

**CONSTITUTION
OF THE
EDITORS' FORUM OF NAMIBIA**

1. PREAMBLE

- 1.1 Namibia's print, broadcasting and online media have formed an association to be known as the Editors' Forum of Namibia ("EFN") and this association and the members thereof commit themselves to a programme of action to defend and promote media freedom, pluralism, independence and self-regulation.
- 1.2 The EFN is an affiliate of the Southern African Editors' Forum (SAEF).
- 1.3 The EFN is founded on the belief and understanding that:
- 1.3.1 Public and media scrutiny of the exercise of political and economic power is essential for the promotion of the values of democracy, development and human rights.
- 1.3.2 Namibian laws relating to the operation of media should be consistent with the Constitution of the Republic of Namibia, the relevant provisions of the Universal Declaration of Human Rights, the media principles contained in the Declaration of Windhoek (1991) and all other regional and international instruments, in their protection of freedom of expression and media freedom.
- 1.3.3 Media practitioners and media owners have a duty to work to the highest professional standards and ethics.
- 1.3.4 The media have a duty to embrace a learning culture through a commitment to ongoing education and training.
- 1.3.5 Self-regulation is the best system for promoting high standards within the media.

2. ESTABLISHMENT

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

3. LEGAL PERSONALITY AND STATUS

- 3.1 EFN shall be a juristic person with perpetual succession notwithstanding changes in the composition of its membership or office bearers and capable of

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

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

4. THE OBJECTIVES OF THE EFN

- 4.1 The principal objectives of EFN shall be:

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

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

4.1.2.1 any trading or other profit making activities;

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

- 4.2 The ancillary objectives of the EFN shall be to:

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

4.2.2 require members to adhere to the Code of Ethics and Conduct as set out in Schedule I ("the Code") to this Constitution and to enforce the Code in accordance with the Rules of Procedure of the EFN set out in Schedule 2 to this Constitution;

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

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

- 4.2.5 address and redress imbalances prevalent in media organisations in Namibia, including those based on race, colour, sex, gender, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status and to encourage the equitable spread of media ownership;
 - 4.2.6 promote media diversity in the interests of fostering maximum expression of opinion;
 - 4.2.7 help aspiring and practising journalists to acquire or develop new skills and professional depths through media education programmes;
 - 4.2.8 promote and uphold principles, rules and regulations guaranteeing professional freedom and independence in the print, broadcast and online media, including all media that is publicly funded;
 - 4.2.9 encourage government to ensure transparency and openness in administration and to demand and promote laws ensuring maximum freedom of information and whistleblower protection;
 - 4.2.10 encourage three tiers of broadcast media, namely, public, community and commercial broadcasters to ensure diversity of ownership;
 - 4.2.11 defend media freedom and related rights through all possible means, utilising every available medium and other institution.
- 4.3 EFN shall endeavour to apply for exemption of payment of income tax and to remove any taxes that could impinge on the right to receive and impart information as provided for in the Namibian Constitution.

5. POWERS OF THE EFN

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

- 5.1 encourage programmes for corrective action and a transformation of culture within news organisations to promote the growth of independent, professional media;
- 5.2 compile and circulate regular progress reports and establish a database of such programmes and of print, broadcast and online media outlets;
- 5.3 investigate and recommend industry guidelines and targets, based on research and international best practice;
- 5.4 conduct media education and training programmes;
- 5.5 make education and training integral to corrective action;

- 5.6 encourage liaison between industry and teaching institutions and promote industry commitment to these institutions;
- 5.7 research and report on media education and training needs and teaching activities in the region in regard to quality and relevance of trainers, materials, infrastructure and students;
- 5.8 monitor the process of accreditation of journalists and journalism programmes in line with the constitutional principles of the Republic of Namibia and work with other public and/or private institutions set up for this purpose;
- 5.9 hold conferences, meetings and seminars as the need may arise on issues relating to the objectives set out in Clause 4 above;
- 5.10 publish media of various kinds in the furtherance of the objectives;
- 5.11 engage in research into various issues affecting the print, broadcasting and online media, in partnership with organisations with similar objectives and interests;
- 5.12 monitor legislative, regulatory, policy development and judicial activities, and, where necessary, to take steps to intervene or to attempt to bring about changes therein;
- 5.13 litigate in its own name or to provide practical assistance in litigation involving other parties;
- 5.14 co-operate with national, regional and international organisations with similar objectives to those of the EFN;
- 5.15 to draft a Code of Ethics and Conduct for print, broadcast and online members of the EFN;
- 5.16 establish, operate and enforce, a self-regulatory scheme in respect of the above-mentioned Code of Ethics and Conduct to which all print, broadcast and online members of the EFN adhere; and
- 5.17 do all things incidental to the above-mentioned powers that are desirable and necessary in order to achieve the objectives of EFN.

