to provide cover for lack of expertise within the media outlet.

Drama, sensationalism and scoops

- 9.172 Brkic, about to introduce a weekly paper into the Maverick stable, commented that:

“When you have a weekly newspaper, you live and die by having to have a screaming scoop. So, on Thursday or Friday you are open to much greater compromise in order to grab something for the front page. These are business realities.”

He further pointed out that the commercial pressure is “terrifying”, as is the pressure to have a front-page scoop, which means that “some will accept whatever comes in”.

- 9.173 The change in dominant media platforms has, according to one informant, fed a “desire for drama”. While the relative slowness of print production supports a cooling-off process, which theoretically allows editors and sub-editors to check on facts and sources, this is rather less so with the much more immediate story generation of broadcasting and media house social media.
- 9.174 All forms of media were criticised to the Panel for grandstanding and sensationalism in their use of language and exclamation; the examples of ‘serious allegations’ and ‘revelations’ have already been discussed above. More were cited by informants. An item in a story is described as a ‘disclosure’ – but who is the source? At Nasrec (the venue for the ANC conference) two years ago, the headline was ‘Cyril rescues’ but no one was clear about who or what was rescued and from whom: the headline simply looked interesting.

- 9.175 One informant suggested that the offer of a revelation or disclosure is to obscure the lack of content or real interrogation. Several people told the Panel that it is the absence of any appreciation of context or understanding of what specialist information (a set of financial statements; a piece of litigation) actually means that results in such reliance upon irrelevant, false or unimportant ‘exposés’ wrapped in sensationalist language. Journalists may be ‘carried away’ by their own misunderstanding of what a set of facts means; indeed, Vick believes that both the South African media and news consumers have a “cultural attachment” to scoops, sensational news and splashes.
- 9.176 An additional contributory factor has already been discussed in the Chapter Eight discussion of the *Sunday Times*: arrogance. One informant cited the “immense arrogance of the *Sunday Times* that has persisted to this day, stemming from the fact that it is the most profitable ‘paper for the people’”.
- 9.177 Columnist Chris Moerdyk expressed to the Panel his concern that many media are “extremely unethical in seeking sensationalism to boost readership, listenership and viewership.” He added that this has almost become the norm. In addition, politicians, activists and newsmakers seek attention through inflammatory statements which the media reports without any reflection on content and impact. Moerdyk wrote: “Right now many of them believe that the news media are so desperate that they will publish anything, no matter how inflammatory, illogical or just plain stupid.”
- 9.178 As noted in Chapter Five, the Panel was told that the success of an online story is increasingly evaluated by feedback in the form of real-time analytics. Reporters and editors can learn instantly which stories are trending and receiving the most ‘clicks’ and re-posts, creating implicit and sometimes explicit pressure for stories that repeat successful, often sensationalist, formulae.

CONCLUDING QUESTION: AN INTERNAL OMBUD?

- 9.179 One reinforcement for ethical journalism, the Panel was told, can be the appointment of an internal person of senior status to act as an internal ombud within and for the media platform. Such proposals will be discussed more fully in the chapter on regulation. However, it may be possible to consider such an entity as more than merely a post-box to receive and resolve complaints from news consumers or even a regulatory authority. Such a person could also serve as a resource within the organisation for journalists, editors and other media practitioners.
- 9.180 Of course, potential conflicts of interest and suggestions of compromised capacity may arise if such a person has engaged with, and advised, an editor or journalist on a particular ethical issue only to receive and entertain a complaint from the public about it. But nothing prevents such a person from holding training workshops and internal seminars, or giving public lectures to assist practitioners and enhance the image and credibility of the media.
- 9.181 It was unfortunately not possible for the Panel to canvass this issue with one person highly experienced and with stature in this field: George Claasen. He is both Public Editor/Ombudsman for News24 and a board member of the International Organisation of News Ombudsmen and Standards Editors (ONO), which regularly addresses media ethics issues.

However, as noted in Chapter Five, Claassen was at the time attending a conference discussing, inter alia, issues around science denialism and accurate science reporting.

MAIN POINTS OF THE CHAPTER

This chapter sets out the constraints that reporters and news organisations experience in trying to present credible, accurate news. It does this by:

- **Examining the growth of mis- and disinformation, instances of the deliberate generation of ‘fake news’ and pressures on news organisations to generate sensationalist news and ‘clickbait’ to attract readers, as well as the role of social media in all these developments;**
- **Noting the multiplicity of allegations about, but the paucity of evidence for, deliberate misconduct by individual journalists;**
- **Noting additionally the many instances of excellent news reporting that exist in South Africa;**
- **Discussing the personal vulnerability of journalists and the verbal and sometimes physical threats and attacks from diverse sources they experience in the course of their work, couched in many instances in racialised or gendered terms;**
- **Examining how the Covid-19 pandemic has intensified some of these threats, underlined the need for reliable news information, and demonstrated the selfless courage of many journalists; and**
- **Describing a range of remedies suggested to the panel, including more critical engagement with information received, collaboration between news organisations, and the creation of effective workplace organisations for journalists.**

CHAPTER TEN: THREATS TO NEWS REPORTING AND CREDIBILITY

INTRODUCTION: CONSTRAINTS ON ETHICAL REPORTING

The growth of misinformation and disinformation

- 10.1 Misinformation is information that is unintentionally misleading. Many persons have written or spoken to the Panel alleging incorrect, inaccurate or downright false reportage. But these errors, mistakes, lapses, inaccuracies or wrong attributions occur without malice and are unplanned.
- 10.2 Earlier chapters dealing with the economic challenges facing the South African media, turbulence in the media landscape and challenges to good newsroom management and conduct have contextualised and suggested causes for lapses in professional standards. The majority of these lapses result in the publication of what may be called misinformation. They can be characterised as a deterioration in the quality of news journalism, but not as an appropriation of the media for nefarious purposes. Such errors are usually resolved with a correction or retraction, but sometimes go so far as to provoke litigation. But they do not threaten the state of the nation or destroy public confidence in all media and all news.
- 10.3 Among the challenges already discussed are unacknowledged advertorial and native advertising: messages favourable to an interested party, which are presented as emanating from a disinterested journalist and a non-partisan news outlet. The panel has recorded multiple examples ranging from broadcasters presenting stories for government departments to corporate press releases published under the by-line of a 'staff reporter'. The so-called 'cognitive capture' of journalists who become too closely aligned to sources and vested interests has also been discussed as an area of concern.
- 10.4 Reg Rumney has usefully written on the nature and extent of both misinformation and disinformation. The latter functions on a different level: it is intentionally misleading and is often purveyed with malice. William Bird and Thandi Smith of Media Monitoring Africa (MMA), which organisation provides a regular bulletin on the subject for the *Daily Maverick*, have defined disinformation as "false, inaccurate or misleading information designed, presented and promoted online to intentionally cause public harm". However, not all media commentators would limit the definition of disinformation to online dissemination.
- 10.5 The incidence of and concerns about disinformation brought to the attention of this Inquiry have tended to be in the arena of 'capture' by forces threatening South African democracy – viz. the subject matter of the Zondo Commission of Inquiry. As noted, this Inquiry does not wish to trespass on that subject matter, and this chapter discusses multiple areas and causes of media content that misrepresents itself as truthful news.

Clickbait

- 10.6 'Clickbait' is web content essentially aimed at generating online revenue through the use of sensational headlines to attract click-throughs. The link, however, leads to content that is either of dubious value (hyper-sensationalised content, for example) or bearing limited if any relationship to the headline used to attract the reader.
- 10.7 SANEF gave the Panel multiple examples of clickbait, including:
- a) Headlines falsely claiming that Ayanda Mabulu, painter of a particularly controversial Zuma-Gupta capture artwork, had been shot and killed.
 - b) Headlines falsely claiming that DJ Black Coffee had died in a European hotel room.
 - c) Headlines falsely claiming Judge Thokozile Masipa's motor car had been torched.
- 10.8 SANEF believes that such 'sexed-up' headlines ought to be within the purview of the *Code of Ethics and Conduct for South African Print and Online Media* (Press Code). The organisation suggests an amendment to clarify that the prohibition against misleading headlines equally prohibits the use of clickbait online.

'Fake news'

- 10.9 South Africans of older generations have had long experience of propaganda: the communication emanating from the SABC and other outlets of the apartheid regime before 1994, falsely trumpeting the righteousness and invincibility of the apartheid project. The phrase 'fake news' is an oxymoron that has been popularised by Donald Trump and is now the term of choice when referring to narratives such as those exposed by the Gupta Leaks.

Gupta Leaks, Bell Pottinger and the media

- 10.10 As Emeka Umejei noted in the *State of the Newsroom Report 2018*, a great deal remains to be learnt about State Capture; perhaps there remains equally as much to be discovered about whether, and to what extent, the media itself was captured.

10.11 The narrative concerning ‘white monopoly capital’ is one instance of a news message engineered at the instance of the Gupta family that for a time dominated some South African media platforms. It was designed and developed by UK-based public relations company, Bell Pottinger, but adopted and disseminated by anyone with a gripe against those unsympathetic to former President Jacob Zuma and his acolytes. It was further adapted and misused by a much wider constituency to make arguments against persons or entities who were black or white, capitalists or socialists, monopolists or state functionaries.

10.12 According to the #guptaleaks website:

“As the public outcry against the Guptas reached a crescendo last year, UK public relations firm Bell Pottinger – founded by Margaret Thatcher’s former PR guru Lord Tim Bell – stepped into the breach to spin for the Guptas on a £100,000-a-month contract. So, despite the mountain of dirty laundry already in the public domain about the Guptas’ relationship with Zuma, the firm accepted a brief – partly in consultation with Zuma’s son Duduzane – to run a counter-campaign blaming white-owned businesses for perpetuating ‘economic apartheid’ in South Africa. Somehow, it was ‘white monopoly capital’ standing in the way of genuinely aspirant black businessmen – like the immigrant Gupta family – from fulfilling their full economic potential in the country. Bell Pottinger now stands accused of stoking racial tension in the country, aimed at its white population in general and at the media in particular. A pop-up movement called Black First Land First has subsequently targeted editors and journalists at the forefront of exposing the Guptas’ dealings. At one point, Bell Pottinger gave feedback about a prospective article proposed by the movement’s leader. The PR firm also scripted speeches subsequently delivered by ANC politicians at political rallies.”

10.13 This initially Gupta-funded disinformation campaign grew its own tentacles and extended into every avenue of socio-politico-economic discourse in South Africa. The story is one of political opportunism that did not only emanate from the Gupta family. The Panel learned that the incitement to racial tension and stoking of divisive politics was mediated through both social and traditional media – the Gupta-owned *New Age* newspaper and ANN7 television channel being the most noticeable. But as is pointed out, the lifespan of this disinformation campaign was short-lived and was ‘busted by the South African media’ itself through the work of Scorpio, the African Network of Centres for Investigative Reporting and others.

10.14 Ultimately, the United Kingdom Public Relations Communications Association (PRCA) expelled Bell Pottinger (its most serious sanction) for breaching all four parts of the PRCA’s Code of Conduct and, particularly, for its failure to “deal fairly and honestly with... intermediaries, the media of communication...and above all else the public”. The PRCA found that the social media campaign highlighting issues around ‘white monopoly capital’ was likely to – and did – ‘inflame racial discord’ in South Africa.

10.15 SANEF echoed the concerns raised in *State of the Newsroom 2018* that the narrative underlying Bell Pottinger’s social media campaign found its way uncritically into a number of stories in the news media. SANEF believes that “this was done crudely and ... we believe, expressly to undermine critical reporting.” Bell Pottinger used the media for the propagation of messages on the topic of ‘white monopoly capital’ (WMC). In particular it used Gupta-owned media assets and also media in the Independent Group to ‘push’ its messages.

10.16 WMC narratives gained traction because of the sharp, racialised, inequalities that persist in South Africa. The divisive use of the term was a tool to divert attention from critical reporting on state capture.

- 10.17 This PR campaign has been dubbed “the first large-scale fake news propaganda war in South Africa” (*State of the Newsroom 2017* report). The campaign began in 2016. More than 100 fake Twitter accounts were created which retweeted content, involving approximately 220,000 tweets. Three prominent editors (Ferial Haffajee, Peter Bruce, and Adriaan Basson) were targeted by the campaign in a barrage of offensive and threatening Tweets that sought to portray them as biased and lacking in integrity. Inter alia, the campaign stated that they were paid by their white bosses to criticise the Guptas.
- 10.18 It is SANEF’s view that 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 sway public opinion in a particular political direction.

Propaganda

- 10.19 The Palestine Solidarity Committee (PSC) submitted to the Panel that fake news and the deliberate distortion of facts for propaganda purposes has a long history.
- 10.20 The PSC referred to the now wholly discredited WMD (Weapons of Mass Destruction) claim by President George Bush and Prime Minister Tony Blair concerning Iraq as an example of fake news with horrendous consequences.
- 10.21 In relation to geopolitical arenas where so-called ‘Big Powers’ are active, the PSC pointed to what it considered a significant distortion in media discourse: the conflation of the political ideology of Zionism with the religion of Judaism. This, the PSC told the Panel, was perhaps the greatest current example of long-term media use of terminology that encourages a particular – and distorted – view.
- 10.22 The Committee concludes its submission:
- “We do not expect journalists to share our views and analysis. All we ask is that the facts be honestly and truthfully presented to the public at large. Analysis of such facts should also be debated, openly and honestly. Our fear, however, is that in the present straitened economic conditions and with sections of the media apparently ‘captured’ by narrow interests, this will be difficult to accomplish. However, training and mentoring provided to young journalists can be improved and this would certainly contribute to at least reducing the levels of fake news and manipulation – surely a goal to be aimed for?”

Captured or rogue journalists

- 10.23 No instances of ‘embedded journalists’ or ‘political operatives’ were suggested to the Inquiry. At most, there are thought to be individuals who have natural sympathy for particular causes or issues, or have aligned themselves with the viewpoint of a particular media outlet.

- 10.24 As already discussed, the Panel met with three persons who were at the centre of, or involved in, exposing a ‘brown envelope’ scandal where journalists were allegedly paid for favourable coverage by the political administration in the Western Cape a dozen years ago. Unfortunately, no documents, dates, financial records or details were forthcoming to substantiate the distress of two of these informants at having been excluded from employment by the allegedly corrupt politicians who had made the payouts.
- 10.25 In one written submission to the Inquiry, a seasoned media practitioner stated a belief that: “The print media industry is sometimes complicit in either turning a blind eye to transgressions or adopting an attitude of ‘forgive and forget’ – without, in my view, considering the message this sends to both corrupt/unethical journalists and the consumers of news and opinion.”
- 10.26 This Report discusses in Chapters Five, Eight, and elsewhere examples submitted to it of journalists who had allegedly been found ‘guilty of wrongdoing and then readmitted to the profession’.
- 10.27 It was explained that these examples were given to the Panel “not with the intention to single out or ‘name and shame’ individual journalists, nor to argue that journalists should forever be blacklisted for ethical transgressions.” They were submitted to demonstrate that journalism itself had “contributed directly to perceptions of the ethical collapse it is currently experiencing, and to provide examples of how this had happened”.
- 10.28 In addition, it was suggested in a written submission that a problem of ‘double standards’ exists – “that journalists and their industry do not practice what they preach [and] do not appear to apply the same standards they apply to the rest of society (...) to their own conduct”. A sense of impunity prevails around misconduct: “Journalists who have committed ethical breaches tend to quietly leave the profession and are seldom held accountable, or reinvent themselves. Yet the media profession and industry are hugely critical of corporates that provide ‘soft landings’ to executives who are, for example, involved in corruption.” The Panel was told that these double standards do little to build public confidence in the media profession or its products, and there is a real need for consistency in how ethical breaches and other forms of misconduct are treated.
- 10.29 Paul O’Sullivan entitled his submission to the Inquiry “State Capture was Facilitated by Rogue Journalists and Lawyers” and went on to assert that “without a rogue element in the media the State Capture project would not have been possible”. In his view: “The media had a significant role to play in the removal of key elements of the criminal justice system, which were then replaced by criminals. If that did not happen, the levels of crime and corruption we have seen in the last decade would not have been possible, because good cops and prosecutors on post, would have put a stop to it.”
- 10.30 It is O’Sullivan’s view that “certain rogue journalists helped create a facilitating environment so that the underworld could seize control of the criminal justice system”. In his 2017 report, *Joining the Dots: Capture of the Criminal Justice System*, O’Sullivan “named and shamed certain journalists” but there were others who “regularly put up knowingly false stories seeking to impugn my character and the charters of others”. In his submission, O’Sullivan details the campaign he believes the media has waged against him personally but there are no indications that any one person was paid, intimidated, inveigled or suborned in any way to pursue a vendetta against him in order to bring about state or any other capture.
- 10.31 The Zondo Commission has been told that journalists were paid to write positive stories about Bosasa, the facilities and security company, which is currently under investigation at

that inquiry for their alleged payment of cash and other bribes to high level government and political party cadres to obtain and retain lucrative contracts.

- 10.32 Allegations were made by a Hawks Officer, Colonel Kobus Roelofse, to the Zondo Commission that a 'crime intelligence slush fund' had settled vehicle payments and paid for tyre replacements for senior Tiso Blackstar journalist Munusamy, at a time when she was not working as a journalist.
- 10.34 As discussed earlier, Minister of Mineral Resources and Energy Affairs, Gwede Mantashe, stated that he had bribed two journalists at the *Sunday World*. He then retracted that claim without explanation.

Social media platforms

- 10.35 Almost all informants raised concerns about the incorrect information found on social media, which is seen as a threat to the credibility of the media and to the public interest. The difficulty, of course, as the Panel appreciates, is that every blogger, Tweeter, YouTube content creator, streamer, website writer and unaligned online media practitioner may well be seen by uncritical readers or listeners as a 'journalist'.
- 10.36 All media consumers are vulnerable to social media beguilement, and there is frequently nothing to proclaim the agenda or intention with which mis- or disinformation (or indeed any information) is presented. Further, some of those relying on social media are also journalists who have chosen – or been instructed – to source information from social media platforms, or whose working circumstances give them access to no other sources.
- 10.37 SANEF is alert to the impact of social media on media credibility, and takes note of the work done by MMA and the Independent Electoral Commission (IEC), with support from SANEF, to begin to eliminate false information on social media platforms during the 2019 election period. The Panel also acknowledges the operation of MMA and the IEC's Real411 portal to counteract 'fake news' during the 2019 election. SANEF referred the Inquiry to this portal, launched by the MMA, which exists outside election periods, on an ongoing basis, to counteract disinformation.
- 10.38 Globally, there is growing pressure on social and other media platforms such as Google, Twitter and Facebook, to counter fake news and, in so doing, to bolster media credibility. The recent deletion of certain medically inaccurate Tweets by Donald Trump about the susceptibility of children to Covid-19 is a case in point.

REFLECTIONS ON MISINFORMATION AND DISINFORMATION

- 10.39 Perhaps the entire State Capture project, and by implication, misuse of the media and 'capture' of the media industry, are further signals of the vulnerability of South African media, as previously discussed. The State Capture saga is evidence of the extent to which the media is

susceptible to uncritical reporting of both hidden and public agendas. As the PSC points out, “We live in a global village, and it is not only on the domestic front that insidious propaganda is created and fed by journalists to the wider public. Much of such distorted or fully fake news requires the collaboration” – deliberate or unwitting – of journalists.