6. MEMBERSHIP

6.1 ACQUISITION OF MEMBERSHIP

- 6.1.1 Membership of EFN shall be open to:

- 6.1.1.1 all registered print media;
- 6.1.1.2 all licensed public broadcasting services, whether television or radio;
- 6.1.1.3 all licensed commercial broadcasting services, whether television or radio;
- 6.1.1.4 all licensed community broadcasting services, whether television or radio;
- 6.1.1.5 all online media operations;
- 6.1.2 Membership shall be conferred by the Executive Committee of the EFN in accordance with criteria established for the different categories of membership set out above, and only after recommendation by the EFN sub-Committee on Membership, Discipline and Corrective action, provided that any prospective member shall be proposed and seconded by a fully paid up member of the EFN;
- 6.1.3 Membership shall be voluntary.
- 6.1.4 The members will pay annual membership fees applicable to the categories of membership set out above. The amount to be paid will be determined by the Executive Committee of EFN from time to time.
- 6.1.5 The liability of any member for the obligations of EFN shall be limited to the amount of any subscription that may be due and owing at the time that the obligation of the EFN arose, and the members shall not become liable for any of the obligations or liabilities of the EFN solely by virtue of their status as members of the organisation.

6.2 SUSPENSION AND TERMINATION OF MEMBERSHIP

- 6.2.1 The EFN sub-Committee on Membership, Discipline and Corrective action may suspend any member pending an investigation into an alleged breach of the aims and objectives of the EFN.
- 6.2.2 A suspended member shall have the right of a fair hearing within a reasonable time before further action is instituted.
- 6.2.3 The EFN sub-Committee on Membership, Discipline and Corrective action may expel any member after an impartial investigation has found, on a balance of probabilities, that the member has breached the aims and objectives of the EFN.
- 6.2.4 Any such expelled party shall have the right to appeal the decision. Such appeal shall be decided by a majority of the members of the Executive Committee of the EFN and the outcome shall be final.

- 6.2.5 If any member fails to pay the appropriate subscription for a period of six months after it has fallen due, his or her membership shall automatically lapse without prejudice to the members' right to apply for re-admission on payment of the subscription fee.
- 6.3 Any member may resign at any time in writing.
- 6.4 The EFN must notify the Communications Regulatory Authority of Namibia of any changes with regard to its public, community or commercial broadcasting members.

7. STRUCTURES

7.1 ANNUAL GENERAL MEETING

- 7.1.1 The supreme policy-making authority of EFN shall be the Annual General Meeting that shall consist of all paid-up members.
- 7.1.2 The EFN shall hold an annual general meeting of all its members at least once in every year at a place that shall be determined by the Executive.
- 7.1.3 All members shall be given at least three weeks' notice of every annual general meeting.
- 7.1.4 The business of the annual general meeting shall be as follows:
- 7.1.4.1 to receive annual reports from the Executive;
 - 7.1.4.2 to approve and adopt the financial statements;
 - 7.1.4.3 to appoint auditors;
 - 7.1.4.4 bi-annually, to elect members to the Executive; and
 - 7.1.4.5 to transact any other relevant business.
- 7.1.5 The Chairperson of the Executive may summon an extra-ordinary general meeting if such meeting is requested by not less than 20% of the members of EFN; provided that members of EFN shall be furnished with not less than three weeks' notice in writing of the meeting, and the business to be dealt with thereat.
- 7.1.6 The quorum for an Annual General Meeting or extra-ordinary general meeting shall be 50% of the total number of paid-up members in each membership category set out above. However, for an Annual General Meeting or extra-ordinary general meeting that does not take place due to a lack of quorum and is reconvened with the due notice requirements set out above, the quorum is met if more than one member is present at the reconvened an Annual General Meeting or extra-ordinary general meeting.

- 7.1.7 Members shall endeavour to reach decisions by consensus but if this is not possible decisions shall be taken to the vote.
- 7.1.8 Voting shall take place by show of hands, unless 20% of the members present who are entitled to vote request a secret ballot in which case the Chairperson shall order a poll by secret ballot.
- 7.1.9 Each member shall have one vote and decisions, other than as otherwise provided for in this Constitution, shall be taken by way of simple majority. In the case where there is a deadlock in votes, the Chairperson shall have the final and casting vote.
- 7.1.10 A notice shall be deemed to have been sufficiently dispatched and forwarded in writing, including e-mail, to a member at the number or last address as provided by such member to the Secretary and in the case of a posted notice shall be deemed to have reached such Forum member 10 days after the date of posting.