- 10.40 William Bird of MMA has worked and written extensively on disinformation and the underlying reasons therefor, some of which have been referred to in Chapter Three. Chris Roper of Code for Africa has worked in fact-checking initiatives where “data scientists have been trained on misinformation ... and are enabled to monitor disinformation that affects the credibility of the media”. He points out that it is necessary for media houses to “have their own tools to fight to ensure the truth”.
- 10.41 As was discussed in Chapter Three, much of the media industry still needs to learn to be less deferential towards authority and power. It still needs to learn that it can and should flex its muscles and that received wisdom is not always true and correct. In a society where the majority of the media did not interrogate at the time the concept that Black Africans were lesser people than white colonials, it cannot be expected that, within one generation, the media industry as a whole would know when, why or how to interrogate the agendas of those in power.
- 10.42 After all, as Umejei has pointed out, “the notion of ‘state capture’ is limiting and not entirely reflective of what actually was going on, yet this was the concept that framed the endemic corruption that is still being exposed”. But media coverage did not always make evident that there was the need for “more nuance than the false dichotomy of either being captured or an agent of white monopoly capital”.
- 10.43 Murray Hunter of amaBhungane told the Panel that “the only cure for wrong speech is more speech” and probably that applies to fake news as well – that the only cure for fake news is more and more trustworthy and credible news. Roper agrees with more and better news but also says that the media needs to “make people want us” and that the media “needs to be more and more transparent about who it is and who we are” so that it is possible to say that these disinformation and false news spreaders “don’t speak for you”.
- 10.44 As Hunter points out, there is also the inadequate answer that it is “necessary to equip people with the tools to be able to differentiate the quality of information and so it is about media literacy and information and empowering users”. This places all responsibility on media users whereas it also rests on the publishers of news, which is why amaBhungane “is about showing the chain of information and the conclusion”.

Personal responsibility

- 10.45 An interesting comment was received from Chris Vick, directed towards the need for introspection and personal responsibility rather than reliance upon excuses such as lack of external support.
- 10.46 His view was that many, if not all, of the ethical collapses in the media in recent years were the result of personal ethical failures by individual journalists. Journalists and editorial decision-makers could apportion blame to others, but ultimately it had required a personal

decision by a journalist to trigger an ethical crisis. Vick wrote that if you are offered money to write a particular story or 'kill' a particular story (as alleged recently by Energy Minister Gwede Mantashe), it requires a personal decision on whether to accept payment or not. If you receive a dossier of seemingly true information, it requires a personal decision whether to report on it. Vick comments that "You cannot blame the system – any system – for that". The result, says Vick, is that:

"All the checks and balances in the world will do nothing if individual journalists continue to be ethically weak or compromised, and it requires deep introspection – and circumspection – about the cause of ethical failures and the direct role that individual journalists have played in this."

PUNISHING THE MESSENGER: THREATS AND ATTACKS

- 10.47 It is unsurprising that journalists are vulnerable in their personal capacities. Firstly, the messenger has always been blamed for the message, so it is to be expected that those who disagree or are inconvenienced by the message have taken their revenge on journalists. Secondly, journalists enter dangerous or complicated worlds to meet sources and uncover facts. Thirdly, although journalists may be viewed as the knights in shining armour speaking truth to power, the armour offers increasingly little protection as employers are less active in protecting them; especially if the journalists are freelancers and their abusers or attackers are linked with powerful interests or hide behind the anonymity of online platforms.
- 10.48 One indicator of the vulnerability of journalists is the existence of organisations such as the Committee to Protect Journalists, Reporters Without Border and the Index Against Censorship. All these have reported in various documents how honest investigative journalists and commentators are increasingly coming under attack throughout the world. Developments in South Africa are also of concern.
- 10.49 There has been no suggestion to the Inquiry that any of these threats or attacks, physical or verbal, have succeeded in impacting upon the credibility of journalists. But they are indicative of the environment within which the media operates, the pressures under which journalists work and the attempts which are made to control or discredit or intimidate them. We can never know on which potential stories journalists may have stayed silent out of real fear for themselves or those close to them.

Physical danger

- 10.50 Notwithstanding the many complaints to the Inquiry about the attitude and work ethic of some journalists, it is worth reminding all readers of this Report of what they do and how they are frequently called upon to do it. Good reporting often requires attendance at tense and sometimes violent situations and journalists are caught in the crossfire in many ways. Below follows merely a small sample of relevant incidents.
- 10.51 Netwerk24 photographer, Adrian de Kock was manhandled and slapped by EFF Deputy

President Floyd Shivambu in the Cape Town parliamentary precinct in March 2018. Shivambu demanded that De Kock delete a picture de Kock 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 who continued to harass De Kock.

- 10.52 At the level of communities, criminal elements have also taken advantage of the presence of journalists covering stories and their physical vulnerability:
- 10.53 Newzroom Afrika journalist, Mveli Masilela was attacked by community members in Vosman near Emalahleni in Mpumalanga in July 2019. 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.
- 10.54 An SABC news crew was robbed of their broadcast equipment in April 2019 in Alexandra township while covering a story. This followed a similar attack the week before.
- 10.55 In May 2019 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 three men with a gun. The men held up the crew and stole their equipment, excluding the camera.
- 10.56 Two SABC journalists, Thabo Katsanda and Thabiso Radebe, were attacked in May 2019 by a group of armed youths 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.

Threats in racialised and gendered terms

- 10.57 The High Court found that the EFF, in openly attacking Karima Brown for her critical reporting against them, had violated section 8(c) of the Electoral Code, in that it failed to take reasonable steps "to ensure that journalists are not subjected to harassment, intimidation, hazard, threat or physical assault by any of their representatives or supporters".
- 10.58 Julius Malema of the EFF made statements in November 2018 outside the venue where Pravin Gordhan was testifying at the Zondo Commission. He singled out a number of senior journalists, accusing them of showing bias in favour of 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 failed 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 would not be engaging with certain media houses and journalists until these journalists asked Gordhan "the questions we want them to".
- 10.59 SANEF reported to the Panel on activities of the EFF and its supporters who, over the period November and December 2018, 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 (called ‘doxing’). In another incident in November 2018, a senior editor was accosted by three men who shouted her surname and mocked her while she was out shopping. No evidence was presented to the Panel that this harassment could be laid at the door of any single group.

- 10.60 In 2017 SANEF was successful in obtaining a restraining order against then-lobby group, Black First Land First (BLF) which had stated that journalists should be physically and verbally attacked for their alleged support of white monopoly capital.
- 10.61 In the wake of investigative journalist, Pauli van Wyk’s hard-hitting stories on the EFF and VBS Bank, Julius Malema of the EFF communicated in May 2019 to his more than 2.4m followers on Twitter, calling for them to “go for the kill and to hit hard”. He did not elaborate, but the timing pointed to a threat levelled at van Wyk.
- 10.62 Columnist and former Editor of the *Business Day*, Peter Bruce, was physically hounded outside his home by members of the Gupta-supporting BLF and attempts were made to smear his private life. This occurred at the height of reporting that exposed meetings at the Guptas’ Saxonwold home with political and business leaders.
- 10.63 The Panel asked Adriaan Basson about threats which had allegedly been made to him by Bosasa and he explained that he had been working on a Bosasa investigation for the *Mail & Guardian* for about two years and there were “veiled threats from people inside the company who would phone me and say are you sure you want to pursue the story?”. Basson was telephoned and told that the conversation was happening ‘Afrikaner to Afrikaner’; in that conversation it was suggested that something might happen to look like an accident and Basson would end up in a “hellhole African prison”. Things, Basson said, became more “sinister when Benedicta Dube called me and she said that ‘I’m very brave to investigate Bosasa’ and then read out details from an intelligence report asking, for example, is this still your address and are these your family members?” Dube is a former journalist whom the Zondo Commission of Inquiry was informed was at that time on the payroll of Bosasa. She had made the mistake of phoning from a cell phone and so could be traced. Evidence presented at the Zondo Commission of Inquiry was that Dube had been paid over R1 million to intimidate Basson. Basson said that at the time he was shaken, but his colleagues were very helpful and his mentors pointed out that the entire purpose was to stop him writing stories. Basson concluded: “The only answer can be better journalism.” Basson told the Panel he learnt “that you must never work alone and no one must ever have information on you”.

Litigation and use of the courts

- 10.64 Freelance journalist John Clarke spoke to the Panel about threats of litigation against journalists involved in exposing commercial malpractice in the Eastern Cape and the strain of strategic lawsuits against public participation (SLAPP suits) being threatened or initiated against local reporters.
- 10.65 Basson told the Panel how lawyers could intimidate journalists on behalf of “dodgy” clients by writing intimidating letters and threatening defamation actions. Basson said, “If you don’t have a strong editor or proprietor then they are likely to succeed in stopping the story.” During his coverage of Bosasa he was also subjected to ‘the bullying tactic’: he was told a

summons was being issued. As the Panel was informed, the use of such legal avenues, if they result in costly court actions, can put a journalist or publisher out of business.

Individuals in government

- 10.66 The Finance Minister, Tito Mboweni, posted two bizarre Tweets threatening war against the media in November 2018. Without context, Mboweni tweeted: “Wars start in different ways. Spears and shields, gunpowder, bullets and now through media: printed and electronic (e.g. 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 “There will be collateral damage.” SANEF met with Mboweni, who acknowledged there was a problem with the severity and tone of his tweets.
- 10.67 A previous communications minister, Faith Muthambi, was found by an ad hoc parliamentary committee to have illegally intervened on a number of issues at the SABC, including making permanent the appointment of Mr Hlaudi Motsoeneng as COO.
- 10.68 Current Minister of Communications, Stella Ndabeni-Abrahams, was filmed blocking the work of journalists from the SABC and other media 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”.

Statutory bodies

- 10.69 In 2018, the National Lotteries Commission (NLC) issued a statement declaring 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 in its structures. The statement said that the NLC computers had been 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 misspending by the NLC with the intention of bringing down the organisation.
- 10.70 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 sole director. Their backdrop was an ongoing investigation by a group of journalists into multimillion-rand grants to a variety of Lottery-funded projects.

The South African Police Services and security companies

- 10.71 In March 2018, the home of investigative journalist and author Jacques Pauw, author of the

book *The President's Keepers* – which had detailed much state capture – was raided by the Hawks.

- 10.72 *Sunday Tribune* journalist Karinda Jagmohan was assaulted by police in May 2018 for filming a police member who was tackling a protester to the ground. Jagmohan was covering protests outside a police station, following the shooting of a 9-year-old outside Chatsworth during a hijacking. Despite her informing 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 and then prevented any of the journalists from returning to the protests.
- 10.73 Journalists were injured in June 2018 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.
- 10.74 Journalist Marianne Thamm of the *Daily Maverick* was intimidated and 'pushed' by the Hawks via the SAPS in Kwazulu-Natal in July 2019 to release her sources on a key story about the appointment of a senior police officer to the post of acting head of the KZN Hawks Organised Crime Unit, despite allegations of corruption having been laid against him.
- 10.75 Two journalists were attacked and manhandled by Durban Metro police while covering a protest in July 2019 in support of suspended eThekweni Mayor, Zandile Gumede, whom the ANC had placed on special leave amid charges of fraud and corruption. Police fired stun grenades to disperse the protestors. Independent Newspaper Group 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.
- 10.76 Rekord community media journalist Reitumetse Mahope was manhandled in March 2019 by private security guards while taking pictures during a protest at the Huis Davidtz retirement home in Pretoria. Workers at the home were protesting about racism, nepotism, 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, pushing and shoving him with shields and batons. His phone was knocked out of his hands and damaged in the ensuing scuffle.

Political parties

- 10.77 The ANC Women's League (ANCWL) 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 ANCWL released statements condemning the article and labelling it as false, damaging and aimed at discrediting the ANC in the run-up to the 2019 elections. In September 2018 Women's League Secretary General Meokgo Matuba's cellphone was then used to send a picture of a gun to Hunter's mobile after Hunter called Matuba with questions about the Zuma meeting.

- 10.78 There was violent disruption of the book launch of journalist Pieter-Louis Myburgh's *Gangster State* book at Exclusive Books in Sandton in April 2019. Video footage showed protestors wearing T-shirts displaying the logos of the ANC and the South African National Civics Organisation (SANCO) destroying 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 for the same book.
- 10.79 The ANC Deputy Secretary General, Jessie Duarte verbally attacked eNCA political reporter Samkele Maseko in April 2019, accusing Maseko of asking questions that were 'attacking the ANC', 'battering the ANC' and 'intimidating everybody'. She threatened to report his conduct to the Press Ombudsman. Duarte also accused Maseko of being "a bully" and "arrogant". SANEF was concerned by Duarte's suggestion that Maseko had no right to defend media freedom because he did not "fight for" such freedom.
- 10.80 The Panel was told that EFF leader Julius Malema sent inflammatory tweets in March 2018 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.

Attempts to discredit news reporting

- 10.81 The Panel noted how compromised newsmakers – and even one media house – have resorted to a frenzy of vitriol against journalists from other stables. This was seen in the publication of a full-page 'expose' by all English-language newspapers in the Independent Group on 23 and 24 August 2016, of one or some or all of thirteen named journalists as "propaganda journalists", "members of the white boys club", "a virtual plant of the DA (Democratic Alliance) in its newsrooms", "racist", performing journalistic work "out of malice" and with "aspirations to maintain white control and collusion". This assault was made because these journalists had propagated "misinformation and sabotage against the media house [the Independent Group], its executive chairman and associated companies and all its employees". By reason of its failure to follow ethical journalistic practice in publishing these defamations, the Independent Group was ordered by the Press Ombud to apologise to one of the journalists, who had sought satisfaction through the Press Council. The Independent Group refused to comply and withdrew from the Press Council.
- 10.82 In 2018 following the unsuccessful listing of Sagarmatha Technologies on the JSE by the owners of Independent Media, the faces and names of South African journalists who had reported critically on this transaction were published by a number of Independent-owned newspapers online, with the allegation that they – including Anton Harber and Thandeka Gqubule – had been Stratcom agents during the apartheid era.
- 10.83 The Panel was told that the Guptas established 'news sites' which published deliberately false stories, including, for example, publishing a Photoshopped image of well-known journalist and editor Ferial Haffajee ostensibly sitting on the lap of Johann Rupert, in an attempt to undermine her reportage of government corruption.
- 10.84 One instance of a someone employed as a journalist turning on her own profession was described to the Panel, concerning the Executive Editor of Independent Business, Adri

Senekal de Wet, who has featured in evidence before the Zondo Commission. On 27 February 2017, under the subheading 'SA deserves better than a set of fake news', she published a personal diatribe against well-regarded business journalist Ann Crotty calling her 'Ann Grumpy' and accusing her of writing fake news about Independent Business and the Sekunjalo Group. Senekal de Wet's article was also an attack on the Times Media Group, its financial tribulations, its "substandard business articles" and media content which she described as "mostly political copy-and-paste press releases".

- 10.85 Journalist, Piet Rampedi, a former *Sunday Times* journalist, who has argued that he was 'hounded' for exposing the SARS 'rogue unit' has accused several of his former colleagues of being involved in a cover-up driven by Minister of Public Enterprises, Pravin Gordhan, for Tiso Blackstar's commercial gain. He has taken to Twitter to attack a number of journalists, media houses, civil society organisations and activists by name.
- 10.86 Businessman Kolbe Anema and DA councillor Renaldo Gouws asked the Inquiry to take disciplinary action against journalist Daniel Friedman of the *Citizen*. The Panel explained that this was within neither the purview nor the powers of the Inquiry. A complaint was laid with the *Citizen*, a disciplinary inquiry held and Friedman was dismissed. However, Friedman also contacted the Inquiry bringing to the attention of the Panel a stream of racist, anti-Semitic, vitriolic abuse relating to the matter emanating from a variety of persons. It would serve no purpose to replicate these Tweets and messages in this Report. Suffice to say that no one, journalists or otherwise, should have to undergo harassment and abuse of this nature from anyone, no matter the cause. After all, Anema and Gouws and their various supporters and acolytes had a remedy, which was to complain to the employer of the journalist. The journalist had no remedy, since litigation against online assailants is unlikely to result in identification and action against the actual perpetrators.

Appropriate channels of complaint

- 10.87 SANEF drew many of these instances of abuse or attacks on journalists to the attention of the Panel suggesting that this indicates:
- "a worrying trend of political parties, their representatives, and others, not challenging allegedly poor or biased reporting through formal channels such as the BCCSA or the Press Ombud but instead, relying on the informal tactic of labelling journalists as being associated with Apartheid and/or white monopoly capital."
- 10.88 SANEF is of the view that this appears to be a deliberate political strategy to unfairly undermine the reporting of political issues across the spectrum. The effects of this are to put question marks around the credibility of the media in the minds of the public without ever having to justify such claims – unless the journalists themselves go to the expense of taking the matter to court. SANEF told the Panel this could only have a chilling effect on the media and, particularly, on journalists. This in turn, undermines the media's ability to play its watchdog role of holding the powerful to account. SANEF noted that these trends mirror similar international trends aimed by politicians at delegitimising the media, as described in the UNESCO *World Trends in Freedom of Expression and Media Development: Global Report 2017*.
- 10.89 Since the Press Council and the BCCSA are, except in very specific circumstances, complaints-

driven bodies, they generally cannot exercise an independent watchdog role without a complaint having first been lodged. This enables political parties, media houses, journalists, commentators and members of the public to criticise the media for alleged misconduct without testing these in the enforcement structures and procedures of these co-regulatory bodies.

- 10.90 SANEF expressed to the Panel concern that such practices amount to an unjustifiable diminution of media credibility in the eyes of the broader public, with serious consequences for the media's ability to carry out its watchdog role in ensuring an informed citizenry. Ultimately, they undermine a key pillar of democracy itself.
- 10.91 SANEF has suggested investigating options for promoting the use of formal complaints mechanisms with a view to encouraging media compliance with codes of conduct and ethics in print, on air and online. Where allegations of ethical breaches or misconduct are not pursued in a formal complaint to the relevant enforcement body, or a court, SANEF suggests that such allegations ought to be presumed to be baseless.

INVESTIGATIVE JOURNALISM

From “the brilliant to the despicable”

- 10.92 While there has been a decline in the size of South African newsrooms there has never been greater need for journalists who, as Hunter told the Panel, pursue the task of journalism which:

“is not to regard yourself as a reporter only, i.e. a stenographer who sees their task as observing and producing and not seeing any need for focus, setting priorities and understanding but a journalist who probes... the task of journalism is accountability and understanding and you cannot do that without focusing.”

- 10.93 In the *State of the Newsroom Report 2018*, Anton Harber posed the question:

“How was it possible that our news industry – and some of the best of our investigative reporters – could swing so radically and quickly from the brilliant to the despicable? The answer (...) lies in the distinction between the general deterioration of South African news-rooms, the decimation of their capacity for in-depth and investigative work, and the occasional pockets of excellence which continue to produce such work.”

- 10.94 The nadir of investigative journalism was the situation culminating in the *Sunday Times* ‘apologies’ for the stories that are the subject of this Report. But, as Harber points out, the apogee was the publication of the Gupta Leaks trove of emails, which provided the hard evidence of the State Capture project in a way that could no longer be denied. For this work he gives credit to the independent Investigative Unit at amaBhungane in alliance with Scorpio of the independent *Daily Maverick*, and to News24.
- 10.95 Branko Brkic of the *Daily Maverick* told the Panel that investigative journalism:

“involves flair, is complicated and takes a long time. It also takes integrity to do this work. amaBhungane has incredible integrity so *Daily Maverick* doesn’t want to mess with their formula. We are looking at a way of boosting graphics - senior writers are keen on the bells and whistles, we have a podcast and graphics team – but the reason is always the integrity of the piece. We have to present the information and be certain the research has been done. We are aware that an investigative piece can be dense. We need to keep the main story factually correct at the cost of not being the most riveting read.”

- 10.96 SANEF noted to the Panel that the Gupta Leaks stories were preceded by earlier, thoughtful, painstaking work done by a number of journalists on issues of state capture, including stories on the various arms deals; the Marikana massacre; the HIV pandemic; the Nkandla scandal; and Eskom and load shedding. The persistent and lone work of Raymond Joseph on the NLC, so long ignored and rejected by the mainstream media and pursued by GroundUp, has now borne fruit in the decision by the Minister for Economic Affairs to overrule the NLC insistence on secrecy.
- 10.97 Perhaps one of the analyses of the state capture project offers a useful approach to what is called by some, investigative journalism. Umejei has reminded us that it is necessary to engage critically with the state capture narrative rather than dismissing the subtexts. It should never be assumed that the media is impartial. Additionally, it should be remembered that the media does not always adequately “perform its role in facilitating conversation in times of political polarisation but rather adds to it by often dismissing complexity in favour of a simple and overly determined single narrative of South Africa’s problems”. Where there are many agendas at play, Umejei contends, the simplification of the narrative can be dangerous for media objectivity. It is this tendency of the media to “eviscerate nuance [that] makes it vulnerable to disinformation, propaganda and the agenda of political campaigns in the first instance”.

amaBhungane

- 10.98 All members of the media and most of the public with whom the Panel engaged referred admiringly to the work of amaBhungane. In part, that justifies this subsection which outlines the views of amaBhungane on their model of journalism.
- 10.99 The amaBhungane Centre for Investigative Journalism is a non-profit company that develops investigative journalism:
- “a public interest task we believe promotes free, capable media and open, accountable, just democracy. We aim to do so through the best practice of investigative journalism; by helping others do the same; and by advocating for the information rights that are the lifeblood of our field.”
- “The Investigations Programme aims to develop best practice in our field by producing investigative stories that are accurate and fair, expose wrongdoing and empower people to hold power to account. The Investigations Support Programme develops and supports investigative journalists domestically and in the SADC region: we do this through workshops, fellowships and story support, and by incubating a regional hub for investigative journalism launched in 2019. The Advocacy Programme focuses on securing the information rights (access to information, freedom of the media and speech) that are the lifeblood of investigative journalism. It does this through submissions on legislative and

policy processes, access to information requests, and strategic litigation.”

- 10.100 This work is described by amaBhungane as undertaken by an Advocacy Coordinator and is cordoned off from their journalistic work: that is to say, amaBhungane may undertake advocacy to advance the cause of journalism, but does not undertake advocacy relating to the results of their journalism.
- 10.101 In 2016, as its funding base grew and diversified, the organisation told the Panel how it relaunched as the amaBhungane Centre for Investigative Journalism and transitioned to a ‘distributed publisher’ model – publishing across a range of print and digital platforms, at no cost to the publishing partner. In the past year, amaBhungane stories have been published by News24 and associated sites, the *Daily Maverick*, the *Mail & Guardian*, *Business Day*, the *Financial Mail*, the *Daily Dispatch* and the TimesLive website, as well as other websites and social media. This approach “aims to create one model of sustainable funding for public-interest investigative journalism, while ensuring that this journalism has the widest possible reach, including to audiences that have traditionally been under-served in the South African media landscape”.
- 10.102 amaBhungane described to the panel the range of policies and practices it has adopted to safeguard its independence, demonstrate transparency and build trust in their work. They describe them thus:
- “The funding policy serves to protect our editorial independence from any influence or perception of influence from any of its funding sources. This provides among other things that amaBhungane will not accept funding for specific stories or story areas, or entertain any conditions on our editorial decisions from a funder; will not accept corporate or government funds; discloses on the website the identity of any donor contributing more than a certain amount per year; sets a cap on the amount which will be accepted in donations from any single source; and caps grant funding from any single grant-making organisation at 20% of the annual budget; the organisation’s audited financial statements and funders are disclosed on the amaBhungane website.”
- 10.103 Some safeguards are prescribed in policy including internal mechanisms such as staff declarations of interests and external mechanisms such as the Code of Ethics and Conduct for South African Print and Online Media. But organisational culture is seen as having played a vital (if intangible) role in promoting and developing amaBhungane ethics and standards. The mandate is captured in amaBhungane’s Memorandum of Incorporation:
- “The Object of the Company is to promote open, accountable and just democracy, and a free press capable and worthy of performing this duty. To do so, the Company will develop investigative journalism in the public interest, inter alia by engaging in its best practice, by transferring investigative skills to other journalists, and by helping to secure the information rights investigative journalists need to do their work.”
- 10.104 amaBhungane emphasised to the Panel that their mandate is not only to undertake investigative journalism, but to develop the field. In relation to stories, this means the constant pursuit of best practice, which encapsulates both methods (technical) and standards (professional and ethical). Accordingly, it is amaBhungane practice to raise and debate ethical issues relating to stories and methods, and to encourage others also to do so. The organisation strives to make the amaBhungane newsroom a place for debate, openness and transparency, where each team member benefits from and contributes to a climate of collaboration, collective problem-solving, and searching discussions. The organisational culture also favours accuracy

over exclusivity – resisting the pressure to be ‘first’ with a story, even at the risk of being ‘scooped’. These approaches are in part enabled by amaBhungane’s particular model, which is not tied to immediate commercial pressures or daily and weekly story deadlines. Such approaches are more difficult to sustain in news rooms that are subject to more conventional – and often dire – commercial pressures.

10.105 amaBhungane concluded its written submission with the following:

“Despite this, it would not surprise any observer that, despite any of the safeguards mentioned here, amaBhungane’s work has been subject to significant attacks in the public domain – from political leaders, public institutions, wealthy business people, and various accounts on social media. There is no need to revisit each of these as part of this submission, but suffice to say that genuine concerns about journalistic integrity are easily co-opted and weaponised by those seeking to shield the corrupt and powerful from scrutiny. In this, events in South Africa mirror those in many parts of the world.

We see a growth of criticism of media institutions where the end goal appears to be to weaken the institutions of journalism, not strengthen them; to silence critical voices, not bolster them.

Our approach to building confidence and credibility in institutions of journalism is to do and develop the journalism – as transparently, honestly, and courageously as we can.”

The need to engage critically, interrogate and search for the sub-text

10.106 Harber and Umejei discussed in the *State of the Newsroom* 2018 report the supply and demand in South Africa for investigative journalism:

“The supply came in this country with state capture and a divided ruling party which led to leaks and a plethora of targets for investigation. And new technology brought the large digital data leak which required teamwork and a high level of skill. There was also high demand in this period because of public anxiety over the implications of state capture.”

10.107 Among the best-known key narratives have been ‘white monopoly capital’, ‘resign or sink SA’ and ‘Zuma deserted’, but others remain and are covered on a daily basis, not least the ‘tenderpreneurship’ and corruption associated with the COVID 19 pandemic.

10.108 This fertile ground has provided what Harber and Umejei have called “important lessons to be learned about the strengths and weaknesses of SA media” and which have been identified to the Panel as including uncritical repetition of agendas, perpetuating concepts without interrogating them, lack of nuance, very limited search for and understanding of complexity and lack of engagement with subtexts. They were particularly critical, as previously noted, of the “tendency to eviscerate nuance”.

10.109 Pressure for ‘scoops’ entails pressure to churn out broad-brushstroke, attention-grabbing investigations at rapid intervals, as was the case at the *Sunday Times*. Mathatha Tsedu stressed to the Panel that editors must be endowed with sufficient authority that no investigative unit, such as that at the *Sunday Times*, is allowed to have so much autonomous authority and

power, with stories not subjected to normal newsroom checking regimes. Tsedu stressed that contacts in particular must be checked, because “each source has a motive (either personal or public good) and the journalist must know how to use the process in the public good”.

The dangers of being first and wrong: scoops

- 10.110 It is understandable that every reporter, editor and media outlet wants to be the first to break a significant story. But the danger of being ‘first and wrong’ as Adriaan Basson has called it, is always there.
- 10.111 What Tsedu has called ‘slippage’ happens because scoops “should go through seven eyes [and nowadays there is] a reduction in the number of eyes which means that the rest of the value chain doesn’t pick up each tiny detail”.
- 10.112 Jovial Rantao cautioned that the media must learn how to handle the kind of ‘star’ investigative reporters who usually staff specialised units. Such people may operate in isolation from the rest of the newsroom and are excused from news conferences where all ideas are subjected to debate and the group is informed of what is going on. Rantao said he knew of cases where investigative reporters did not even tell the news editor what they were working on – a serious loss of essential checks and balances. When a reporter discloses their sources to an editor this protects the reporter, the editor, the paper and the public because the credibility of that source can be interrogated and tested.
- 10.113 Harber comments that, notwithstanding that there is “no evidence that a strong front page influences circulation”, that does not stop news organisation managements from demanding them. It is the investigative units that are expected to deliver. Using that demand as the rationale, investigative reporters are often permitted to deliver at the last minute and subjected to looser controls; they only answer directly to an editor. In addition, the hunger for a scoop may lead to their work being further rewritten and ‘sexed up’ to become not only a ‘scoop’ but one of a highly sensationalised nature.

The need for collaboration between media organisations

- 10.114 One of the first to raise the issue of inter media collaboration was Wits Journalism Associate Professor and writer Lesley Cowling. This was, however, a common theme throughout this Inquiry. Everyone with whom the Panel spoke praised the collaborative efforts of Scorpio/ Maverick, amaBhungane and News24 in the Gupta Leaks series.
- 10.115 Africa Check suggests that “more collaboration, and not less, can only be beneficial to South African media” and cites the example of working together on the verification of election claims. Africa Check believes, “Showing that media houses can work together for the benefit of the voter will strengthen the media’s currency with the public.” SANEF, too, is supportive of collaboration between media houses.
- 10.116 Roper believes that one strategy for the survival of the media is “more collaborative news-gathering to unearth stories and share stories”. He anticipates media models where platforms are created that “allow people to buy subscriptions to multiple media at the same time”, which

would be an example of newsrooms sharing resources. Nevertheless, Roper told the Panel he still wants competition “because we don’t want one voice. We do want individual news organisations to create their own unique product for their own unique audience”.

- 10.117 Everyone with whom the Panel consulted deplored “internecine battles between media houses” and, in particular that between the Independent Group and the former Tiso Blackstar Group where, in response to critical news stories published in Tiso Blackstar titles regarding the listing of one of his companies, Dr Iqbal Survé, CEO of the Independent Group, openly referred to Tiso Blackstar journalists’ stories as “having all the hallmarks of Stratcom and dirty tricks”. However, he declined to pursue the matter through formal channels thereby denying Tiso Blackstar the opportunity of formally defending its reporting and its reporters.
- 10.118 Further, as noted above, the Independent Group is no longer a member of the Press Council, thereby denying the public a valuable means of complaining about its own reporting, and undermining the very system of co-regulation of the media that is at the heart of ensuring compliance with ethical standards of journalism. The result of this, SANEF told the Panel, is that the public remains largely in the dark as to what is, in fact, the truth of allegations and counter-allegations, leading to a generalised distrust of the media.
- 10.119 Murray Hunter pointed out to the Panel how the work of amaBhungane was trusted because “we show how we get from point A to point B” and attach documents and evidence. He suggested this reputation of trust could be built on “because other media are reporting on what we have exposed”. Hunter cited the example of other media outlets replicating amaBhungane stories: an instance of collaboration based on trust.

ORGANISATIONS FOR JOURNALISTS

- 10.120 All individuals and entities with which the Panel engaged concurred that journalists and media practitioners needed an organisation to represent them and the interests of the media.

SANEF

- 10.121 SANEF, the Panel heard, is currently the most energetic and high-profile organisation active in representing media interests. Comments to the Panel on the role and activities of SANEF were varied but, on the whole, appreciative and enthusiastic.
- 10.122 The Panel was told SANEF had “done a pretty good job of being a voice for journalists”; “SANEF has intervened in key moments”; SANEF “is engaged in ongoing public advocacy”; and “SANEF speaks for the profession”.
- 10.123 The preamble to the SANEF constitution states that the membership comprises “South Africa’s most senior print, magazine, broadcast and other electronic media editors and

media educators”. The organisation has clearly identified itself as being directed towards the interests of ‘senior’ media practitioners, both management and journalists. It is therefore not exclusively for journalists and not inclusive of all journalists.

- 10.124 Ryland Fisher noted that, apart from SANEF, there has not been a meaningful organisation since the days of the South African Union of Journalists (SAUJ), Association of Democratic Journalists (ADJ) and Media Workers Association of South Africa (MWASA), with some of these no longer functioning or having a negligible presence in many newsrooms and the Forum for Black Journalists (FBJ) having “all but disappeared”. Fisher believes that there is a need for an organisation – beyond SANEF, which targets a “high level grouping” – to engage with issues around the future of the media industry and ethics “at a lower level”.
- 10.125 SANEF told the Panel it was not unaware of these criticisms. It also mentioned other criticisms, namely that the organisation appears to support certain journalists and not others; and that it does not consistently call out unethical behaviour in the industry – protecting some unethical journalists. The organisation had been spoken of as inconsistent in its approach to media freedom issues and described as elitist. SANEF said it was often called upon to deal with labour-related issues. When it does not do so, on the basis that it has no jurisdiction, it encounters deep disappointment and anger.
- 10.126 SANEF told the Panel it believes one key structural problem in the media sector to be that media unions are weak and divided across the industry therefore able to provide little or no support for labour matters, including retrenchments.
- 10.127 Insofar as issues of unethical practice are concerned, the Panel believes SANEF is quite correct that it has no disciplinary or other powers in respect of either members or non-members – although the sanction of suspension or expulsion of any offenders who are SANEF members is certainly a possible sanction for the organisation to implement. Insofar as other issues – retrenchments, editorial interference, attacks on journalists, government and corporate pressure, training and provision of infrastructure and support to journalists – from all that the Panel has heard, SANEF is serving the general journalist and media community with energy, enterprise and integrity.

POSTSCRIPT: COVID-19

The impact of the pandemic

- 10.128 The Covid-19 pandemic has had a catastrophic impact, globally and nationally, upon individuals, families, communities and nations. SANEF has commissioned timeous research and analysis by Reg Rumney on the impact on the South African economy and the media industry both now and for the foreseeable future. His data and interpretation are devastating for all concerned.
- 10.129 Rumney details the straits in which the news media, particularly legacy print operations, finds itself. One need not repeat the detail of his list: closures; redistribution arrangements; and the ‘need for adaptation’ to be implemented because of loss of advertising and

subscription revenue and the disappearance of third-stream revenue. The results have been retrenchments; layoffs; salary reductions; benefit cuts; and loss of work among all categories of media practitioners including down-the-line and associated supply chain functions.

- 10.130 The future of the media industry in South Africa remains challenging. There will be continuing closures and reduced diversity and South African online media will not necessarily benefit financially while the global social media behemoths become stronger. Many media practitioners face loss of work and penury.

The demand for credible news and information

- 10.131 However, all is not lost for the news media. Rumney has given figures for the “massive surge in traffic to credible online news sources”. He details a “dramatic uptake in production [by broadcasters and online platforms] as citizens seek sources of trustworthy, credible information in the time of uncertainty around the Covid-19 pandemic”.
- 10.132 There may well be opportunities for what Rumney calls “nimble new entrants”, whom he suggests may hope to “carve a niche”. Such entrants need not only be media outlets, but also practitioners.
- 10.133 The value of honest communication from the newsroom is highlighted every day in the media, while the upheaval caused by malevolently inspired fake news and misinformation as well as political and ideological fantasy is similarly exposed.
- 10.134 On 29 July 2020, the Panel read on page 2 of the *Sunday Times* that “local and international reports had cast light on horrific hospital conditions in the [Eastern Cape] province”, which information had not reached the national health minister, Dr Zweli Mkhize, and his advisors:
- “(…) A senior Eastern Cape health official who was among those who alerted Mkhize said ‘rosy reports’ on the province’s health management needed to be exposed for the ‘lies’ they are. ‘The media were spot on. The problem, however, is far worse than what they often reported’, the official said.”
- 10.135 As this one story illustrates, the media industry is not only exposing ‘tenderpreneur’ corruption in the sourcing of Personal Protective Equipment (PPE) essential for healthcare and other services, but is saving lives on the ground through investigation of, and publication about, conditions which would otherwise be unknown, disregarded or denied.
- 10.136 At the same time, much work has been done on the spread of false pandemic-related information. Work is being done by MMA and Africa Check, amongst others, on “disinformation in a time of crisis”. MMA uses the Real1411 platform to analyse disinformation trends which focus on Covid-19. William Bird and Thandi Smith have published weekly commentaries to create awareness and push counter-narratives to content found to be disinformation. Not only is such disinformation “dangerous, to our individual (and collective) health, but to the very core of what we stand for as a democracy”. They report on the “more dangerous, bizarre and outright silly” instances of disinformation found on social media platforms.

Journalists' courage and contribution

- 10.137 It would also be remiss of the Panel not to note the bravery of reporters risking their own health to report on the news during the pandemic – from health facilities, overcrowded protest actions and other perilous locations – and the exposure by the media of abuses such as the brutal killing of Collin Khosa and the physical abuse of many others by authorities over-zealously imposing a curfew in the early weeks of the pandemic.

Ethics in the new world

- 10.138 For the purposes of this Report, these developments ensuing from Covid-19, have implications for ethical practice in the media industry.
- 10.139 On the one hand, the uncertainty provoked by the cataclysm of the Covid-19 pandemic means that the entire global community, from nation states to private individuals, rely more and more on the media to keep them informed and advised on health; economic; political; financial, and social issues pertaining to the pandemic and the social and economic aftermath. Ultimately, the search for news continues, but along different lines.
- 10.140 On the other hand, financial devastation has left more and more media practitioners without secure employment, and those still in employment vulnerable to pressures and practices which negate the high standards of ethical practice required of journalism.
- 10.141 If indeed the demise of traditional print journalism as the dominant media format is being dramatically hastened by this pandemic-induced economic crisis, then SANEF and other such organisations are needed more than ever.
- 10.142 In the wider media and communications industry, SANEF has the background, credibility, contacts, and commitment to both news media and democracy to work towards ensuring ethical media practice survives.
- 10.143 One option, the Panel believes, is for SANEF to usefully and urgently investigate and work towards training and reskilling media practitioners in those areas of the media industry which will still survive. Reinvention of approach, attitude, skills and personae will all have to happen, and SANEF would be well placed to assist journalists and others in this enterprise.
- 10.144 There should never be a place for charlatans and deceivers in the news media, but there is even less place for them at this precarious time in the physical, economic and political health of South Africa. Ethical media practice is vital to ensure that health provision is assured during the Covid-19 pandemic, while socio- economic and political information, analysis and discussion demands dissemination so that those in power act in the best interests of the entire South African society. Organisations such as SANEF can thus play an important role in collaborating with existing organisations and bodies on sustainability solutions for the media industry and for practitioners.

CONCLUSION

10.145 The journalistic endeavour of news continues to be vital in the South African polity. Where there has been excellence, that work has had implications for the entire South African community and the fate of the nation. Where there have been, and remain, faults, structures and mindsets can be changed and improved.

10.146 Insofar as there are new challenges ahead that to some may seem insurmountable, Clay and Ansell offer a plea for future excellence:

“We are not Luddites. The new digital media climate offers important opportunities for better reporting through improved research tools, wider reach for vital information the public needs and much more, all of which we embrace. But during this transition time, industry bosses are dealing with the crash in print advertising and readership largely through a continual, relentless process of cutting staff, resources and time. This, in turn, is impacting on reporters’ and editors’ ability (and motivation) to generate careful, truthful stories.

Specific measures to disseminate and inculcate legal and ethical awareness in news-rooms are important and must be supported. But a deeper solution demands that the industry at its highest management levels reconsiders how better to balance the very real tensions between new technological and business challenges and shareholder pressures and the continuing professional imperative to operate ethically.”

10.147 Everything told by everyone to this Panel affirms that survival of a credible and trusted media requires professional and ethical standards across the whole integrated, multi-platform newsroom ecosystem.

CHAPTER 1.1: MEDIA COMPLAINTS: PUBLIC OPINIONS, SYSTEMS, INSTANCES AND RULINGS

MAIN POINTS OF THE CHAPTER

This chapter:

- **Describes how public engagement with the Inquiry was sought;**
- **Employs the primary lens of public complaints submitted to the PCSA and the BCCSA to map public opinions about media failings, based, among others, on the first-ever longitudinal survey of the work of the PCSA, commissioned as part of this Inquiry;**
- **Discusses complaints from the public related to the failure to follow up stories; truth, accuracy and fairness; the right of reply; the handling of protected comment and the use of potentially misleading page furniture (headlines, illustrations and captions); and**
- **Compares the rulings on similar complaints from print/online and broadcast regulatory bodies.**

CHAPTER 11: MEDIA COMPLAINTS: PUBLIC OPINIONS, SYSTEMS, INSTANCES AND RULINGS

INTRODUCTION

- 11.1 Since the purpose and value of the media is to communicate with and for the public, the perceptions of readers, listeners and viewers of all media must be considered. Without reflecting on-the-ground opinion, the remainder of this Report would be only the empty theorising of the chattering class.
- 11.2 In the absence of focus groups, questionnaires, and other research, this Inquiry has sought to derive a picture of public opinions about the media from the complaints submitted to the Press Council and the Broadcasting Complaints Commission. It is appreciated that not all persons with grievances or objections pursue these channels, but they offer some insight into the public's expectations of the media, and the disappointments which are experienced. During this inquiry some additional complaints were brought to the attention of the Panel through our dedicated email address; these give limited insight into a number of issues.