7.2 THE EXECUTIVE COMMITTEE

- 7.2.1 The overall management of EFN shall be vested in the Executive Committee of EFN (hereinafter called “the Executive”) which shall consist of a Chairperson, a Vice Chairperson, a Secretary, a Treasurer, and five other members elected to represent the members of the specific membership categories set out above. The election of the Executive Committee must conform to the ideals of the SADC Protocol on Gender.
- 7.2.2 Except for the first members of the Executive, all other members of the Executive Committee shall be elected at an Annual General Meeting of EFN and shall hold office for a maximum of two consecutive terms of office of two (2) years. It being recorded that such elections are to be staggered to ensure that no entirely new Executive Committee is elected at any one Annual General Meeting.
- 7.2.3 The Executive Committee shall meet at least once per quarter and the quorum for any meeting of the Executive Committee shall be one half of its members.
- 7.2.4 Meetings of the Executive Committee shall be summoned by the Chairperson at his or her own instance or if at least six members of the Executive Committee request such a meeting in writing.
- 7.2.5 The Executive Committee may appoint individuals or committees to advise it and the EFN. Such individuals or committees may be invited to attend meetings of the EFN or the Executive Committee but shall not have the right to vote at such meetings.
- 7.2.6 The Executive Committee shall appoint an Executive Director (hereinafter called “the Director”), on such terms and conditions which the Executive

Committee may determine from time to time, who shall have responsibility for the day to day running of the EFN and who shall be an *ex officio* member of the Executive Committee.

- 7.2.7 Neither the Executive Committee nor the Director shall distribute any of EFN's assets or income other than in order to achieve the objectives for which it has been established.
- 7.2.8 The Executive shall have the power to dismiss or discipline any employees of the EFN, and may delegate this power to the Director.
- 7.2.9 The Executive Committee shall open and operate a bank account in the name of EFN and all financial transactions shall be conducted through the said banking account. Signatories for the account shall be the Director and/or the Chairperson together with either the Treasurer and/or the Secretary.
- 7.2.10 The Executive Committee shall cause proper accounting records to be kept as are necessary fairly to present the state of affairs and business of EFN and to explain the transactions and the financial position of the business of EFN. The accounting records shall be kept at the main place of business of EFN or at such other place or places as the Executive Committee thinks fit to allow examination by members. The accounting records shall annually be audited by an external firm of auditors appointed at the Annual General Meeting.
- 7.2.11 The Secretary General shall open a minute book in which minutes of the annual general meetings, extra-ordinary meetings and meetings of the Executive Committee shall be minuted and recorded.

7.3 THE DIRECTOR

- 7.3.1 The Director shall be responsible for the implementation of policy and the administration of the EFN as directed by the Executive Committee.
- 7.3.2 The Director shall report on the activities and financial and other affairs of the EFN at the Annual General Meeting.

7.4 SUB-COMMITTEES

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

- 7.4.1.1 Membership, discipline and corrective action;
 - 7.4.1.2 Education, training, ethics and professionalism; and
 - 7.4.1.3 Media monitoring, legal issues and research.
- 7.4.2 The Annual General Meeting and/or the Executive Committee may appoint such other *ad hoc* sub-committees to perform specific tasks on their behalf as may be required from time to time.

7.5 MEDIA COMPLAINTS PROCEDURES

- 7.5.1 In fulfilment of its enforcement powers with regard to the EFN's Code, the EFN shall establish and meet the costs of:
- 7.5.1.1 a Media Ombudsperson,
 - 7.5.1.2 a Media Complaints Committee; and
 - 7.5.1.3 a Media Appeals Committee

for the purposes of receiving and adjudicating on complaints by members of the public against EFN members.

- 7.5.2 The appointments of the Ombudsperson, members of the Media Complaints Committee and Media Appeals Committee, and the procedure of adjudicating the complaints are set out in Schedule II to this Constitution.
- 7.5.3 Notwithstanding the formal media complaints procedures provided for above, members are encouraged to appoint public editors and other internal mechanisms for resolving complaints as quickly as possible.

8. AMENDMENT OF THE CONSTITUTION

- 8.1 Any amendment to this Constitution, including to Schedules I and II thereof, must be done by way of a resolution supported by at least two-thirds of members present in person at an annual general meeting or extra-ordinary general meeting.
- 8.2 The members undertake to review the provisions of Schedule I and operational functioning of Schedule II to the Constitution at the Annual General Meeting.

9. FINANCIAL YEAR

EFN's financial year shall be from 1 April to 31 March of each year.

10. DISSOLUTION

- 10.1 The EFN may be dissolved by a resolution of two thirds of voting members present at an annual general or extra-ordinary general meeting of EFN.
- 10.2 If a resolution is duly passed for the dissolution of EFN, or if for any reason EFN ceases to exist, its assets, after payments of its debts, shall devolve upon such institution decided upon by the Executive Committee, provided that the institution shall also be a not-for-profit organisation having similar objectives to those of the EFN.

**SELF-REGULATORY CODE OF ETHICS AND CONDUCT FOR NAMIBIAN
PRINT, BROADCAST AND ONLINE MEDIA**

Effective date **[EFN to confirm]**

PREAMBLE

As is stated in the Preamble to the Namibian Constitution, 1990, the people of Namibia “have finally emerged victorious in our struggle against colonialism, races and apartheid” and “have resolved to constitute the Republic of Namibia as a sovereign, secular, democratic and unitary State securing all our citizens justice, liberty, equality and fraternity”,

And as is provided for in Article 21(1)(a) of the Namibian Constitution, “All persons shall have the right to freedom of speech and expression, which shall include freedom of the press and other media”,

And noting the contents of the Windhoek Declaration of 3 May 1991, particularly the provisions of article 12 thereof on the fact that establishing “truly independent, representatives associations, syndicates or trade unions of journalists and associations of editors and publishers, is a matter of priority in all the countries of Africa where such bodies do not now exist”,

And recalling the contents of the African Charter on Broadcasting, 2001, including Article 4 of Part IV thereof which provides that “African governments should provide for the development of online media and African content, including through the formulation of non-restrictive policies on new information and communications technologies”,

And noting Article IX(3) of the Declaration of Principles of Freedom of Expression In Africa adopted by the African Commission on Human and People’s Rights in 2002 that states “effective self-regulation is the best system for promoting high standards in the media”,

Now therefore we, the Editors’ Forum of Namibia (“EFN”), representing the print, broadcast and online media, adopt the following Self-Regulatory Code of Ethics and Conduct for print, broadcast and online media (together referred to as “the media”) in order to best serve the public interest by providing information of legitimate interest and importance to the people of Namibia to enable citizens to make informed decisions on the issues of the day. In this regard, the EFN agrees with the Broadcasting Policy for the Republic of Namibia, 2009 wherein it is stated that “regulation is most effective when the effective practice of norms of good conduct are internalised within organisations, rather than enforced by an external agency”.

As journalists we commit ourselves to the highest standards, to maintain credibility and keep the trust of the public. This means always striving for truth, avoiding unnecessary harm, reflecting a multiplicity of voices in our coverage of events, showing a special concern for children and other vulnerable groups, exhibiting sensitivity to the cultural customs of our audiences and the subjects of reportage, and acting independently.

CHAPTER 1: MEDIA-GENERATED CONTENT AND ACTIVITIES APPLICABLE TO ALL PRINT, BROADCAST AND ONLINE MEDIA

1 DEFINITIONS

- (a) "Act" means the Communications Act, Act 8 of 2009;
- (b) "Authority" means the Communications Regulatory Authority of Namibia;
- (c) "child" shall mean a person under the age of 18 years and reference to children should be construed accordingly;
- (d) "current affairs" means a programme that is not a news bulletin but that focuses on and includes comment on and interpretation and analysis of issues of immediate social, political or economic relevance and matters of international, regional and local significance;
- (e) "news" means programming that is not current affairs by a broadcaster in which it reports on news events of immediate social, political or economic relevance and on matters of international, national and local significance;
- (f) "online media" means media which is published over the Internet, and includes, without limitation, web-sites, blogs, and social media;
- (g) "sexual conduct" means:
 - (i) the display of genitals or of the anus;
 - (ii) masturbation;
 - (iii) sexual intercourse including anal sexual intercourse;
 - (iv) in the case of child pornography, the fondling or touching of breasts, genitalia or the anus;
 - (v) the penetration of a vagina or anus with any object;
 - (vi) oral genital contact; or
 - (vii) oral anal contact.
- (h) "UGC" means user-generated online content;
- (i) "watershed period" shall mean: the period between 21h00 and 05h00 for free-to-air television Broadcasting service licensees and 20h00 and 05h00 for subscription television Broadcasting service licensees.

2 GATHERING AND REPORTING OF NEWS

- 2.1 The media shall take care to report news truthfully, accurately and fairly.