Engagement with the inquiry

- 11.3 SANEF issued press statements and used its contacts to publicise the existence and work of this Inquiry. An email address dedicated to the work of the Inquiry was set up. Over a period of some six months, a significant volume and variety of e-mails was received by the Panel.
- 11.4 A number of these e-mails shared senders' views on ethical practice within the media industry. Experiences, critiques, or suggestions for the future of the media industry additionally formed part of written submissions or oral discussions with the panel. These contributions were diverse in subject matter. They covered, among others, the Independent Media Group, SANEF as a body, views on the Press Ombud, the vulnerability of journalists, corruption of journalists, failures of the media to embrace indigenous South African culture, neutrality as a standard of journalistic practice, the relationship between owners, editors and journalists, and industry ethical practice more generally.
- 11.5 As soon as it began its work, the Panel immediately contacted senior and former journalists and editors, academics, civic bodies and associations. The Panel requested their guidance on its own work and their comments on the state of ethical practice in the media industry and the context thereof.

- 11.6 All these complaints, ideas and comments have been reflected in preceding chapters and acknowledgment is given to those who contributed.

Complaints to the Panel

- 11.7 A number of persons and bodies made approaches concerning specific grievances involving the media, which they wanted the Panel to investigate or resolve. In almost all instances, the Panel was obliged to advise that these complaints were not within our powers to consider. They had been dealt with by legal processes or the Press Ombud or one or more of the various Commissions of Inquiry underway. Usually, those who had made such approaches to the Panel continued to send documents, demand involvement, and accuse the Panel of complicity in various nefarious campaigns. Very often, these complainants continued to send the Panel material which they were also presenting to Parliament; the Public Protector; SAPS; and the Zondo Commission of Inquiry. Eventually, the Panel ceased to respond thereto.
- 11.8 Nevertheless, it is possible to discern from these – often unpleasant – interactions some of the expectations held of the media industry, as well as feelings about societal dislocation. Very often, those whose difficulties are not solved through negotiation, discussion, litigation, or recourse to administrative bodies turn to the media as their last resort. There is a hope that journalists will respond, investigate, understand and publicise a personal injustice which will then be resolved. This places a considerable responsibility on the media. On the one hand, it suggests that not enough other effective channels exist to sort out societal imbalance or disturbance. On the other, it shows that the media continues to be seen as the crucible of justice when all else fails.
- 11.9 There were complaints by persons who alleged that their intellectual ideas had been stolen; that advertising was fraudulent; that family problems had been unjustly bruited abroad; and that they were the victims of fraud and corruption within certain businesses or municipalities. All had laid complaints with SAPS or had turned to litigation, or to the Public Protector but remained aggrieved and unsatisfied. They still needed help and believed the media could provide it.
- 11.10 The Panel repeatedly had to explain that this Inquiry was not an additional or parallel process to the legal process or the Zondo Commission.

Failure to follow up issues

- 11.11 A great many persons or bodies claimed that they knew of corruption or injustice, had approached one or more journalists and been met with lack of interest or rejection. They protested against what they experienced as the failure of the media to take up issues they believed to be of public interest.
- 11.12 The Panel advised that it was not the task of the Inquiry to pronounce on whether or not issues were in the public interest or of media interest. Journalists could not be expected to

investigate and write about every issue brought to their attention. The Panel explained that a filtering process exists in newsrooms, through which editors scrutinise material and make decisions on the allocation of resources.

- 11.13 Throughout the country – in homes, places of employment, government offices and places of recreation – there are people and organisations with faith (and sometimes naïve optimism) that the media offers the promise of the communication and correction of wrongs. This is a compliment to the industry and to journalists, but also a considerable burden.
- 11.14 There are many misunderstandings about how the media operates. One man who was acquainted with a newspaper editor met with that editor and described his disastrous employment situation. He was angered to find that the ensuing story about this had been written by a reporter, not by the editor. The Panel found no error in the article, which reported on litigation in the Labour Court and Labour Appeal Court. However, the man was aggrieved because he expected the editor, with whom he discussed his situation, to write the article.
- 11.15 Stefaans Brummer of amaBhungane commented that journalists often did not follow up tips and leads given to them by the public because of “a real lack of capacity”. He said: “In an ideal society each street block would have social workers, health workers and a journalist,” but journalists were “very few and far between” and he would be surprised if each magisterial district in South Africa had one.
- 11.16 amaBhungane, Brummer told the Panel, had to “prioritise and find the correct trends which really matter”. He referred to these as “systemic issues”. AmaBhungane conducted an annual strategic session and diagrammed trends and stories regularly. In Zoom conferences each week, the team focused more precisely. In an effort to “constantly try and stay focused at a systemic level, we find many stories, but only some we can highlight.”
- 11.17 Murray Hunter, also of amaBhungane, suggested to the Panel there was one major shortcoming, driving lack of trust in the media: “There simply aren’t enough journalists.” He explained that he heard of and saw “stories of deep injustice...often symptoms of society failing across the board... where people have gone from the CCMA to the magistrates court to the public protector... they have gone from pillar to post and eventually arrive at the newsroom and hope that someone will take up their story.” However, “even as newsrooms are shrinking, they are being asked to act as fire departments, but they have closed down for some people.”
- 11.18 This suggests to the Panel that the media industry may improve its standing in the eyes of the public by explaining how stories are selected; how journalists and reporters work, and how material is allocated for production.

THE PRESS COUNCIL (PCSA) AND PRESS OMBUD

- 11.19 The work of the Press Council of South Africa (PCSA) and Press Ombud creates and archives rich material on the expectations and appraisal of the media by the public. The Inquiry is indebted to the staff of the Press Council (Latiefa Mobara, Pippa Green, Joe Latakomo) for

their collaboration, which involved a time-consuming process of collecting and collating all complaints made to the Council over a two-year period; ensuring confidentiality; and allowing the researcher under the direction of the Inquiry (Martine van der Walt Ehlers) to peruse files and rulings and prepare a detailed analysis thereof. The full van der Walt report, procured by SANEF through the work of this Inquiry, is available in full on the SANEF website.

Statistics

- 11.20 The Inquiry analysed all 706 complaints submitted to the office of the Press Council over the 18-month period, February 2018 to September 2019.
- 11.21 Well over half the complaints were dismissed on the grounds that there was no breach of the Press Code; the Council did not have jurisdiction; the complainant did not have a personal interest; there was pending or ongoing litigation; or the writing in question was protected comment. Complaints that were resolved with the assistance of the Public Advocate included apologies and corrections.
- 11.22 Complaints were lodged against 155 publications, of which 40 did not fall under the jurisdiction of the PCSA. Fifty complaints were lodged against 12 publications belonging to Independent Media (Pty) Ltd.
- 11.23 The majority (268) of the complaints were lodged by third party complainants, followed by 125 complaints from governmental departments or state/public institutions/state-owned enterprises and individuals serving them. One hundred and twenty complainants were members of the general public; 86 came from businesses and other organisations. Seventy-five public figures and celebrities lodged complaints, while 18 complaints were received from political parties and their representatives. That the majority of complaints were from the third parties and the general public indicates that the general public does refer to the PCSA.
- 11.24 Formal adjudication by the Ombud's office was conducted on the 121 complaints referred to it.
- 11.25 The majority of complaints submitted were not worded in conformity with Press Code categories of breach. Complainants however identified the basis of their complaints as, in descending order: reports creating reputational damage (159); factually incorrect reports (147); no right to reply given to news subject(s) (131); publication of false information (113); one-sided, biased and ambiguous reporting (97); unsubstantiated/baseless information/allegations (97); misleading headlines (58); misleading content (53); and defamation/character assassination (27).
- 11.26 Complainants felt the following sections of the Press Code were the most frequently breached: Section 1.1, "The media shall take care to report news truthfully, accurately and fairly." (65); Section 1.2, "The media shall present news in context and in a balanced manner, without any intentional or negligent departure from the fact whether by distortion, exaggeration or misrepresentation, material omissions, or summarisation." (68); Section 1.3, "The media shall present only what may reasonably be true as fact; opinions, allegations, rumours or suppositions shall be presented clearly as such." (39); Section 1.8, "The media shall seek, if

practicable, the views of the subject of critical reportage in advance of publication, except when they might be prevented from reporting, or evidence destroyed, or sources intimidated. Such a subject should be afforded reasonable time to respond; if unable to obtain comment, this shall be stated.” (44).

- 11.27 Of the 121 rulings made by the Press Ombud, 16 complaints were upheld; 47 were partially dismissed; and 56 were dismissed in their entirety.
- 11.28 Complaints ruled upon by the Ombud involved 35 different publications with ten publications having five or more complaints against them: *City Press* had 32 breaches; followed by the *Sunday Times* with 17; the *Daily Maverick* with 11, and the *Mail & Guardian*, *Rapport* and *The Kormorant*, with ten breaches each.
- 11.29 The above analysis of Press Ombud’s work provides an interesting insight into who makes complaints, about which material, and the explanations offered by the media. For the purposes of this Report, however, no general conclusions can be drawn on the ethical foundations of media practice or breaches thereof. Nevertheless, some of the Ombud’s rulings give insight into the challenges faced by South African media, and this is considered below.

Truth, accuracy, fairness

- 11.30 Frequently the media content complained about contains statement of supposition as fact; conclusion from circumstance as fact; and failure to insert qualification into assertions. On occasion, it is the Ombud who does the necessary investigation or enquiry to ascertain the truth. There are examples where the journalist has relied on what has been stated or told to them by others and not done the necessary veracity checks or examined original documents. There are occasions where there is failure to distinguish between preliminary and final documents.
- 11.31 In *Daily Maverick*, the Ombud found that this was “a classic case of a publication having used fake news, or rather, fake ‘dis-information’, as a source for its story”. In *Anant Singh vs Sunday Times*, phrases in both the headline and article were found to be sensationalist and “putting too much spin on the ball”. In *Constant van Graan vs News24*, the Ombud had to analyse whether awareness of farmer and farm worker safety was only occasioned by campaigns by certain ‘right-wing’ groups, and cautioned about the care with which words and phrases must be used by journalists. In *Ernst vs Rapport & Netwerk24*, the issue was who had made certain phone calls, which the Ombud clarified, but also the failure to obtain comment on the calls. In *City of Johannesburg vs City Press*, the Ombud found incorrect reportage had relied on sources rather than properly examining and comprehending audited financial statements.

Right of reply

- 11.32 Sometimes subjects were not offered a right of reply, which the former Ombud described as “one of the most fundamental maxims of journalism”. In one case the ‘reply’ was concocted and in another case ‘the report’ upon which the story was based had also been. In these

matters, the Ombud commented that the panel had no jurisdiction over journalists who had fabricated the 'reply' or the 'report' but that it was for the publication to take necessary action.

- 11.33 In *Office of the Premier of Limpopo vs City Press*, the Ombud ruled the paper was entitled to rely upon a report, but a preliminary and final report had been used interchangeably, with the potential for confusion and therefore lack of context as regards decision making or lack thereof. Further, in this case, the journalist was unable to show that the subject had been contacted for comment or, in fact, that any 'comments' had not been fabricated. In *Collins Letsoalo vs Sunday Times*, the Ombud contacted the office of the Auditor-General to obtain the report upon which the journalist claimed to have relied, and it was disclaimed by the Auditor-General as a "forged document that was purported to be sourced from our office", while another document supplied by the journalist was not what it had been reported to be, with the result that the Ombud commented:

"This can only mean one thing – the journalist has deliberately misled all and sundry. The journalist's motive for this is not known to me. I leave this matter up to the editor to take it further as he sees fit. Need I state what immense damage such reporting does to the credibility of the South African media in general, and to the *Sunday Times* in particular?"

The content of the article informed the headline and sub-headline, with the Ombud stating: "I have hardly, if indeed ever, seen such misleading, unfair and untrue statements in a headline."

- 11.34 In *Prof Adam Habib vs The Citizen*, the Ombud found that public interest justified reporting on certain allegations of nepotism and corruption because they were made in an affidavit, but that the Ombud was not in a position to ascertain the truth of same, while the journalist's complete misunderstanding of emails and direct accusation of abuse led to the Ombud stating:

"I have mulled over for quite some time what the reason could be why the journalist misused her own influence to falsely accuse Habib of nepotism, based on 'first-hand evidence'. At best it could be that she merely wanted to strengthen her story; at worst.... Let me rather not speculate any further. Given the careful way in which the reporter had written the rest of the story – which points to the fact that she is quite a capable journalist – I am left with very little doubt that this did not happen accidentally. The journalist has deliberately cast doubt on Habib's actions, intentions and integrity... Clearly, the unnecessary – and huge – harm caused to his dignity and reputation weighed less than whatever her motivation was to mislead the public by her inaccurate and unfair reporting."

- 11.35 In *Zakhele Khumalo vs Queensburgh News*, the Ombud found a technical inaccuracy in ownership of property and thus a failure to take care to report news accurately, but there was no evidence that the remainder of the story had ever been verified, nor all views reported. In *Minnie Dlamini-Jones vs Sunday Sun & Daily Sun*, the Ombud found the reporter should have been curious about the funding at issue but this could and should have been checked by the reporter which would "...have given him a better – and substantiated – story", while the Ombud's own check with sources found corroboration but not verification. In *Pastor Alph Lukau and Alleluia Ministries International vs City Press*, the reporter had transposed a complaint of "sexual harassment" into "sexual assault" which the Ombud found was a material omission.

- 11.36 In *Lakela Kaunda vs The Citizen*, at issue was the fate of a political appointee and, after

examination of actual transcripts of conversations, which discredited the reportage, and discussion of the unfolding political context, the Ombud had occasion to state:

“This story is a good example of what happens when a ‘popular narrative’ combines with ‘aggregated journalism’ - in other words, reporting garnered from several sources not subject to checks. A ‘popular narrative’ means something that sounds true based partly on some knowledge, but also partly on assumption and prejudice.”

Headlines, captions, photographs

- 11.37 Section 10 of the Code, which provides that headlines and captions shall not mislead the public, was frequently breached.
- 11.38 In *ANC v City Press*, an article was headlined, ‘Secretary-General Ace Magashule says: We don’t need white votes’, which the Ombud found had nowhere been said, and commented that, “In a country that still harbours racial tensions, this headline may have aggravated those tensions when there was no basis for doing so.” In *Prof Adam Habib vs The Citizen*, there was objection to a headline that read, ‘Habib at centre of funding scandal’, when it was admitted that there was no such scandal. In *Christine Kuch vs Randburg Sun*, photographs of dogs had been used in two articles on the SPCA which the Ombud found gave wrong context to the story and no caption clarified the matter.

Protected comment

- 11.39 Certain comment and criticism falls under the banner of protected comment, where it concerns actions or events of public interest and remains protected even if “extreme, unjust, unbalanced, exaggerated and prejudiced, as long as it is without malice, is on a matter of public interest, has taken fair account of all material facts that are either true or reasonably true, and is presented in a manner that appears clearly to be comment.”
- 11.40 In *AfriForum vs News24*, the issue was whether or not the CEO of AfriForum had offered ‘solutions’ during a presentation to a Parliamentary Committee. The Ombud found that he had done so during a subsequent Q&A session, which meant that the assessment by the impugned article did “not take fair account of all material facts” and therefore could not be considered protected comment. In *Sonke Gender Justice vs City Press & News24*, there had been a report on allegations of sexual harassment which had been levelled against the national project manager of the organisation. The Ombud found that after holding a hearing these had resulted in suspension and certain conditions for reinstatement, which did amount to sanction, meaning that the commentary was untrue and unfair.

Plagiarism

- 11.41 In his handbook, *Decoding the Code*, the former Press Ombud, Johan Retief, stressed that plagiarism, prohibited in section 1.13 of the Code, is indefensible:
- “Reporters work with words, and if they take over text from somebody else without acknowledging this fact, they are stealing and betraying the very trade that they (should) hold so dearly... To me such journalists do not belong in the industry. They make their living by writing – and if they use somebody else’s work under their own names, they are defying the very purpose for which they should be striving.”
- 11.42 One such instance was in *Pastor Alph Lukau and Alleluia Ministries International vs City Press*, where the Ombud found what might have been inadvertent copying. The sentence in question was: “He said all he needed to do was to anoint their ring finger and Mr Right would appear within 90 days.” Even though that statement had been repeated numerous times by other people, the Ombud found it to be a minor breach of the Code.

Graphic content

- 11.43 Section 9.3 of the Code prescribes that “content which depicts explicit sex should be avoided unless the public interest dictates otherwise,” in which case “prominent indication and warning must be displayed”.
- 11.44 In *Women in Action et al v Die Son*, the rape of a woman in her home was described in most graphic detail. Notwithstanding that the editor argued that the intention of the article was “to expose the violent nature of this criminal act to the public”, the Ombud asked what purpose was served by detailing each aspect of the rape, found it to be unnecessary, and found that a prominent warning should have been given. Although the Ombud commended the paper for not naming or identifying the rape survivor, it was found that members of the close-knit community would have known who she was and the Ombud wrote, “I shudder to think what added impact trauma the allegation in question must have had on the victim...”

Comment by the Panel

- 11.45 The report on the work of the PCSA commissioned by this Inquiry outlines in each instance the argument offered by the complainant and by the media entity involved, in order to show how the issues are viewed from the perspective of reader and publisher. Those perspectives reveal robust debate and thoughtful views on the role of the media in society, and the response of society to the execution of that role. It can be seen that the Ombud is not merely a rubber stamp for one or other party but enters into a careful enquiry, often calling for evidence of transcripts/ records/ documents, to ensure that no avenue is left unexamined. The media is criticised but also encouraged to perform the useful functions discussed in earlier sections of this Report.

- 11.46 The analysis of complaints and rulings indicate where the media is thought by the public to fail.
- 11.47 Firstly, what emerges are readers' concerns that the print and online media publishes factually incorrect, false or misleading information; that the media does not always give a fair opportunity to respond and explain what is about to be published; and that there is reputational damage and harm done to the subjects of reporting. Two fundamental concerns, discussed at some length in earlier sections of this Report, emerge: the media must tell the truth and allow all views to be expressed.
- 11.48 Secondly, the rulings of the Ombud are necessarily more technical in nature and focus on process as much as content. The media does sometimes fail to report accurately and fairly and this is often the result of one of more failures to observe and follow expected journalistic practice.
- 11.49 The breaches identified in the rulings of the Ombud pertain, in the main, to reliance upon inaccurate or incomplete information; dependence upon sources and hearsay rather than examination of and verification through original material; and failure to have regard to the full context.
- 11.50 Remedy and satisfaction are offered through the careful work of discussing and mediating solutions undertaken by the Public Advocate, and, when that is not possible, through adjudication of disputes by the Ombud, drawing on rulings which are publicly available on the PCSA website.
- 11.51 It was of interest to the Panel that *Sunday Times* editors made it clear that it was the ruling by the Press Ombud which caused editors and management at that title to reassess the series of articles on the SARS 'rogue unit' and the Cato Manor 'death squad' written by its investigative unit, and published by the newspaper. The decision to issue the public apologies discussed in Chapter Eight is a powerful indication of the effectiveness of co-regulation; the significance the media industry attaches to the work of the Press Council and the Ombud; and the value attributed by members of the public to the co-regulatory process.
- 11.52 SANEF has made a number of suggestions to the Panel regarding regulation. Inter alia, it suggests that the Press and Online Media Code ought to deal specifically with 'clickbait', where so-called 'sexy' headlines do not reflect the actual content of the story.