- 2.2 News shall be presented in context and in a balanced manner, without any intentional or negligent departure from the facts whether by distortion, exaggeration or misrepresentation, material omissions, or summarisation.
- 2.3 Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with reasonable regard to context and importance. Where a report is not based on facts or is founded on opinion, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.
- 2.4 News should be obtained legally, honestly and fairly, unless the public interest dictates otherwise.
- 2.5 The gathering of personal information for the purpose of journalistic expression must only be used for this purpose.
- 2.6 Media representatives shall identify themselves as such, unless public interest or their safety dictates otherwise.
- 2.7 Where there is reason to doubt the accuracy of a report or a source and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be stated in such report.
- 2.8 The media shall seek the views of the subject of critical reportage in advance of publication; provided that this need not be done where the institution has reasonable grounds for believing that by doing so it would be prevented from reporting; where evidence might be destroyed or sources intimidated; or because it would be impracticable to do so in the circumstances of the publication. Reasonable time should be afforded the subject for a response. If the media are unable to obtain such comment, this shall be reported.
- 2.9 Where a news item is published on the basis of limited information, this shall be stated as such and the reports should be supplemented once new information becomes available.
- 2.10 The media shall make amends for presenting information or comment that is found to be inaccurate by communicating, promptly and with appropriate prominence so as to readily attract attention, a retraction, correction or explanation.
- 2.11 An online article that has been amended for factual accuracy should indicate as such. In the event of an apology or retraction, the original article may remain, but the publisher must indicate in a prominent manner that it has led to an apology or retraction – and should link to both the apology/retraction and the original article.
- 2.12 No person shall be entitled to have an article removed which falls short of being defamatory, but is alleged by such person to be embarrassing.

2.13 Journalists shall not plagiarise.

3 INDEPENDENCE AND CONFLICTS OF INTEREST

- 3.1 The media shall not allow commercial, political, personal or other non-professional considerations to influence or slant reporting. Conflicts of interest must be avoided, as well as arrangements or practices that could lead audiences to doubt the media's independence and professionalism.
- 3.2 The media shall not accept a bribe, gift or any other benefit where this is intended or likely to influence coverage.
- 3.3 The media shall indicate clearly when an outside organisation has contributed to the cost of newsgathering.
- 3.4 Editorial material shall be kept clearly distinct from advertising and sponsored content.

4 PRIVACY, DIGNITY AND REPUTATION

- 4.1 The media shall exercise care and consideration in matters involving the private lives and concerns of individuals. The right to privacy may be overridden by the public interest.
- 4.2 In the protection of privacy, dignity and reputation, special weight must be afforded to cultural customs concerning the privacy and dignity of people who are bereaved and their respect for those who have passed away, as well as concerning children, the aged and the physically and mentally disabled.
- 4.3 The media shall exercise care and consideration in matters involving dignity and reputation. The dignity or reputation of an individual should be overridden only if it is in the public interest and in the following circumstances:
 - 4.3.1 The facts reported are true or substantially true;
 - 4.3.2 The reportage amounts to fair comment based on facts that are adequately referred to and that are true or substantially true;
 - 4.3.3 The reportage amounts to a fair and accurate report of court proceedings, Parliamentary proceedings or the proceedings of any quasi-judicial tribunal or forum;
 - 4.3.4 It was reasonable for the information to be communicated because it was prepared in accordance with acceptable principles of journalistic conduct and in the public interest; or
 - 4.3.5 The article was, or formed part of, an accurate and impartial account of a dispute to which the complainant was a party.

- 4.4 Rape survivors and survivors of sexual or gender-based violence shall not be identified without the consent of the victim or in the case of children, without the consent of their legal guardians (or a similarly responsible adult) and the child (taking into consideration the evolving capacity of the child), and a public interest is evident, and it is in the best interest of the child.
- 4.5 The HIV/Aids status of people shall not be disclosed without their consent. In the case of children, the HIV/Aids status of the child shall not be disclosed without the consent of the child (taking into consideration the evolving capacity of the child) together with the consent of their legal guardian or a similarly responsible adult, provided that such disclosure is in the public interest and it is in the best interests of the child.

5 NEWS AND CURRENT AFFAIRS DURING ELECTIONS AND REFERENDA

- 5.1 News coverage of elections and referenda shall be left to the discretion of the media concerned.
- 5.2 Proper balance and fairness shall be applied to all current affairs programmes that deal with elections and referenda.

6 BALANCE AND IMPARTIALITY DURING ELECTIONS AND REFENDA

- 6.1 The media must afford reasonable opportunities for the discussion of conflicting views and must treat all political parties equitably.
- 6.2 The media must ensure that they are balanced and impartial in their election reporting and that no political party or candidate shall be discriminated against in editorial coverage or the granting of access to coverage.
- 6.3 In the event of any criticism against a political party being leveled in a particular medium –
 - 6.3.1 without that party having been afforded an opportunity to respond immediately;
or
 - 6.3.2 without the view of that political party having been reflected therein,

the medium concerned must afford that political party a reasonable opportunity to respond to the criticism.

7 PROTECTION OF PERSONAL INFORMATION

- 7.1 The media shall take reasonable steps to ensure that the personal information under their control is protected from misuse or loss, and to prevent unauthorised access to such information.

- 7.2 The media shall ensure that the personal information they gather is accurate, reasonably complete and up to date.
- 7.3 Where a person requests a correction to be made to his or her personal information under the control of a member, the media must take reasonable steps to verify the accuracy of the information and, if necessary, amend the information.
- 7.4 Some personal information, such as addresses, may enable others to intrude on the privacy and safety of individuals who are the subject of news coverage. To minimise these risks, the media shall only disclose sufficient personal information to identify the persons being reported in the news.
- 7.5 Where it is reasonably suspected that an unauthorised person may have obtained access to personal information held by a member, the media must inform the affected person(s) and take reasonable steps to mitigate any prejudicial effects.