THE BROADCASTING COMPLAINTS COMMISSION OF SOUTH AFRICA (BCCCSA)

- 11.53 As discussed further in Chapter Twelve, the BCCSA is involved only with broadcast media; the PCSA with print and online news.

Statistics

- 11.54 A total of 1,953 complaints were received over the period 1 January to 31 December 2019. Of these, 902 were not accepted because of vagueness, despite complainants being requested to substantiate how the complaint fell within the Code. A further 710 complaints pertained to issues which did not fall within the Code, such as subscription fees, decoder problems, advertisements, SABCTV licence issues, cinema movies, cell phone providers and suchlike.
- 11.55 Of the remaining 341 complaints, the complainant accepted the relevant broadcaster's apology in 46 matters, which were then closed.
- 11.56 There were 62 adjudications by BCCSA Commissioners, where 15 complaints were upheld, and 28 judgments by the BCCSA Tribunal where six complaints were upheld.

Protection of Privacy and Dignity

- 11.57 The breaches involved pertained both to the process and the content of broadcasts. Of note is the spontaneous and contemporaneous nature of broadcast content.
- 11.58 In *Scheepers v 702*, the presenter, who had read out an entire Tweet, believed that she/he was entitled to express an opinion without engaging the complainant. The presenter was found to have responded to the complainant's reaction with anger and hurt, although it could not be inferred how reasonable listeners would have interpreted such response. Broadcasters were urged to be vigilant in ensuring that presenters complied with the requirements when emotional responses were triggered. In *Seger, Mehtar and another v Hot 91.9FM*, it was found that the complainant was entitled to consider the use of the word 'moffie' offensive. In a similar vein, uninformed remarks about individuals affected by cleft lip and palate were the issue at stake in *Coates and de Beer v Hot 91.9 FM*. Complaints were upheld against M-Net regarding *Carte Blanche* programmes where complainants were aggrieved by failure to specify their capacity when signing procurement contracts, or showing visuals of a brand name in a negative context.

Points of view in news and discussions of controversial issues

- 11.59 The accuracy of information was relevant in a number of complaints. Complaints that incorrect information had not been verified before or after the broadcast and had caused harm to the complainant were upheld in *Transpaco v ENCA*. Likewise, in *Keswa v Multichoice Newzroom Afrika Channel 405*, the complaint that incorrect information was used in connection with a government representative handing over an RDP house was supported.
- 11.60 The context within which individuals or entities were identified was relevant in the matters of *Dickson and Steffens v ENCA*, where a visual had been shown with a brand name in an overall negative context; and in *Chemvulc v SABC2*, where it was found that the broadcaster had not expressed an honest opinion when it allowed employees of the company to make

false claims about an employer without allowing the complainant the opportunity to respond to the allegations.

- 11.61 In *Churr v SABC Channel 404*, a complaint was upheld with regard to a news presenter using outdated research statistics to present a programme biased in favour of the organisation Gun Free South Africa, which was said to come across as propaganda. In *PR Meyer Farm Trust v SABC Channel 404*, farm dwellers were found not to have been evicted but to have voluntarily vacated a farm after being promised dwellings in a municipal housing scheme; other broadcasting information was also found to be false.
- 11.62 Hate speech received special attention. In *Scheepers v 702* it was held that broadcasts were not persistently unfavourable to white people but the broadcaster should have informed listeners of the cost of calls and SMSs to the station. In *Vamvakos v SABC2*, the complaint was upheld that a documentary contained factually and historically incorrect anti-white, racist propaganda.

Fairness and balance as set out in the Codes

- 11.63 Henning Viljoen of the BCCSA informed the Panel that he believed “balance” was an essential prerequisite for maintaining ethical standards in broadcasting journalism. He drew the attention of the Panel to several rulings in which the standards of the BCCSA on issues of “balance” were set out.
- 11.64 In *Global Visas v MNET (Case No 41/2013)*, the tribunal found that in the context of an investigative programme, it was inevitable that opinions would differ and the complainant would invariably question the truth of certain of the comments made by the broadcaster:
- “...Where controversial issues of public importance are involved...the requirement for a programme such as this is that reasonable effort must be made by the broadcaster to fairly present opposing points of view. The purpose is obviously to give the complainant a fair chance to refute any comments by the broadcaster that the complainant deems to be incorrect.”
- 11.65 However, the Tribunal restated that the Code does not require absolute truthfulness of the comments. “It merely requires that the comment must be an honest expression of opinion, that it must clearly be understood to be comment and that the broadcaster must be able to demonstrate its reasons or motivation for the comment, in other words that it must be able to point to the facts on which the comments were made.” In light of these considerations, the Tribunal found that all the comments by Carte Blanche in this programme complied substantially with the requirements of the BCCSA Code.
- 11.66 In *Neil Diamond and others v Electronic Media Network (Pty) Ltd*, the Tribunal found that the editor of the programme, Carte Blanche:
- “...has the right to include or exclude material. However, it speaks for itself that material may not be excluded on that ground when the Subscription Broadcasting Code requires that certain material be included. Thus: once a person is criticised on a controversial matter of public importance, that person has a right of reply. In this case, by placing Mr Diamond within the public sphere in which he functioned, the Broadcaster has, in the

process, also placed the programme within the public importance sphere, which led to its duty to publish his answers on crucial issues. If such a reply is made available to the broadcaster, it must be broadcast.”

- 11.67 Furthermore, the following statement in *The Citizen 1978 (Pty) Ltd and Others v McBride* 2011 (4) SA 191 (CC) at para 83, was said to be of particular relevance:

“Protected comment need thus not be ‘fair or just at all’ in any sense in which these terms are commonly understood. Criticism is protected even if extreme, unjust, unbalanced, exaggerated and prejudiced, so long as it expresses an honestly-held opinion, without malice, on a matter of public interest on facts that are true.”

- 11.68 In *King Edward High School v SABC1 (Case no 27/2109)*, the Tribunal found that the broadcast showed a video of a white man assaulting a black man at a filling station in Roodepoort, Johannesburg, which video was not linked to the school but was broadcast in a manner that created an impression that it was. The SABC had submitted to members of the Tribunal that the use of unrelated racist images and the way these images were structured amounted to editorial discretion in the form of a ‘teaser’, which was said to be aimed at setting the tone for the programme.

- 11.69 The Tribunal held that:

“...the Respondent’s editorial discretion is not disputed. However, the issue of racism is one that society is very sensitive to and any inaccurate reporting thereof cannot be cured by a ‘teaser’. There were various serious allegations of racism made against the Complainant and the school principal in the broadcast; these were detailed and specific but were not presented to the Complainant to respond to. The Respondent instead indicated that it broadcast a ‘general’ response from the Complainant which was along the lines of ‘the school denies all the allegations.’

The Complainant however indicated that if it knew the details of the allegations at the time when it was interviewed, these could have been easily refuted and evidence thereof provided. Clause 13(1) of the Code provides the following:

‘In presenting a programme in which a controversial issue of public importance is discussed, a broadcaster must make reasonable efforts to fairly present opposing points of view, either in the same programme, or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time of the original broadcast and within substantially the same time slot.’

The broadcast cannot be seen to have ‘fairly’ presented opposing points of view. In the broadcast, a farmer who was accused of racism was seen providing his version on allegations of racism. This however did not address the numerous and serious allegations that were specifically made against the Complainant. The allegations against the Complainant were so detailed and grave that a mere: the school denies the allegations was not enough to satisfy the requirement in this clause, that reasonable effort must be made to fairly present opposing views. The Respondent has thus contravened Clause 13 (1) of the Code.”

- 11.70 In the *Worldwide Foundation for Nature CC t/a The Rhino Force v SABC2 (Case no 03/2014)*, the Tribunal held that the issues raised in the programme were clearly of public importance and also controversial. This case revolved around freedom of expression, the right of reply, and editorial independence:

“The general logic, based on these cases, is as follows: the Respondent has the right to editorial independence and freedom of expression. However, this right has to be exercised in accordance with the Code which, broadly, requires of a broadcast dealing with a matter of public importance, that it be reasonable in the manner it treats of the subject matter, and that the broadcaster’s opinions are based on facts truly stated or fairly indicated.

Furthermore, programmes on controversial issues of public importance should have sufficient balance in order to afford audiences the opportunity to form their own opinions. In addition, the Respondent has a duty to grant a right of reply where a person is seriously criticised – or where their credibility is questioned – on a matter of public importance. This is especially true for private persons and/or organisations that cannot necessarily rely on access to various public platforms, the so-called ‘marketplace of ideas’, to defend themselves – their only opportunity to exercise their defence lies in a right of reply.”

Comment from the Panel

- 11.71 The BCCSA Code of Conduct engages with a media industry which utilises public assets - airspace, spectrum and bandwidth – controlled by the government. Broadcasting is therefore regulated by statute and statutory bodies such as ICASA. Radio and television are not always able to utilise the checks available to the print media, including time, reflection and control. This is because much of the material aired is live-to-air, spontaneous and unscripted and thus not amenable to advance editorial scrutiny. Nevertheless, as can be seen from reference to the above rulings, it is usually the planned programmes which fall foul of the Code.
- 11.72 Understandably, the BCCSA Code of Conduct for subscription broadcasting service licensees is concerned with the specifics of the broadcasting process – warnings of content, programme classification – but is also focused on protecting the unwary or unwitting viewer or listener. The Code is less concerned with news than with offensive material (extreme violence and sexual conduct but also, intriguingly, bestiality) and protection of the delicately minded and the young.
- 11.73 The Code and the rulings appear to envisage a less robust and less rigorous reportage of issues and analysis thereof. After all, radio and television may be considered to be more about entertainment than about news reportage – but that is a matter for discussion in an academic thesis. However, it may be that the NAB, the BCCSA and members of the CCC would find it useful to examine the more news-directed Print and Online Media Code.
- 11.74 The point to be made is that where listeners and viewers complain, the BCCSA and the Code do offer a responsive and fairly protective service to the listening and viewing public.

CHAPTER TWELVE: REGULATION OF THE MEDIA IN SOUTH AFRICA

MAIN POINTS OF THE CHAPTER

This chapter considers the issue of regulating the South African media by:

- **Setting out the context created by the relevant provisions of the South African Constitution;**
- **Examining different categories of regulatory model, including self-, co- and State regulation, and the regulatory practices of professional bodies;**
- **Describing the models of regulation currently functioning for South African print/online and broadcast media, employing as one point of reference the regulatory models of Canada;**
- **Setting out submissions to the Panel by the public, and the findings of various post-apartheid commissions of inquiry; and**
- **Drawing from this evidence and these submissions conclusions regarding the efficacy of the existing system of media regulation.**

CHAPTER TWELVE: REGULATION OF THE MEDIA IN SOUTH AFRICA

INTRODUCTION

- 12.1 The desired outcome of this Inquiry is to assist the media industry in taking steps to strengthen adherence to ethical codes and practices; enhance public confidence in the media; secure the role of accountable, trustworthy, informative media; and to ensure freedom from manipulation by partisan or secret interests. It is appropriate that this Report consider the steps taken, locally and internationally, to give guidance and direction to media organisations and practitioners to achieve those outcomes.
- 12.2 This section has regard to self-regulatory or co-regulatory mechanisms and complaints procedures adopted by South African media organisations. Attention is also given to international guidelines for self-regulatory media models. The many quotes contained in this section emanate, in the main, from UNESCO and the Organisation for Security and Co-Operation in Europe. Full citations are to be found in the Ramsden memoranda.

REGULATION IN THE CONTEXT OF THE CONSTITUTIONAL RIGHT OF FREEDOM OF EXPRESSION

- 12.3 All consideration of extant or proposed regulation of the media, in any shape or form, immediately introduces discussion of the need to protect the right to freedom of expression.
- 12.4 As already discussed, the right to freedom of expression is considered an essential and fundamental human right in South Africa, protected by the Constitution. In addition to being its own right, it is also a gateway right, which strengthens and reinforces other rights, such as the right to form political parties; to organise and mobilise; and to share ideas. Significantly related to the right to freedom of expression is the right to information. It is in the protection and promotion of both of these rights that the media plays an important role.
- 12.5 This Report has already indicated that the importance of freedom of expression and the freedom of the media does not mean that this right cannot, and should not, be limited or restricted. The most obvious limitation would be laws relating to defamation. Other necessary limitations would include the restriction of hate speech, speech with intent to incite violence, and some other cases where restriction of speech would be in the public interest. However, it is generally accepted that any limitation or restriction must be as minimal as possible and only to the extent that is strictly necessary.

- 12.6 Where there has been a decline in democratic vigour, such as in South Africa, the media continues to act as a watchdog to ensure that “corruption, maladministration and corporate wrongdoing” are exposed. Unsurprisingly, this has occasioned continual attacks on the media.
- 12.7 The media does not only play the role of “sustaining and nurturing democracy, good governance and human rights” through enabling the free exchange of ideas and opinions: a role which is “necessary in a democracy”.
- 12.8 The media is also a social actor which, as UNESCO has documented, can shape events and the public’s perception of those events. Reliance by the public on information which may have been exploited for the benefit of governmental or commercial interests is seen as justification for some form of regulation of the media industry.
- 12.9 Regulation of the media is thought to be necessary to ensure that journalistic expression does not, in itself, lead to a limitation on the right to freedom of expression by way of the wilful distribution of misinformation or expression including, for example, hate speech. In addition, regulation of the media is thought to enhance the trust of the public in the media.

TYPES OF REGULATION OF THE MEDIA

- 12.10 There are basically two types of regulation: regulation by the State and regulation by the media industry (with different variations thereof) and, in South Africa, “co-regulation”.

State regulation

- 12.11 While it is a generally accepted principle in democratic societies that the State should have a minimal role in the regulation of the media, this has not always been the case in South Africa. Chapter Three of this Report outlined the various commissions of enquiry established by the National Party as it strove to entrench and protect the apartheid regime and prohibit or dilute criticism thereof.
- 12.12 However, to say that the State should play no role at all would be to ignore the practicalities and realities of modern life. Media that is free from state interference does not necessarily guarantee a rich media environment. Such an environment can only be realised when all sectors of society have the ability to access information through the media and make their voices heard.
- 12.13 The State needs to play a direct role in “providing infrastructure, funding a public broadcaster, [and] ensuring the right kind of regulatory environment which should ensure a diverse media system”. This is even more marked in relation to broadcasting, where the State is obliged to play an important role in allocating a limited bandwidth spectrum.

- 12.14 In addition to its direct role, the State plays a very important indirect role by ensuring a regulatory and legal environment where there are guarantees on the right to freedom of expression, access to information, and as few limitations on those rights as possible.
- 12.15 State regulation of the media at all levels is strongly criticised. After all, government is a participant “in the political contest” and, as this Report has tried to show, is not best placed to “enforce rationality and fairness”. Any such enforcement would bring into question the independence of the media and open up opportunities for political or commercial influence. Where there is an effective system of self-regulation, this “will make state interference unnecessary”.

Self-regulation

- 12.16 It is suggested that self-regulation or regulation by the media itself, is important for several reasons. Firstly, it ensures the preservation of editorial freedom; secondly, it helps to minimise state interference; thirdly, it promotes media quality; fourthly, it is evidence of media accountability; and fifthly, it helps users access the media.
- 12.17 There exists the hope that self-regulation will encourage and assist the media to be responsible and accountable, and to maintain high professional and ethical standards.
- 12.18 Self-regulation is essentially a “combination of standards setting out the appropriate codes of behaviour for the media that are necessary to support freedom of expression, and processes for how those behaviours will be monitored or held to account”. Self-regulation can also preserve the independence of the media and create a system of accountability that does not entail government expenditure on regulatory infrastructure.
- 12.19 The main role players in a self-regulation system are the media themselves, because they are best-placed to understand the needs of both the system and their own sector of work. This cadre of role players comprises media organisations, journalists, editors and managers. One mechanism of self-regulation is the formation of voluntary and independent press councils. These can build trust and credibility in the media; improve quality standards; prevent state interference; and minimise the number of court cases against journalists by resolving issues before they result in litigation.
- 12.20 Self-regulation does not equate to self-censorship, but rather is a mechanism whereby “minimum principles on ethics, accuracy, personal rights, and so on” are established while still maintaining “editorial freedom on what to report and what opinions to express”. This in turn, assists the media in responding to legitimate complaints and correcting “mistakes in a trial-and-error way”.

Substance of self-regulation

- 12.21 Effective self-regulation requires four factors: the existence of editorial independence; a code of ethics; a complaints procedure; and sanctions.

- 12.22 Editorial independence must be both guaranteed and respected in practice. Basically, this is the right of editors and journalists to make decisions on the content of the media, without interference, and “on the basis of professional criteria and the public’s right to know”.
- 12.23 A code of ethics is indispensable to any media self-regulatory framework. Regulatory bodies and some individual media houses have their own codes of ethics, which may vary in content. However, the common elements they should all share are requirements for truthfulness, accuracy, objectivity, impartiality and fairness.
- 12.24 Irrespective of variations in content, all codes of ethics should be written in clear language, be comprehensive and compact, and undergo frequent revision.
- 12.25 The purpose of a code of ethics is to provide guidance on agreed editorial standards and thus assist journalists to provide content that, in democratic states, is in line with the law. A code of ethics should never be an instrument for censoring freedom of expression.
- 12.26 Codes of ethics are voluntary professional codes. This means they may be difficult to enforce. However, they are the backbone of a complaints procedure; the codes will be used in order to determine whether there has been a breach or violation of ethics.
- 12.27 The complaints procedure is the mechanism through which the code of ethics is upheld: a kind of “quality insurance”. Complaints procedures can either be specific to a media house or can be set up to serve the industry as a whole, as, for example, the Press Council and the BCCSA.
- 12.28 The benefit of such procedures lies in their speedy, non-confrontational, low cost, and the effective resolution they provide for disputes regarding the content and processes of the media.
- 12.29 Sanctions can be imposed if a breach or violation of the code of ethics has been found during the complaints process. A hierarchy of sanctions is required, ranging from suspension or the imposition of a fine through to an apology, a correction, or the opportunity to respond or reply.

THE SOUTH AFRICAN APPROACH

- 12.30 Subject to the Constitution, media in South Africa is not formally subject to a single regulatory regime, in that there may be state or self-regulation or even co-regulation.
- 12.31 SANEF has usefully identified the South African media as being engaged in co-regulation. Broadcasting licensees may either comply with the Code enforced by the regulatory authority’s Complaints and Compliance Committee (CCC), or may subscribe to and comply with their own association’s code and enforcement mechanisms providing these are approved by the Independent Communications Authority of South Africa (ICASA). Print and online media are regulated by a Press Council whose membership comprises an equal number of media representatives and members of the public. In short, neither print nor broadcast media regulate themselves; in broadcasting, the statutory body and in print and online, the public also have oversight of both codes and enforcement.

PRINCIPAL REGULATORY BODIES

The Broadcasting Complaints Commission of South Africa (BCCSA)

- 12.32 The Electronic Communications Act of 2005 provides that all broadcasting licensees must adhere to the prescribed Code of Conduct for Broadcasting Services, unless they are members of an industry association which complies with a Code of Conduct, recognised by ICASA. The National Association of Broadcasters (NAB) has developed its own codes of conduct, which have been approved by ICASA.
- 12.33 The BCCSA is the independent and impartial tribunal established by the NAB to mediate and adjudicate complaints received on the content of broadcasts. Statute required recognition of the BCCSA by the statutory body, previously the Independent Broadcasting Authority (the IBA) and now ICASA. Such recognition was granted in 1995.
- 12.34 The NAB provides the funding for the BCCSA, which is nevertheless, entirely independent from it. The NAB is however currently asking the courts for a redefinition: it is seeking a ruling that the BCCSA is a voluntary association, which members of the NAB can also join. The BCCSA, while indicating that it will abide the decision of the court, is concerned about the impact of such a ruling. The requested finding would mean that members of the NAB, in respect of whom the BCCSA adjudicates complaints, would now be the higher authority of the BCCSA and able to amend the BCCSA constitution. The concern is that this will have a negative impact on media ethics and credibility in general.
- 12.35 Initially it was intended that half of the BCCSA commissioners would be appointed from persons nominated by the NAB. However, the IBA (now ICASA) insisted that candidates should be appointed by members of the public.
- 12.36 Currently, 61 broadcasting entities fall within the jurisdiction of the BCCSA. (The full list appears in the organisation's Annual Review as well as its Complaints Record.) These comprise eight television broadcasters; 17 commercial broadcasters (the 18 SABC commercial broadcasters are registered as the SABC, so in fact there are 35 commercial radio broadcasters); 22 community radio broadcasters; and an association of 13 Christian media broadcasters.
- 12.37 The BCCSA has two codes of conduct: one for Free-to-air Broadcasting Service Licensees and the other for Subscription Broadcasting Service Licensees. It also has a prescribed complaints procedure.
- 12.38 This procedure specifies that a complaint may be resolved at one of four stages: Registrar, Adjudication, Tribunal and Appeals Tribunal. In the first two stages, there is discussion and negotiation involving the complainant and the broadcaster through the intervention and services of the appropriate BCCSA body. The Tribunal and Appeals stages are more akin in process to legal proceedings, although without the same technicalities.
- 12.39 The sanctions within the power of the Adjudicator of Tribunal or the Appeals Tribunal range from dismissal and reprimand, to requiring the broadcast of a directed correction and/or summary of findings, the granting of reasonable access for the complainant in broadcasts, and/or imposing a fine not exceeding R80 000.

- 12.40 Both the Ramsden memoranda and the previous chapter of this Report contain a summary of the number of complaints received; an indication of their content, and the outcomes thereof.
- 12.41 The Panel made contact with Kobus van Rooyen, chair of the BCCSA from 1993 to 2015 and now chair of the ICC at ICASA. However, lockdown and other exigencies prevented the Panel meeting him to discuss the work of the ICC.

The Press Council

- 12.42 This body is not ordained to, or regulated by, any legislation. It is a voluntary, independent, co-regulatory mechanism established to deal with complaints against subscribing publications that may have violated the Press Code. The Press Council deals with complaints relating to the editorial content of both print and online media.
- 12.43 The Press Council was established in 2007 by the constituent members of the South African press, these being the Association of Independent Publishers (AIP); the Forum of Community Journalists (FCJ); SANEF, and the Interactive Advertising Bureau of South Africa (IABSA) representing online media.
- 12.44 The Press Council has developed the South African Press Code to guide journalists in their daily practice of gathering and distributing news and opinion, and to guide the Ombud and the Adjudication Panel in reaching decisions on complaints. A full analysis of the Code insofar as there have been complaints, is set out in the van der Walt report commissioned by this Inquiry.
- 12.45 All members of the constituent associations named above subscribe to the Press Code on behalf of their publications, and an additional group of small publications has applied for membership. Almost all are South African print media and predominantly members of the organisation Print and Digital Media of SA (PDMSA). All publishers of mainstream publications (Tiso Blackstar now Arena Holdings; Caxton; Media24, and the *Mail & Guardian*) subscribe to the Code.
- 12.46 However, as detailed in this Report, the Independent Media Group withdrew from the Press Council in 2016 due to a fracas over reportage on the financial affairs of the group. Thus, all titles within the group, including the *Star*, *Pretoria News*, and *Cape Argus* do not subscribe to the Press Code, and are not subject to the complaints and adjudication system thereof. Independent Media previously had its own internal complaints system, including an internal ombud, but the ombud has resigned and at the time of concluding this Report there is no indication of the existence of any functioning internal ombud process at all.
- 12.47 *Nosweek* also withdrew its membership from the Press Council, and this Inquiry has no information as to whether or not that publication is involved in any complaints or ombud process.
- 12.48 Members of the Press Council Adjudication Panel comprise an equal number of public and press representatives.
- 12.49 A complaint may be resolved by the Public Advocate, the Press Ombud, the Panel of

Adjudicators or the Appeals Panel.

- 12.50 When a complaint is dealt with by the Public Advocate, discussion with the parties is involved. The Press Ombud may decide on a complaint on papers after a hearing, or there may be an informal hearing for purposes of clarification. Appeals are permitted only where there are reasonable prospects of success.
- 12.51 Additionally, matters may be heard even when there has been no complaint, where the Press Ombud considers there to have been a prima facie contravention of the Code, and an appeal may be heard where the chair of the Appeal Panel is of the view that the issues involved are of great public interest.
- 12.52 The sanctions available to the Press Council include a caution or reprimand; direction to publish a correction, retraction or explanation; direction to issue an apology; and/or publication of the Ombud or Appeal findings.
- 12.53 The Press Council has a further power which allows it to impose a monetary fine and/or suspension for a period, or expulsion from the jurisdiction of the Ombud. These sanctions exist not for editorial content but because the publication failed to appear at hearings or because there has been repeated non-compliance with its rulings.
- 12.54 Again, some indication of the number and types of complaints and their resolution is to be found in the Ramsden memoranda and also in the detailed van der Walt Report, which contains an analysis of all Press Council complaints over a period of two years. A sample of these complaints is discussed in Chapter Eleven above.

THE CANADIAN APPROACH

- 12.55 Canada is ranked 18th in the world for media freedom in the Reporters Without Borders World Press Freedom Index; South Africa is ranked 31st. However, despite Canada's higher ranking, both fall within the same category of 'fairly good'. In addition, Canada's self-regulatory systems have some similarities to (as well as some differences from) the South African model, making its system a good point of comparison.
- 12.56 The main self-regulatory bodies in Canada are the Ombudsman of the Canadian Broadcasting Corporation (CBC) and Radio-Canada; the Canadian Broadcasting Standards Council (CBSC); the National News Media Council, and (for Francophone media) the Conseil De Presse Du Quebec.

The Canadian Broadcasting Corporation (CBC)

- 12.57 The national public broadcaster, the CBC, provides both television and radio services. The Ombudsman is completely independent from the programme staff and management of the CBC.

- 12.58 The Ombudsman acts as an appeal authority for complainants dissatisfied with responses received from CBC programme management to their grievances. In addition, the Ombudsman gleans the public's major concerns from complaints received, and advises management of these. The Ombudsman also has the power to institute studies on overall coverage of specific issues when it is felt there may be a problem. The jurisdiction of the Ombudsman extends to all content produced for radio, television and online (including the corporation's social media).
- 12.59 After receiving a complaint, the Ombudsman will determine whether it warrants a response from the CBC management. If this is the case, the complaint will be forwarded to the relevant manager. If the complainant is not satisfied with that initial response, he or she may request the Ombudsman to review the case.
- 12.60 In this review, the Ombudsman will conduct an in-depth investigation to determine whether the complaint is justified and whether there was any violation of the code of Journalistic Standards and Practices. The Ombudsman will issue an opinion and may make recommendations. These are the limits to this power. If a complaint has legal implications, the complainant will be asked to choose between legal action or recourse to the Ombudsman.
- 12.61 Over the period 2018/19, the Ombudsman received a total of 3693 complaints. Of these, 562 fell outside the office's mandate and 3131 within it. The Ombudsman sent 825 complaints to programmers for a response; at the time this account of Canadian activities was compiled, 20 were still awaiting a response. The Ombudsman does not always insist on a reply, waiving that insistence if the nature of the complaint is too broad or if it duplicates complaints already received. In these two instances complaints will simply be shared with news management. Two thousand, three hundred and six such complaints were shared but did not require a response.
- 12.62 The Ombudsman received 88 requests for review, of which 79 had been reviewed at the time of reporting. Of these, ten were found to have violated policy; in seven it was found that there was room for improvement; and 71 complaints were found to have no issue.
- 12.63 The Ombudsman remarked that there was no easily discernible pattern to the nature of the errors, but certain trends were noticed. First, the way in which a story was framed could give the impression that the reporter was pursuing an agenda, which could undermine confidence in the media. Second, where stories were complex or nuanced it had been impossible to include every perspective in a single story or programme segment, leading to complaints. Third, because social media had the ability to undermine the reputation of a news organisation, all staff needed to be engaged on this issue.

Canadian Broadcasting Standards Council (CBSC)

- 12.64 The CBSC is a national voluntary self-regulatory organisation created by Canada's private broadcasters to deal with complaints. The CBSC has two panels: the Adjudicating Panel, which deals with complaints regarding content; and the Journalistic Independence Panel, which deals with complaints such as interference from management.
- 12.65 Any complaint is first forwarded to the broadcaster with a request for response to the

concerns raised. If the complainant is unsatisfied with that response, he or she may submit a Ruling Request to the CBSC. A complainant cannot make a complaint to the CBSC and at the same time pursue legal action.

- 12.66 If the complaint raises a new issue, or is one which has been found to be a violation of the Code in the past, it will be sent to the Adjudicating Panel, which will review all correspondence and listen to or watch the relevant broadcast to determine whether there has been a violation. There are no hearings.
- 12.67 A decision by the Adjudicating Panel is considered “evergreen” in nature: it applies not only to the broadcaster in question but to all CBSC broadcasters with programmes of a similar nature. The only power the CBSC has, is to order the broadcaster to broadcast two separate announcements of the result of the ruling.
- 12.68 Over the period 2017/2018, the CBSC received a total of 2133 complaints. However, 638 related to other broadcasts or issues that fell within the jurisdiction of other organisations and these were forwarded to the agencies concerned.
- 12.69 Of the 1495 complaints falling within the CBSC’s mandate, 786 were considered Code Relevant and Specific. This means that they raised issues covered by one or more codes and the complaint was made with sufficient detail. A further 709 complaints were considered general as they did not contain enough detail, or the complainant had no standing. In such instances the complainants are unable to request a ruling from the CBSC.
- 12.70 The 709 general complaints were closed. Of the 786 code-relevant and specific complaints, 579 would not require a follow up as they were resolved at the level of broadcaster association and complainant communication. A decision taken by the Panel resolved 52 further complaints, and 126 complaints were still to complete the dialogue process at the time of reporting. Finally, 29 complaints where a ruling was requested were still at various stages of review.

The National News Media Council (NNC)

- 12.71 The NNC is a voluntary, self-regulatory ethics body for print and online news media, established in 2015 through the amalgamation of various press councils across Canada. Quebec is the exception and retains its own press council.
- 12.72 The NNC only accepts complaints against member publications. However, if a complaint is made against a non-member, the NNC will respond to the complainant and, if possible, advise them where their complaint should be directed. Where appropriate, the NNC will also usually include brief information about journalistic standards related to the complaint, because it is within the NNC’s mandate to educate the public about news media standards.
- 12.73 The NNC will not consider any complaint that involves legal action. A complainant will be required to sign a waiver agreeing not to pursue legal action. In addition, the NNC will not accept any legal submissions from either party.
- 12.74 For the NNC to consider a complaint, the complainant must first have contacted the news

organisation with a view to resolving the complaint. The NNC will only intervene if the complainant has not been satisfied by the response received from the organisation, or if there has been no response.

- 2.75 Once a complaint has been filed, the NNC will review the complaint to determine whether the publication has been given sufficient time to address it, and whether the complaint falls within the NNC mandate. If the above conditions are met, the complaint will be sent for mediation. At the mediation stage both parties must provide all relevant information and put forward their respective cases.
- 12.76 Should the complaint remain unresolved after mediation it will go to adjudication. The NNC staff will consider both parties' submissions and make a recommendation to the Adjudicating Panel. This Panel will review the submissions and staff recommendations and, if necessary, convene a hearing. However, a hearing will only be convened if the complaint involves public education, public interest, or relates to a significant journalistic issue or matter of complexity.
- 12.77 The Panel may dismiss or uphold the complaint or dismiss it with reservation. The Panel's decision is final and not subject to any further appeal.
- 12.78 The majority of the complaints received in both 2018 and 2019 involved allegations of bias or inaccurate and misleading statements contained in opinion pieces and columns. Concerning opinion pieces, the NNC often noted that the standard journalistic practice allows opinion writers to question issues, express a point of view, and use strong language. Opinion or column writers have wide latitude to express their opinion, even if that opinion is provocative or addresses uncomfortable issues; their role is to be a catalyst for discussion.

Conseil de Presse du Quebec (Press Council of Quebec)

- 12.79 The Council is a voluntary self-regulatory organisation established in 1973. The Council's scope extends to all media organisations that publish or broadcast in Quebec, whether they belong to the print or electronic media and regardless of whether they are members of the Council. Membership is voluntary.
- 12.80 A complainant is required to sign a document agreeing to immediately inform the Council if legal action is taken. A complaint is automatically closed if legal action is taken, as the Council cannot interfere in court processes.
- 12.81 A complainant is first required to approach the media organisation concerned to afford it the opportunity for correction or clarification. If this step has been completed and the complainant is still dissatisfied, a complaint may be submitted to the Council. On receiving the complaint, the Council will forward it to the respondent to obtain their version of the facts. The response will be forwarded to the complainant who will then be given the opportunity to respond.
- 12.82 After all the information has been gathered, the complaint will be sent to the Journalistic Ethics and Complaints Committee for determination. Once a decision has been made, it will be transmitted to the parties and made public. The media organisation has a moral obligation

to publish or broadcast the Council's decision.

- 12.83 If either party is dissatisfied with the decision, they may appeal to the Appeals Committee, which will evaluate the file, focusing on how the complaint was dealt with by the Journalistic Ethics and Complaints Committee. All decisions of the Appeals Committee are final.
- 12.84 In the year reported on, the Council received 158 complaints and published 85 adjudications. Of these complaints, 62% involved pursuing truth; 34% involved respect for individuals and groups, and 4% involved independence.

VIEWS ON REGULATION

- 12.85 The concept of regulation in any field of endeavour encompasses technical, economic, social and political activities and is legitimised by virtue of an apparent social, economic or political benefit. Alternatively, it is said to be exercised by those in power as being in the public interest. Regulation can be conceived of and exercised as a form of social control occurring somewhere along a spectrum from extreme domination through to voluntary and informed consent.
- 12.86 Martinis has written:
- “The very nature of regulation as a constantly contested practice means that it shifts between extremes, from benign control by democratic means over a consenting public to an imposition of rules, often by violent means, imposed by authoritarian regimes. It can therefore be exercised for legitimate reasons and justified as satisfying a positive social function, or simply be the outcome of tyrannical rule.”
- 12.87 South African media has known the extremes of censorship and banning under Apartheid security legislation and media regulation. It now operates within a constitutional democracy committed to freedom of expression, but one where government increasingly engages in regulatory activity, attempting to balance public interest ideals.
- 12.88 The BCCSA and Press Council arrangements were determined upon by major players in the media industry after long deliberation and negotiation, as indicated earlier. Subsequent, to the introduction of these two co-regulatory systems, certain further inquiries and discussions have taken place.

The SAHRC Commissions of Inquiry

- 12.89 In 1999 and 2000 the South African Human Rights Commission (SAHRC), released reports on their inquiry into racism in the media. The SAHRC is a Chapter Nine institution established under the South African Constitution to protect certain specified rights and interests. The inquiry was instituted following complaints from the Black Lawyers Association and the Association of Black Accountants of South Africa, concerning South African newspapers

– specifically the *Sunday Times* and the *Mail & Guardian* – about their representations of race, and lack of sensitivity around matters of equality. Following interventions and objections, including by SANEF, the SAHRC announced that comment would be invited on “recommendations as to how freedom of expression and the press can best be applied in the construction of a new South Africa”, and that the panel would make recommendations which would “contribute to the ultimate outcome of the process by way of either a code of conduct, guidelines or specific proposals directed at specific institutions”.

- 12.90 Among the many recommendations made by SAHRC was that “SANEF should convene a study and/conference on media freedom in South Africa ... on effective monitoring and accountability of the media in South Africa”. This should include consideration of whether or not the ICASA Code of Conduct and monitoring mechanism “would not usefully be applied to the print media as well”. Alternatively, the introduction of a “regulatory framework that uniformly addresses all the media” could be considered. It was also recommended that current codes of conduct be reviewed to ensure that they are in line with constitutional requirements and “properly reflect the role of the media in a democratic society”. During 2017, SAHRC turned its focus to social media and issues of racism. Some of its recommendations are included below. (NB: *The institution incorrectly referred to below as the ‘Institute for Advanced Journalism’ is in fact ‘The Institute for the Advancement of Journalism’.*)

We urge SANEF and the Institute for Advanced Journalism to offer racism awareness training for journalists at all levels of the industry. We believe that this report will be a valuable resource for discussion and debate. We encourage editors to organize newsroom discussion groups from time to time with a view to sensitizing journalists to the manner in which racism creeps into their copy. We advise schools of journalism and media studies at universities and technikons to consider a module on racism in the media in the academic training of journalists and media workers.

Exposure of journalists to the cultural diversity that forms the fabric of our society should be promoted. There are many agencies in our country that organize “plunges” and trans-cultural dialogues. These would help all South Africans understand and appreciate the value of cultural diversity in our country.

It is recommended that a body like the Institute for Advanced Journalism should conduct regular workshops on the impact of s. 16 of the Bill of Rights and Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 on the prohibition of racism and the promotion of equality and human dignity.

Mindful of the fact that we were strongly urged not to propose any measures that would restrict press freedom, or encourage the government or parliament to legislate against the media, we believe, nonetheless, that SANEF should convene a study and/or conference on media freedom in South Africa or initiate a pilot project on effective monitoring and accountability of the media in South Africa within the context of the Constitution. We believe that such a study could consider whether the Independent Communications Authority’s (ICASA) Code of Conduct and monitoring mechanism would not be usefully applied to the print media as well. Alternatively, we are of the view that a regulatory framework that uniformly addresses all the media; that sets a framework and an independent regulatory authority solely under the control of and funded by the media: publishers, investors, editors/journalists, readers/civil society and other media workers, may be of benefit. In other words, what already exists should be strengthened and established by legislation.

It is recommended that there be ongoing public debate about the role and responsibility of the media in a democracy. Such a debate commenced during the course of the hearings, should continue. The media, training institutions and the South African Human Rights Commission should play a leading role in continuing the debate.

It is recommended that both formal and non-formal training institutions, as well as the media management, vigorously address the issue of the training and recruitment of black staff, especially sub editors. An aggressive recruitment and training campaign with clear time frames – matched by appropriate in-house training and mentoring is recommended. The media should strive to ensure greater representivity in the newsrooms through recruitment and training in accordance with the letter and spirit of the Employment Equity Act. The South African Human Rights Commission will monitor this by examining the equity plans of media industry.

It is recommended that the current attempts to establish the Media Diversity Agency be given greater impetus. The private sector should be encouraged to support such an initiative and if necessary, funding and support should be made available by both the government and the private sector to promote and encourage greater diversity in ownership. This is consistent with the Declaration of Windhoek which supports a pluralistic press⁹³ defining it as... “the end of monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community”.

It is recommended that the Media Diversity Agency and other agencies involved in attempts to diversify the media consider the issue of language diversity as part of the broader thrust of achieving a diverse media. In this regard the views of the Pan South African Language Board on the matter should be solicited. In addition, it is recommended that current media give consideration to the use of an alternate language in conjunction with the main language in order to broaden access. An example might be a column written in Zulu in the Daily News.

It is recommended that the current Codes of Conduct and various declarations that exist be reviewed in the light of these hearings and this report, to ensure that they are consistent and in line with the current constitutional requirements and that they properly reflect the role of the media in a democratic society. It is recommended that SANEF consider initiating such a process.

It is recommended that consideration be given to the establishment of cadet training programmes for aspirant journalists that would not only address issues such as professional standards and ethics but also to ensure that an understanding of the Constitution and human rights was integrated into the training received. The various media houses, professional bodies such as SANEF and other formal and non-formal training institutions could consider the further implementation of this recommendation.

- 12.91 The SAHRC reports were subjected to much criticism, mainly it would seem as regards their findings of racism in both media practice and content. Nothing further has however been availed to this Inquiry dealing with the suggestions or implications of further regulation of the media in South Africa on a statutory basis, or through involvement of government oversight.