8 VIOLENT, DISCRIMINATORY OR HATE SPEECH

- 8.1 The Media must not publish material which, judged within context, amounts to:
 - 8.1.1 propaganda for war;
 - 8.1.2 incitement of imminent violence; or
 - 8.1.3 the advocacy of hatred that is based on race, ethnicity, religion or gender and that constitutes incitement to cause harm.
- 8.2 Clause 8.1 does not apply to material which, judged within context, amounts to a:
 - 8.2.1 *bona fide* scientific, documentary, dramatic, artistic or religious material;
 - 8.2.2 discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or
 - 8.2.3 *bona fide* discussion, argument or opinion on a matter of public interest.
- 8.3 Except where it is strictly relevant to the matter reported and it is in the public interest to do so, the media shall avoid discriminatory or denigratory references to people's sex, race, colour, sexual orientation, ethnic origin, religion, creed or social or economic status, age, or mental or physical disability.

9 OPINION

- 9.1 The Media are justified in airing their own views on controversial topics, provided that they treat their constituencies fairly by:

- 9.1.1 making fact and opinion clearly distinguishable;
- 9.1.2 not misrepresenting or suppressing relevant facts; and
- 9.1.3 not distorting the facts.

10 PROTECTED COMMENT

- 10.1 The media shall be entitled to comment upon or criticise any actions or events of public interest.
- 10.2 Comment or criticism is protected even if extreme, unjust, unbalanced, exaggerated and prejudiced, as long as it:
 - 10.2.1 expresses an honestly-held opinion;
 - 10.2.2 is without malice;
 - 10.2.3 is on a matter of public interest;
 - 10.2.4 has taken fair account of all material facts that are substantially true; and
 - 10.2.5 is presented in such manner that it appears clearly to be comment.

11 CHILDREN

- 11.1 Article 15 of the Namibian Constitution protects Children's rights. The media also recognises that special protective measures in respect of children are needed and shall therefore:
 - 11.1.1 exercise exceptional care and consideration when reporting about children. If there is any chance that coverage might cause harm of any kind to a child, he or she shall not be interviewed, photographed or identified without the consent of a legal guardian or of a similarly responsible adult and the child (taking into consideration the evolving capacity of the child), and unless a public interest is evident;
 - 11.1.2 not publish child pornography; and
 - 11.1.3 not identify children who have been victims of abuse, exploitation, or who have been charged with or convicted of a crime, without the consent of their legal guardians (or a similarly responsible adult) and the child (taking into consideration the evolving capacity of the child), unless a public interest is evident and it is in the best interests of the child.

12 VIOLENCE AND GRAPHIC CONTENT

- 12.1 Due care and responsibility shall be exercised by the media with regard to the presentation of brutality, gratuitous violence, and suffering.
- 12.2 Material, judged within context, should not sanction, promote or glamorise violence or unlawful conduct, or discrimination based on sex, race, colour, ethnic origin, religion, creed or social or economic status.
- 12.3 Content which depicts violent crime or other violence or explicit sexual conduct should be avoided unless the public interest dictates otherwise, in which case prominent indication and warning must be displayed indicating that such content is graphic and inappropriate for certain audiences such as children.
- 12.4 The media must not publish material which, judged within context:
- 12.4.1 contains violence which does not play an integral role in developing the plot, character or theme of the material as a whole; or
- 12.4.2 sanctions, promotes or glamorises violence or unlawful conduct, particularly if based on race, national or ethnic origin, colour, religion, gender, sex and sexual orientation, age, or mental or physical disability.
- 12.5 Clause 12.4 does not apply to material which, judged within context, amounts to a:
- 12.5.1 *bona fide* scientific, documentary, dramatic, artistic or religious material;
- 12.5.2 discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or
- 12.5.3 *bona fide* discussion, argument or opinion on a matter of public interest.

13 HEADLINES, POSTERS, PICTURES AND CAPTIONS

- 13.1 Headlines and captions to pictures or broadcasting content shall give a reasonable reflection of the contents of the report or picture in question;
- 13.2 Posters shall not mislead the public and shall give a reasonable reflection of the contents of the reports in question; and
- 13.3 Pictures and/or video or audio content shall not misrepresent or mislead nor be manipulated to do so.

14 CONFIDENTIAL AND ANONYMOUS SOURCES

The media shall:

- 14.1 protect confidential sources of information – the protection of sources is a basic principle in a democratic and free society;
- 14.2 avoid the use of anonymous sources unless there is no other way to deal with a story. Care should be taken to corroborate the information; and
- 14.3 not publish information that constitutes a breach of confidence, unless the public interest dictates otherwise.