The Press Freedom Commission

- 12.92 In 2012, the Press Freedom Commission (PFC), consisting of nine persons and chaired by the late Deputy Chief Justice, Pius Langa, reported on its review of press regulation in South Africa. The PFC had been established by Print Media SA (PMSA) and SANEF. The terms of reference of the PFC stated that its primary objective was to “ensure press freedom” with the secondary objective to research the regulation of print media locally and internationally. Expansive studies were conducted.
- 12.93 The PFC concluded that, “an independent co-regulatory mechanism, not including state participation” would best serve press freedom in South Africa. This would enhance the role, accountability and responsibility of the press in promoting the values of a free and democratic South Africa. To be effective, such mechanism must “manifest administrative fairness and institutional independence from the industry it is to regulate”, ensure optimal accessibility by removing the waiver requirements on complainants (that is, that they waived their right to pursue legal remedies via the courts) and remove the characterisation of the complaints procedure as arbitration.
- 12.94 The Commissioners recommended a system of co-regulation, independent of government, composed mostly of persons drawn from various sections of the public outside the press industry. This would be designed to ensure independence from the subjective inclinations and sentiments of the media profession and business. This mechanism was preferred to negotiate both expressed public dissatisfaction with the current system and rejection of government involvement in press regulation.
- 12.95 Independent co-regulation was defined in this context as:
- “a system of press regulation that involves public and press participation with a predominant public membership but without State or government participation. It is accountable to the public. For considerable sections of the public, a vexing issue of the current regulatory system is the perceived ineffectiveness of the sanctions applied against press infractions.”
- 12.96 The Commissioners recommended a revised regime of sanctions, based on a hierarchy of infractions and their corresponding sanctions. A critical and new dimension introduced by the PFC was the question of how the press should handle children and issues concerning children. The Commissioners provided an elaborate guide on protecting the dignity, rights, privacy, image and interests of children. The report therefore expanded and improved upon the provisions concerning children in the then current Press Code.
- 12.97 The Commission considered the issue of “media transformation” (structural and content) because significant sections of the society consider it important in the overall democratisation of the new democratic dispensation, and because ownership was viewed as having an influence on content. The PFC’s recommendations included consideration of content diversification; skills development and training; a media charter; and support for community newspapers.
- 12.98 To these ends, the PFC recommended significant changes in the governance of the PCSA; in its composition and appointment processes; in the Appeals Panel; and also, in the Complaints Procedure. The Commission also proposed strengthening the ethical standards contained in the Press Code.

- 12.99 Not only did the Press Council give careful consideration to, and indeed incorporate, the detailed recommendations of the PFC, but it also went further in increasing remedial sanctions upon non-compliant media. Such wholehearted engagement confirmed that the print and online media industry actively acknowledges that it is an organic part of society.
- 12.100 Indeed, the regular (almost annual) reconsideration and amendment of the Press Code is reflective of the fluid and responsive nature of the Press Council and this system of co-regulation.
- 12.101 In discussion of the PFC findings and recommendations, Julie Reid and Taryn Isaacs wrote a review which included the following:
- “In the light of the ANC’s insistent calls for a media appeals tribunal, it was an important and timely process. The eventual report compiled by the PFC, at first glance, suggested relatively sweeping changes to the system of press self-regulation in South Africa. The most significant recommendation lay in the PFC’s changing the system of self-regulation to what it called ‘independent co-regulation’: a system of accountability performed cooperatively by representatives from the press and the public, but independent of government (Reid 2012). At the time the PFC report drew some criticism from the media and observers, nervous to abandon a system of press self-regulation. The African Commission on Human and People’s Rights Declaration of Principles on Freedom of Expression in Africa states, ‘[e]ffective self-regulation is the best system for promoting high standards in the media.’ Additionally, a research report prepared by a team of researchers from UNISA for the PFC, pointed out that of the top 50 countries in the world which achieve the highest press freedom ratings, 35 of them, or 70%, have a self-regulatory mechanism for the press (Reid 2011a). The significance then, of moving away from a self-regulatory system, could not be over-stated.”

Journalism as a profession

- 12.102 Many of those with whom the Panel spoke advised that all journalists should sign up to a professional code of conduct and subscribe formally to basic standards of practice and excellence. But, of course, that might require that journalists are identifiable as a grouping with collegial allegiances, espousing an agreed or mandatory set of prescripts and precepts, and subject to guidance and governance.
- 12.103 Some practitioners call journalism a “craft”, a “discipline” or a “calling”. However, many others name it a profession, while outsiders are often somewhat surprised that it may so be considered.
- 12.104 Nomenclature is not important, save that it has been suggested that professional status could offer many advantages to media practitioners such as journalists, despite the obligations attached thereto. Among the benefits to both journalists and the public is the standing which they and their work might then enjoy. Members of any profession are known to subscribe to, and be compelled to comply with, a set of ethical and other standards, and it is from this, in part, that their ‘professional status’ arises.
- 12.105 Professional status is usually acquired after achieving both general educational qualifications

and practice-specific qualifications administered by the officers of that skills body. Plumbers complete an apprenticeship and pass National Training Certificate-level examinations; London taxi drivers are tested on “The Knowledge” (the ability to navigate to any destination without using a street-map), while lawyers, accountants, and medical practitioners must have university qualifications, serve subsequent apprenticeships and write practical examinations.

- 12.106 Continuing education is usually a requirement for certification by a professional body. Some crafts, trades or professions incorporate ethics components formally into the prescribed training, and many claim to place great value on standards of both skills and ethics.
- 12.107 But for these practitioners, there are professional bodies which exercise some control over members. These bodies are meant to ensure that certain basic standards of competence are met before membership of the profession is granted; to arrange and regulate continuing training so members keep up to date with relevant developments; and to secure ongoing knowledge of ethical and practical standards. Where there is non-compliance in any respect, then it is these bodies that are meant to investigate; hold enquiries; convene disciplinary hearings; make decisions about members’ standard of practice; and discipline those members who fall out of line and fail to meet professional standards.
- 12.108 An informant making a written submission to the Panel and referring to himself only as “Sipho”, recommended that “journalists must have a professional body which must register journalists as candidates and professionals [and the] body must be legislated for under some ministry or government department.”
- 12.109 Thetha Joel Nzima commented to the Panel that professional standards ought to be raised because professional conduct is “a safeguard of media freedom and media power”, but, he wrote, while the public usually welcomes a code of practice, “it often lacks teeth with which to bite, meaning that no punitive measures are explicitly state in the code.”
- 12.110 He is not alone in this assessment. As indicated in the summary of rulings by the former Press Ombud, individual journalists are subject only to their own consciences and the disciplinary practices of their employers. Further, the media industry has, as discussed earlier, often been willing to keep offending journalists in their employ.
- 12.111 One written submission to the Panel questioned whether or not journalism was a profession which should be regulated, pointing out that:
- “The work of engineers, architects, doctors and lawyers, amongst others, has a direct impact on the public, and may also involve matters of life and death. These professions are therefore highly regulated, either by the state or through professional organisations, in order to protect members of the public and ensure compliance with minimum standards, and adherence to codes of professional practice. Doctors and their patients are also protected by rules on doctor/patient confidentiality, and lawyers by those on attorney/client privilege.”

The writer went on to ask: “Why would it be any different for journalists?”

- 12.112 Generally, the argument has been made that journalists occupy a unique position of trust in relation to both the public and their sources, which warrants them special protections which would not otherwise be afforded to the professions of medicine, law, accountancy, engineering and so on.

- 12.113 SANEF as an organisation, and Clay and Ansell, have all commented on the increasing formality in qualification benchmarks set by the QCTO for becoming a journalist, as opposed to the more flexible structures that have grown organically around the study of the humanities in higher education. Clay and Ansell note that the new qualification is now required by QCTO regulations to include a formal, closed-book, national examination; previously, a portfolio of published work and a range of management reports on a newsroom journalism learner were considered adequate. At present, this examination covers matters such as constitutional protections and media law, knowledge of which is necessary for all journalists, and its ethical implications are, if anything, wholly positive. However, requiring journalists to pass an examination holds the implicit possibility of barring from journalistic activities any who have not taken it or who do not pass, and media freedom advocates are wary of this.

Adherence to professional codes

- 12.114 Some of the Panel's informants believe that if journalism were granted the status of a profession analogous to the engineering, medical, legal, pharmaceutical, teaching or accounting professions, this would ensure adherence to certain standards of practice and commitment to ethical codes.

- 12.115 There are, however, obvious limits to the effectiveness of any ethics code. Medical practitioners have been found to engage in medical aid malpractice, there have been scandals in auditing, and legal practitioners steal from their trust accounts. When discovered, all these professionals are disbarred from continuing to practise within their area of professional competence.

- 12.116 However, Clay and Ansell note that:

“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.”

There has been no such pressure in South Africa but the Panel was warned that the shift to QCTO control, and “thus to significantly more formal qualification procedures”, opens that door.

- 12.117 Any proposed tightening of qualification and professional admission criteria for journalists would demand careful scrutiny, and this is an issue which journalists might usefully discuss, explore, and debate.

- 12.118 One written submission commented that this Inquiry “does seem to be an intention to whitewash serious issues engulfing the journalism profession in the country.”

- 12.119 Nolwandle Ntokozo commented that:

“Journalists as professionals do not have a professional body that will hold all its members to account to an agreed code of conduct. This is a danger as it (allows) government

to regularly ...interfere in the profession. If there was a professional body to register through SAQA, like all others, maybe politicians would not suspect... nefarious political agendas on the side of the journalist.”

(It should be noted that all qualifications, and not just those pertaining to ‘professions’, including all university degrees and Seta/ QCTO journalism qualifications, are already registered with SAQA.)

12.120 SANEF has received numerous calls for journalists to be subjected to discipline and ‘rehabilitation’ in respect of ethical lapses. However, those calls are not accompanied by detailed proposals about which body would be appropriate or capable of performing such duties 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. This is not the view of SANEF.

12.121 While other professions (law, medicine, accountancy, and 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, SANEF believes that “journalism is unique” in not subjecting its practitioners to such strictures. SANEF claims:

“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 journalists.

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 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 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.”

12.122 SANEF told the Panel it does not perceive itself as capable (in terms of legal and HR-related resources) of disciplining members other than through the mechanism of expulsion which, in the view of SANEF, may well prove counterproductive, as persons outside of any regulatory bodies become entirely unaccountable. Further, the SANEF codes of conduct are essentially the Press Code and the BCCSA codes. SANEF would be anxious to avoid a duplication of roles when it comes to journalistic conduct.

- 12.123 SANEF requested that the Panel give consideration to these issues and suggested that SANEF could have an in-house ethics or public editor role comprising a panel of academics reporting to the Head of Diversity and Ethics subcommittee of SANEF, which would be responsible for “flagging problematic behaviour among members”.

The ANC and registration of journalists

- 12.124 The issue of the regulation of journalists is controversial by reason of concerns about political and other interventions in the free exchange of information and opinions, but it raises its head when there are public lapses in ethical practice.
- 12.125 The apologies by the *Sunday Times* apparently reignited calls for the establishment of a Media Appeals Tribunal (MAT).
- 12.126 The review of self- or co-regulation by print and other media, and the imposition of statutory regulation were always on the agenda of the colonial and apartheid regimes. But more recently, at its National Conference in 2007, the ANC called for an investigation into the need for a statutory regulator which it called a Media Appeals Tribunal (MAT) on the grounds that the current regulatory system was inadequate.
- 12.127 Libby Lloyd wrote in 2013 that:
- “Journalists did not protest vigorously at that point, apparently convinced that it would go no further. Some media freedom activists meanwhile also raised questions about the effects of concentration of the media on the ethics and standards of the press, while objecting to government intervention. The ANC in subsequent conferences has changed its resolution slightly, calling for investigations into a MAT and co-regulation, for example, and stipulating that any revised system should complement, rather than replace, existing systems and must reinforce the rights to freedom of expression.”

General comment from interested persons

- 12.128 While many informants shared views that there should be some procedure for expulsion of members of an organisation when those persons have “flouted guidelines”, there was general acceptance that membership of SANEF or any other collegial body could only be voluntary.
- 12.129 However, it was acknowledged to the Panel that the ‘outliers’ of the media industry – whether they be the Independent Group or *Nosweek* – do not meet the ethos of good media practice by failing to subscribe to the Press Council and subjecting themselves to a code that is created and administered by both their peers and the public whom they serve.
- 12.130 As Anton Harber put it, “The problem lies not in the Press Council but with those papers and their owners who will not subscribe.” Rob Rose was of the view that the withdrawal of media outlets from the Press Council “delegitimises the Press Ombud”, which he described

as thereby “neutered”. But others did not agree that this was the result of non-membership of the Press Council and felt that it indicated some sort of self-perceived outlaw status on the part of those who were incapable of committing publicly to a set of agreed codes of practice and agreeing to subject themselves to peer and public scrutiny and direction.

- 12.131 That some print media and many online media outlets simply operate in a “Wild West scenario” was, said Rob Rose, unacceptable since it meant that elements of society were simply issuing information (fact or fiction), opinion (substantiated or not) and communication (true or false), without accountability to accepted and applicable requirements of ethical practice or values in content.
- 12.132 A number of informants were in agreement with Chris Vick’s written submission that the regulatory framework was not always effective in policing or punishing ethical lapses in journalism. This, Vick believed, “is not the function of SANEF, but media owners are almost toothless in this regard”. For Vick, the absence of a professional organisation representing all journalists facilitated this impotence. He wrote:
- “Granted, individual titles have their own codes of ethics and both print and electronic media have codes – such as the Press Code. But adherence to them is essentially voluntary and there are no repercussions – beyond the embarrassment of an apology – for transgressions of the Press Code.”
- 12.133 Vick further suggested that: “a new system may be required, which is not voluntary and has the power to impose punishment for ethical breaches. This could include reparations for people whose lives are affected by incorrect reporting, or by undisclosed conflicts of interest.” He pointed out that print and online media do not have an entity like the BCCSA, which provides for accountability and financial punishment (fines) when the code is violated and, in his view, “is much more effective.”
- 12.134 No one with whom the Panel engaged welcomed any state or legislative interference in press and online media, nor did anyone suggest that the work of the NAB, the BCCSA, the CCC or the Press Council was ineffective. But there was a belief that the primacy of the Press Council and the Ombud should be reasserted over print and online publishers who were not members.
- 12.135 The suggestion was made that those media outlets that belong to the Press Council and make a financial and principled commitment to that structure, should make it a competitive strength that they so do. Rob Rose suggested that such membership be used as a “stamp of legitimacy”, indicating that some print and online media have made a commitment to the Code and are accountable.
- 12.136 There was a general view that the Press Council, the Public Advocate, and the Ombud need more capacity, more funding, and more staff. In the interests of credibility and efficacy, issues needed to be resolved very quickly, while they are in the public eye.
- 12.137 There were many positive compliments about the work of the Press Council and the personnel in its office. Even unsuccessful parties appearing before the Appeals Adjudication Panel, such as Rob Rose, were impressed by the manner in which their matters had been handled and the rulings resulting therefrom.
- 12.138 However it was also stressed that they appeared overloaded and needed more capacity for

compiling statistics and noting trends; their capacity for performing Public Advocate and Ombud functions should be built up, particularly in the context, previously noted in this Report, of growing numbers of approaches from the public. The Panel did not engage with the current personnel of the Press Council regarding the need for more staff, resources and capacity.

12.139 The *Wits State of the Newsroom 2018* report observed that:

“It is good that we have the Press Council to facilitate the complaints and to help maintain standards in the industry – and the number of complaints received suggests the robustness of self-regulation. But it is clear that newsrooms themselves also need to play a part in maintaining standards with as much energy as they show in chasing the next sensational headline.”

12.140 There was some criticism of both the BCCSA and the Press Council procedures in that “poor South Africans” did not have recourse and that the system was mainly used “by people in positions of substantial privilege”.

SANEF view on the current state of the codes and implementation

12.141 The submission of SANEF to the Panel engaged in some detail with the current regulatory systems in respect of broadcasting, print and online media. These proposals are not referred to in any specific order.

12.142 It should be noted that the Panel neither engages with, nor advocates for or against any of these proposals. SANEF has, itself, made the valid point that there is currently a system of co-regulation requiring all media partners – and the public – to consider, discuss, debate and ultimately decide on these proposals. This Inquiry has not convened any such process and has not heard the views of all other participants in the regulatory process.

12.143 Dealing with Clickbait. SANEF recommends that Clause 10 of Chapter 1 of the Code of Ethics and Conduct for South African Print and Online Media (the Code) should be amended to refer specifically to online media practice of creating ‘clickbait’ headlines and to make it clear that the prohibition against misleading headlines in clause 10.1 of the Code prohibits the use of online clickbait.

12.144 Resources for fact-checking, verification and editorial functions. Since a subscriber member of the Press Council must comply with the Print and Online Code, SANEF is concerned that, too often, the burden of compliance falls upon the journalist and/or editor responsible, where such journalist and/or editor simply has no resources for fact- and background checking, or a sub-editor available. SANEF takes the view that in such circumstances, it is the media house which undermines the Code by making it difficult for their journalists and editors to comply therewith. Accordingly, SANEF would recommend amendment to the Code: specifically, to require media houses to provide reasonable editorial staff, precisely to ensure that journalists and editors have the necessary verification, fact- and background checking and sub-editing resources necessary to provide the most accurate information possible to the public. In addition, SANEF would welcome media houses investigating partnerships with fact-checking organisations such as Africa Check.

- 12.145 Encouraging the use of the formal complaints mechanisms to promote media credibility: SANEF comments that, save in specific circumstances, both the Press Council and the BCCSA are complaints-driven bodies which cannot generally exercise an independent watchdog role without a complaint first having been lodged. The result, suggests SANEF, is that political parties, media houses, journalists, commentators and members of the public criticise the media for alleged misconduct without testing these criticisms in the enforcement structures and procedures of either the BCCSA or the Press Council. This, argues SANEF, amounts “to an unjustifiable diminution of media credibility in the eyes of the broader public. This has serious consequences for the media’s ability to carry out its watchdog role in ensuring an informed citizenry and, ultimately, undermines a key pillar of democracy itself.” The solution offered by SANEF is that any criticism not pursued via a formal complaint to the relevant enforcement body, or a court, should be presumed to be without foundation.
- 12.146 Encouraging all print and online media to belong to a co-regulatory body with a Code of Conduct: Broadcasters that are not incorporated within and thereby regulated by the BCCSA are subject to statutory regulation by the ICC of ICASA. However, there is no such default position in respect of print and online publications that are not members of the Press Council. SANEF takes the view that an in-house ombud is no substitute, since it lacks any appearance of impartiality. SANEF suggests that failure to belong to a co-regulatory body such as the Press Council should lead to the presumption that a media house lacks a legitimate complaints and enforcement mechanism.
- 12.147 Encouraging the Press Council to exercise its mandate proactively to investigate breaches of the Code: Unlike the BCCSA, the Press Council is empowered by its Constitution to proactively investigate breaches of the Code. Section 1.9 of the Complaints Procedure empowers the Public Advocate to file a complaint with the Ombud, where the Public Advocate is of the view that there has been a prima facie contravention of the Press Code and it is in the public interest so to do. SANEF recommends that the Public Advocate should be encouraged to so exercise his or her powers.
- 12.148 Encouraging industry co-regulatory bodies to improve the accessibility of complaints mechanisms: SANEF is concerned that the main co-regulatory Media Codes of Conduct (for the print and online media, enforced by the Press Council, and the Codes of Conduct for free-to-air and subscription broadcasters, enforced by the BCCSA), as well as the procedures documents, are available only in English, as are the rulings of these bodies. SANEF recommends that codes and annual reports be published in all official languages and adjudications and rulings be translated where a request is made. Contact details of the Press Council and the BCCSA should be published on the front pages of print media and on the home pages of websites. Accessibility in more than one language would foreground the need for the media to be responsive to the concerns of non-English speakers or readers.