15 PAYMENT FOR INFORMATION

The media shall avoid paying informants to induce them to give information, particularly when they are criminals, except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

16 COMPETITIONS AND AUDIENCE PARTICIPATION

- 16.1 Where audiences are invited on air to react to a programme or competition the media must make known the full cost of a telephone call or SMS.
- 16.2 The media must specify the proportion of the cost of the call or SMS, as the case may be, which is intended for any specified charitable cause.
- 16.3 The media must ensure that audiences who are incited to compete in any competition are made aware on air of the rules of the competition. Such rules must include the closing date and the manner in which the winner is to be determined.

CHAPTER 2: BROADCASTING CONTENT AND ACTIVITIES APPLICABLE TO BROADCAST MEDIA ONLY

17 CHILDREN

- 17.1 Broadcasting service licensees must not broadcast material which is harmful or disturbing to children at times when a large number of children are likely to be part of the audience.
- 17.2 Broadcasting service licensees must exercise particular caution, as provided below, in the depiction of violence in children's programming.
- 17.3 In children's programming portrayed by real-life characters, violence may, whether physical, verbal or emotional, only be portrayed when it is essential to the development of a character and plot.
- 17.4 Animated programming for children, while accepted as a stylised form of storytelling which may contain non-realistic violence, must not have violence as its central theme, and must not incite dangerous imitation.

- 17.5 Programming for children must with reasonable care deal with themes that could threaten their sense of security when portraying, for example, domestic conflict, death, crime or the use of drugs or alcohol.
- 17.6 Programming for children must with reasonable care deal with themes which could influence children to imitate acts which they see on screen or hear about, such as the use of plastic bags as toys, the use of matches or the use of dangerous household object as toys.
- 17.7 Programming for children must not contain realistic scenes of violence which create the impression that violence is the preferred or only method to resolve conflict between individuals.
- 17.8 Programming for children must not contain realistic scenes of violence which minimise or gloss over the effect of violent acts. Any realistic depiction of violence must portray, in human terms, the consequences of that violence for both its victims and perpetrators.
- 17.9 Programming for children must not contain frightening or otherwise excessive special effects not required by the story line.
- 17.10 Offensive language, including profanity and other religiously insensitive material, must not be broadcast in programmes specially designed for children.
- 17.11 No excessively or grossly offensive language should be used outside of the watershed period on television or at times when a large number of children are likely to be part of the audience on television or radio.

18 WATERSHED PERIOD

- 18.1 Programming on television which contains scenes of explicit violence and/or sexual conduct and/or nudity and/or grossly offensive language intended for adult audiences must not be broadcast before the watershed period.
- 18.2 Promotional material and music videos which contain scenes of explicit violence and/or explicit threats of violence and/or sexual conduct and/or the fondling or touching of breasts and/or genitalia or the anus and/or nudity and/or offensive language intended for adult audiences must not be broadcast before the watershed period.
- 18.3 Some programmes broadcast outside the watershed period may not be suitable for very young children. Licensees must provide sufficient information, in terms of regular scheduling patterns or audience advisories, to assist parents and *de facto* or legal guardians to make appropriate viewing choices.
- 18.4 Television broadcasting service licensees may, with the advance of the watershed period, progressively broadcast more adult material.

18.5 Broadcast service licensees must be particularly sensitive to the likelihood that programmes which commence during the watershed period and which run beyond it may then be viewed by children.

19 SEXUAL CONDUCT

19.1 Broadcasting service licensees must not broadcast material which, judged within context, contains a scene or scenes, simulated or real, of sexual conduct.

19.2 Sub-clause 19.1 shall not be applicable to *bona fide* scientific, documentary, dramatic or artistic material which, judged within context, is of such a nature; provided that it is broadcast with due audience advisories after the watershed period.

20 AUDIENCE ADVISORIES

20.1 To assist audience in choosing programmes, television broadcasting service licensees must provide advisory assistance which, when applicable, must include guidelines as to age, where such broadcasts contain violence, sex, nudity and/or offensive language.

20.2 The advisory must be visible on the screen for a minimum of 30 seconds at the commencement of the programme and for a minimum of 30 seconds after each advertisement or other break.

20.3 Where the frequency of the said subject matters, or any one or some of them, is high, a continuous advisory will be necessary, whether it is broadcast before or after the watershed.

20.4 The following visual advisory age system must be used: 10, 13, 16 and 18.

20.5 The following symbols must be used in accordance with the relevant content: V(violence), L(language), N(nudity), S(sex), PG(Parental Guidance).

20.6 An audio advisory before the commencement of the programme must also accompany the broadcast of a film with an age restriction of 18.