Collaboration between regulatory bodies:

- 12.149 Encouraging industry co-regulatory bodies to consider a converged code of ethics and conduct applicable across different media platforms: SANEF notes the likelihood of overlapping code provisions as the Press Council covers the newsfeeds, audio-visual material, Twitter feeds, Facebook accounts and YouTube channels availed by broadcasters. This may lead to public confusion over the relevant oversight body – the Press Council or the BCCSA – which may discourage laying complaints and obtaining redress and thereby undermine the public credibility of the media. SANEF suggests that all media regulators meet to discuss their respective jurisdictions and codes and give consideration to a single cross-platform,

converged code, even if parts thereof are adjudicated by different co-regulatory enforcement bodies. The aim would be to provide a well-publicised code and a single portal for the public to lodge complaints regarding the media, even if broadcasting-related complaints continue to be adjudicated by the BCCSA. SANEF believes there are potential benefits to developing a single co-regulatory code dealing with all content platforms – print, online and broadcast – which would be applicable to the members of the NAB, the Press Council, and IABSA. SANEF is 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, including news-related ethical practices. SANEF notes that Namibia has adopted a single code for print, online and broadcast media members of the Namibian Editors' Forum.

- 12.150 SANEF submitted to the Panel that it would like all media and regulatory bodies, including many of those listed above, to develop a single portal or process to facilitate the public making complaints, which could then be directed to the most appropriate adjudicatory body: the Press Council, BCCSA, ICASA's CCC, or the ARB. SANEF believes it could be useful to explore a single 'clearing house' with shared addresses for email, sms, WhatsApp, a toll-free number and website portal. Then, members of the public could lodge their complaints at one address which would be easier to remember and to publicise.
- 12.151 Encourage co-regulatory bodies to issue annual reports on trends with regard to media ethics and conduct violations. SANEF suggests that all regulatory bodies summarise the trends distilled from their own jurisprudence to inform both the media and the public about lapses in ethics and conduct.
- 12.152 SANEF has asked the Inquiry to make recommendations with regard to these proposals, all of which require full consideration by the relevant role-players. The Panel has declined to comment on the SANEF proposals for the reasons explained above, but this does not suggest that the Panel doubts discussion within the media industry and with the BCCSA and Press Council on all these issues would be of value.

CONCLUSION: WHITHER REGULATION AND REGISTRATION?

What the studies and reports suggest

- 12.153 Through establishment and maintenance of the current system of regulation, the media industry has actively responded to demands placed on the media to assist in the South African democratic constitutional project. It is the media industry which has developed, financed, and continuously improved upon the system of regulation. Responsiveness to and compliance with the regulatory regime is evidenced in the statistics and reports which emanate from all regulatory bodies.
- 12.154 The PFC chaired by Justice Langa identified two main concerns with the current self- or co-regulatory mechanisms which remain somewhat contentious.
- 12.155 Firstly, broadcasting does have a statutorily compulsory regulatory mechanism under the

aegis of ICASA, administered through the CCC, whereas print and online media only have the voluntary Press Council. A print or online publication or news organisation cannot be forced into membership with a self- or co-regulatory body. This Report has identified the Independent Group and Noseweek as isolationist in this regard, while there are others in print media and many functioning online. The result is that they do not subscribe to any recognised code emanating from, and created by, both their peers in the media and the public who consume media. They do not partake in, and thus gain from, ongoing discussion and debate about media standards and ethical practice. Not only do these media outlets forfeit the benefits of membership, but their consumers – the public – are deprived of the quality assurance which comes with membership, and of the avenues for recourse where a media outlet fails to provide such quality.

- 12.156 Secondly, the voluntary nature of use by the public of the BCCSA or the CCC or the Press Council leads to a situation where complaints can and are made, often through social media, without employing the remedial structures availed. Such complaints, not subject to investigation and adjudication, can result in wild and untested allegations being made about the media to its discredit and this obviously reduces the overall trust of the public in the media. The only remedy for a journalist or title may be to approach the courts for relief, seeking an interdict or pursuing a defamation action. These are costly and lengthy processes that do not solve issues of credibility and trust.

Panel conclusions on the issue

- 12.157 The Panel has learnt in the course of this Inquiry that the current system of self- or co-regulation of the print and online media and by the broadcasting industry appears to be working well and to the benefit of the South African democracy.
- 12.158 The *Sunday Times* apologies were inconclusive in that they avoided full exploration of the issues and left more questions hanging than answered. That the *Sunday Times* did not require the complainants – Gordhan, van Loggerenberg, Lackay, Richer, Booysen and others – to pursue their complaints through the Press Council, the Public Advocate, the Ombud and the Appeals Tribunal, is, Judge Satchwell believes, to the credit of the *Sunday Times* editor and his team. Time, money, energy and agony were thereby avoided.
- 12.159 That the Press Council systems were not utilised at the final stages of the *Sunday Times* debacle does not mean that the voluntary system of self- and co- regulation of the media is not working. On the contrary, the evidence in this particular instance indicates the authority and impact of the Press Council system and of the office of the Press Ombud. The Panel was told by the *Sunday Times* legal editor – and this was confirmed by the editor himself – that it was the ruling by the Press Ombud which brought the *Sunday Times* to accept that it needed to take steps and deal with the situation. The Press Ombud obviously carries enormous weight and authority within the media industry for that ruling to have had the impact it did.
- 12.160 The work of the Press Council, the Public Advocate and the Ombud has been carefully examined by this Inquiry in the course of the research and analysis commissioned by the Panel. The multiplicity and variety of approaches made by members of the public all point to knowledge of, and trust in, the process. That the media industry responds to these complaints, engages with the process, and observes the rulings of the Press Ombud, is indicative of the good faith of the media industry itself.
- 12.161 The current system is not cast in stone but is responsive to changing needs and developments.

The PFC, chaired by Justice Langa, did not operate and disappear into a vacuum. The Press Council amended the Code as suggested, and indeed the Code is regularly amended and improved to reflect media trends as well as socio-economic-political concerns. A system which is subject to self-examination, discussion and debate in this manner and then acts thereupon, exhibits the flexibility needed in the rapidly changing world of media. That the Press Council represents the views of both the public and the media means that all stakeholders regularly and actively participate and direct this responsive and transforming process.

- 12.162 The system is not perfect in many respects, but then no system is. That attorneys and medical practitioners and accountants and engineers are registered and required to belong to professional councils has not prevented theft of monies from trust funds; false claims submitted to medical aid schemes; auditing irregularities, and short-cuts in the design of bridges. But there is compliance by the media industry to the demands of the Press Council and rulings by the Press Ombud. The system has integrity and is obeyed.
- 12.163 It is not possible to identify and register every person who purports to be a journalist. Those who blog as private individuals, or prepare online video content as such, or Tweet, or write opinion pieces for a newsletter, or produce 'fake news' often cannot be identified, let alone made subject to registration; this may also be the case with their media outlets. This cohort may well include, in addition to many publishing recklessly or maliciously, many others such as grassroots community journalists who provide unique, irreplaceable reports on, for example, environmental concerns in their areas. A system involving regulation other than that currently operating would be no more successful in capturing and controlling those who wish to exist as outlaws somewhere in the ether, but might well stifle these others.
- 12.164 The Panel has learnt from the many exchanges during this Inquiry that the free exchange of information embraces challenging abuse by the powerful; reflecting views upwards, sideways and downwards; encouraging more, not less news; more, not fewer media outlets; more, not fewer people investigating and probing, and more, not fewer people writing, talking, revealing and thinking. The more the better – and then the better will outweigh the bad.
- 12.165 What is needed is not more control by the state, or anyone else of the media but more media and more consumers. For this, there needs to be a media-literate audience, whose needs are catered for in their own languages, in a medium that is accessible and affordable and where a multiplicity of views is tendered so that viewers, listeners and readers can make up their own minds on a variety of issues relevant to their lives.

APPENDICES

APPENDIX A: DOCUMENTS CONSULTED IN THE COMPILATION OF THIS REPORT

(Note: this list does not detail the multiple additional citations contained in the research memoranda compiled for the Panel as noted below, which are available on the SANEF website <https://sanef.org.za/>)

MEMORANDA AND REPORTS PREPARED FOR THE PANEL

The Panel expresses its gratitude to the following persons who undertook the arduous preparation of researched reports and memoranda on various aspects of the Inquiry: Dimitri Martinis; Jayshree Pather; Chelsea Ramsden; Reg Rumney; Martine van der Walt; and Beata Wierzbicka.

LEGISLATION, GOVERNMENT AND COURT DOCUMENTS

The Constitution of the Republic of South Africa and the Bill of Rights

The Electronic Communications Act 36 of 2005

The Broadcasting Act 4 of 1999¹⁴

The MDDA Act 14 of 2002

and various related judicial rulings and opinions thereon

NEWSPAPERS

Sunday Times articles concerning the ‘illegal renditions’, ‘Cato Manor’ and ‘SARS Rogue Unit’ and the ensuing retractions, apologies and rights to reply afforded, as well as contemporaneous coverage of these and related matters in a range of other South African publications: material collated by Alan Finlay, to whom the Panel expresses its gratitude.

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APPENDIX B: LIST OF PERSONS WITH WHOM THE PANEL HAS ENGAGED

(Note: This list includes all those persons and organisations that approached or were approached by the Inquiry, sent submissions, exchanged correspondence or held meetings, including those who were approached but did not respond. Thus, the presence of a name on this list does not, in itself, signify that the person concerned actually met the Panel or made a submission, unless they have been named in preceding chapters. A number of submissions were made under noms de plume, or provided no information about the informant's role beyond a name. These are indicated by 'NFI' [no further information].)

1. Zackie Achmat – Activist, film director and co-founder Treatment Action Campaign
2. Africa Check – Non-profit fact checking organisation
3. Cathi Albertyn – Professor of Law, SA Research Chair in Equality, Law and Social Justice in the University of the Witwatersrand School of Law
4. amaBhungane – Centre for investigative journalism
5. Jon Abbott - Retired investigative journalist
6. Kolbe Anema – Businessman and communication specialist
7. Gwen Ansell – Journalist; writing coach; editor; consultant and researcher
8. Arthur – NFI
9. Tumi Atchar – NFI
10. Adriaan Basson – Investigative journalist; Editor-in-Chief News24
11. Terry Bell – Labour writer, journalist & researcher
12. Nick Bester – NFI
13. Tim Bester – Writer and consultant
14. William Bird – Director, Media Monitoring Africa
15. Egbert Boesak – Journalist, eNCA
16. Gawie Botma – Journalism Department, University of Stellenbosch
17. Branko Brkic – Editor, Daily Maverick; Founder, Free African Media
18. Victoria Bronstein – Associate Professor, Constitutional Law, University of the Witwatersrand
19. Karima Brown – TV Presenter, journalist and editor
20. Stefaans Brummer – Investigative journalist and co-founder of amaBhungane

21. Nadia Bulbulia – Executive Director, National Association of Broadcasters (NAB)
22. S. Buthelezi – Business Leadership South Africa
23. Chaict - University of Free State – NFI
24. Khutsiso Chuene – Editor at MMC and KasiTalk
25. George Claassen – Former head, Journalism Department, University of Stellenbosch; Ombudsman, News24
26. John Clarke – Journalist, Daily Maverick
27. Paddi Clay – Journalist, media trainer and former head of training Johnnic/TML/Avusa
28. Johnny Copelyn - Chief Executive HCI (Hosken Consolidated Investment)
29. Michael Currin – Chief Director GCIS: Provincial and Local Liaison
30. Paul Diamond – eNCA
31. Jane Duncan – Professor of Journalism, University of Johannesburg
32. Harry Dugmore – Senior Lecturer in Communication, Rhodes University
33. James Evans – Former Athletics South Africa (ASA) president
34. Judy Favish – Palestine Solidarity Campaign
35. Ryland Fisher – Editor and senior journalist,
36. Daniel Friedman – Writer, editor and performer
37. Roger Friedman – Journalist, Oryx Multimedia
38. EOP Miled Clerk – NFI
39. Kgosi Gaonnwe – NFI
40. Anthea Garman – Professor of Journalism, Rhodes University
41. Nathan Geffen – Founder, GroundUp; writer
42. Arthur Goldstuck – Technology journalist; founder, World Wide Worx
43. Benny Gool – Anti-apartheid activist and photographer
44. Renaldo Gouws – Democratic Alliance councillor
45. Pippa Green – Former head, Journalism Department, University of Pretoria; writer; researcher; current Press Ombud
46. GroundUp Media SA – Grassroots news organisation
47. S'du Gumede – Former Ombudsman, City of Johannesburg
48. Ferial Haffajee – Associate Editor, Daily Maverick
49. Ray Hartley – Writer, former editor, Sunday Times, editor Rand Daily Mail

50. Dianne Hawker – Special Projects Editor, Newzroom Afrika
51. Janet Heard – Managing Editor, Daily Maverick
52. Ed Herbst – Author and freelance journalist
53. Mpho Hleza – eNCA
54. Stephan Hofstatter – Journalist, formerly investigative journalist, Business Day/Financial Mail
55. Paul Hoffman – Founder, Accountability Now
56. Leanne Hunt – Journalist and writer
57. Murray Hunter – Investigative journalist, amaBhungane; Media and Democracy Project; founder Right2Know campaign
58. Taryn Isaacs de Vega – Journalism lecturer, Rhodes University
59. Graeme Joffe - Former CNN International sports anchor; investigative sports journalist
60. Raymond Joseph – Journalist, journalism trainer and media consultant
61. Pearlie Joubert – Former Sunday Times journalist
62. Katy Katopodis – SANEF management committee member; News Director Newzroom Afrika
63. Cobus Kellerman – South African Chartered Financial Analyst (CFA)
64. Franz Kruger – Head of School of Journalism, University of the Witwatersrand
65. Adrian Lackay – Former SARS spokesperson
66. Steven Lang – Editor, Grocott's Mail
67. Monica Laganparsad – SANEF Council member; News Editor, New Frame
68. Joe Latakomo – Press Council
69. Sade Lekona – Business Leadership SA
70. George Lektorotsoana – NFI
71. Francois Lion-Cachet – Constitutional Court Trust
72. Justine Limpitlaw – SANEF; Visiting Adjunct Professor (Law) University of the Witwatersrand
73. Suzette Lotter – BCCSA
74. Ntokozo Lwandle – Researcher, University of the Western Cape
75. Collen Mabena – NFI
76. Sue MacLennan – Editor, Grocott's Mail
77. Alex Magagula – NFI

78. Jeremy Maggs – eNCA
79. Paresh Maharaj – NFI
80. Mapi Mahlangu – Media strategist; former eNCA Editor-in-chief
81. Wisper Maimele – Educator
82. Barbara Magagele – Journalist, GroundUp
83. Pumeza Magona – Department Mineral Resources
84. Lebogang Makhubedu – Webber Wentzel
85. Noko Makgato – Africa Check
86. Moipone Malefane – Journalist, SANEF Secretary General
87. Siza Mawanganye – Business Unity South Africa
88. Shouneez Martin – BCCSA
89. Dimitri Martinis – Development sociologist specialising in media, research and ICT
90. Mashishing Civic Coalition
91. Thabisile Mbete – Station manager, producer, 702 Talk Radio
92. Mmeli Mdluli – Former EFF MP
93. Channon Merricks – MD, Vila Kasi Holdings: owns DSTV channel Vila Kasi
94. Muhammed Mia – NFI
95. Izak Minnaar – SANEF Council Member, former Editor: Digital News, SABC
96. Sam Mkokeli – Journalist; former SANEF Media Freedom Committee chair
97. Latiefa Mobara – Executive Director, SA Press Council
98. Chris Moerdyk – Media commentator
99. Subeshni Moodley – Senior Lecturer, Media & Communication, Nelson Mandela University
100. Barney Mthombothi – Sunday Times columnist; former editor, Financial Mail
101. Ranjeni Munusamy - former Associate Editor, Arena Holdings; columnist, Sunday Times
102. Norman Munzhulele – eNCA
103. Vuyo Mvoko – Political Editor, eNCA
104. Neeran Naidoo – CEO and partner, Hewers: crisis communication and reputation risk management consultancy
105. Gideon Nkhundu – NFI
106. Thetha Joel Nzima – MD, Thetha Productions & Technology
107. Paul O’Sullivan – Founder, Forensics for Justice

108. Oscar Oliphant – NFI
109. Phylcia Oppelt – Former Sunday Times News Editor
110. Max Ozinsky – Former ANC MPL, Western Cape Provincial Legislature
111. Simon Pamphilon – Lecturer, Communication Design and Media Law & Ethics, Rhodes University
112. Ravi Pillay – NFI
113. Verashni Pillay – Former editor-in-chief, Huffington Post SA, Mail & Guardian; digital editor Power-FM; founder, Explain.co.za
114. Mark Povey – Property developer, Imperium Developments
115. Max Price – Former Vice-chancellor/Principal, UCT
116. Karabo Rajuli – Journalist, amaBhungane
117. Moselagae Ramoseu – NFI
118. Johannes Rammala – Director, Communication and Information Studies, University of Limpopo
119. Chelsea Ramsden – Legal scholar
120. Jovial Rantao – Chairperson, The Africa Editors’ Forum (TAEF)
121. Malcolm Rees – Freelance writer; former Sunday Times journalist
122. Julie Reid – Associate Professor, Media Policy and Diversity Unit, University of South Africa
123. Laurentia Richer – Former journalist
124. Peter Richer – Former SARS executive
125. Heather Robertson – Editor, Daily Maverick 168
126. Mike Robertson – Former Sunday Times Editor; former Managing Director of Johncom/Avusa/TML publications 2002-2015
127. Chris Roper – chief engagement strategist and deputy CEO, Code for Africa
128. Rob Rose, Editor-in-Chief, Financial Mail
129. Rehana Rossouw – Writer, media trainer and consultant, former senior editor
130. Reg Rumney – SANEF Council member; former director, SA Reserve Bank Centre for Economics Journalism, Rhodes University
131. Megan Russi – eNCA
132. Darren Sampson - The Attorney; former employee, Department of Justice
133. Abiodun Salawu – Professor of Journalism, Communication and Media Studies; Director of Indigenous Language Media in Africa (ILMA), North West University
134. Iqbal Sharma – Former chairperson, Transnet Board tender committee

135. Ololade Shyllon – Human rights lawyer and independent public policy/human rights/technology and innovation consultant
136. Bongani Siqoko – Editor-in-Chief, Sunday Times
137. “Sipho” – NFI
138. Lebogang Seale – Writer; communications strategist
139. Mpho Seero – NFI
140. Patricia Sigman – NFI
141. Lindile Sithebe – NFI
142. Kate Skinner – Executive Director, SANEF
143. Mandi Smalhorne – Fin24 journalist
144. Sam Sole – Founder member, amaBhungane
145. SOS Coalition – Public broadcasters’ campaign for democratic media
146. Coleen Stein – NFI
147. Pat Stevens – Author
148. Mike Stainbank – Writer; founder, The Apartheid Museum*
149. Reena Sukdev - NFI
150. Iqbal Survé – Executive Chairman, the Sekunjalo Group (owner, Independent Newspapers Group)
151. Leetho Thale – Writer and columnist.
152. Karen Thorne – Founder and Station Manager, Cape TV
153. Sipho Tshego – NFI
154. Mathatha Tsedu – Adjunct Professor, Wits University; former Acting Executive Director of SANEF
155. Colm Tonge – MD, independent forensic accounting and litigation support company
156. Thabo Tsolo – NFI
157. Delarey van der Waldt – Director, School of Communication at North West University Potchefstroom Campus
158. Kobus van Niekerk – NFI
159. Johann van Loggerenberg – Former SARS executive
160. Kobus van Rooyen SC – Complaints and Compliance Affairs; ICASA Chairperson
161. Chris Vick – Writer, media strategist, self-described ‘spin-doctor’
162. Henning Viljoen – Professor; Chairperson, BCCSA

- 163. Louis Vos – NFI
- 164. Sylvia Vollenhoven – Writer; journalist; playwright; film-maker
- 165. Herman Wasserman – Professor of Media Studies and Director of the Centre for Film and Media Studies at UCT
- 166. Beata Wierzbicka – Judge’s Clerk, High Court of South Africa
- 167. Phumla Williams – Director-General, Government Communication and Information Service
- 168. Andeline Williams-Pretorius – Freelance journalist; columnist; relationship coach
- 169. Songezo Zibi – Former Business Day editor: Head of Communications, Absa