21 NEWS BROADCASTS

21.1 Broadcasting service licensees must advise viewers in advance of scenes or reporting of extraordinary violence, or graphic reporting on delicate subject-matter such as sexual assault or court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates.

21.2 Broadcasting service licensees must not include explicit or graphic language related to news of destruction, accidents or sexual violence which could disturb

children or sensitive audiences, except where it is in the public interest to include such material.

22 CONTROVERSIAL ISSUES OF PUBLIC IMPORTANCE

22.1 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 reasonable period of time of the original broadcast and within substantially the same time slot.

22.2 A person whose views are to be criticised in a broadcasting programme on a controversial issue of public important must be given the right to reply to such criticism on the same programme. If this is impracticable, reasonable opportunity to respond to the programme should be provide where appropriate, for examples in a right to reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned.

23 ELECTIONS AND REFERENDA

During any election or referendum period, as defined in applicable electoral legislation from time to time, all broadcasters are to comply with the requirements prescribed by the Authority from time to time. The EFN does not have jurisdiction in these matters and complaints must be directed to the Authority.

CHAPTER 3: USER-GENERATED CONTENT – APPLICABLE TO ONLINE MEDIA ONLY

24 GUIDING PRINCIPLES

24.1 This chapter applies where a complaint is brought against an online media member in respect of comments and content posted by users on all online platforms it controls and on which it distributes its content.

24.2 The media are not obliged to moderate all user-generated content in advance.

24.3 All members should have a policy in place governing moderation and/or removal of user-generated content or user profiles posted on the platforms ("UGC Policy") which must be consistent with the Constitution of the Republic of Namibia.

24.4 Members may remove any user-generated comment, content or user profile in accordance with their UGC Policy.

24.5 A member's UGC policy should be publicly available and:

- 24.5.1 set out the authorisation process, if any, which users who wish to post comments must follow as well as clearly setting out any terms and conditions and any indemnity clauses during such registration process;
- 24.5.2 set out clearly the content which shall be prohibited; and
- 24.5.3 explain the manner in which the public may inform the member of prohibited content.
- 24.6 Members should, where practicable, place a notice on the platforms with the aim to discourage the posting of prohibited content.
- 24.7 The public should be informed that UGC is posted directly by users and does not necessarily reflect the views of the member.
- 24.8 Users shall be encouraged to report content which they believe violates the provisions of the member's UGC Policy.
- 24.9 Online forums directed at children and the young should be monitored particularly carefully.

25 PROHIBITED CONTENT

- 25.1 Material constitutes prohibited content if it is expressly prohibited in a member's UGC Policy.
- 25.2 In addition to, and notwithstanding anything to the contrary contained in a member's UGC Policy, content which contains the following:
- 25.2.1 propaganda for war;
- 25.2.2 incitement to imminent violence; or
- 25.2.3 advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm,
- constitutes prohibited content for the purpose of this Code.

26 DEFENCES IN RELATION TO USER-GENERATED CONTENT

- 26.1 It is a defence, in relation to any complaint brought against the media regarding UGC, for the member to show that it did not itself author or edit the content complained of.
- 26.2 This defence will not apply in the following circumstances:
- 26.2.1 the complainant sent a written notice to the member in relation to the content concerned, and

26.2.2 the member failed to remove the content in accordance with Clause 26.4 below.

26.3 The written notice in Clause 26.2.1 must:

26.3.1 be sent via email or letter to the particular address stipulated by the member;

26.3.2 identify the content concerned and, in particular, specify where on the website the statement was posted; and

26.3.3 must explain why the content concerned is prohibited either in terms of a member's UGC Policy or Clause 25.2 above.

26.4 Upon receipt of a written notice complaining about UGC the member must:

26.4.1 remove the relevant UGC from the platform as soon as operationally possible and notify the complainant that it has done so; or

26.4.2 decide not to remove the UGC and notify the complainant of this decision.

26.5 Where a member has decided not to remove the UGC:

26.5.1 the complainant may complain to the EFN's enforcement structures; and

26.5.2 it will be treated as if the UGC had been posted by the member itself, and the member will be liable for such content if it is shown to be prohibited in terms of Clause 25 above.

ENFORCEMENT PROCEDURES IN RESPECT OF THE CODE

1 INTRODUCTION

- 1.1 The EFN and its complaints structures shall ensure that all complaints (which are to be allegations of violation of the Code contained in Schedule I hereto (“the Code”) are considered and adjudicated upon within the shortest possible time after the publication or broadcast of the matter giving rise to the complaint.
- 1.2 Complaints shall be considered and adjudicated upon in a user-friendly manner.
- 1.3 Whenever the position of the Media Ombudsman is vacant or about to become vacant, the Secretary shall call for public nominations through a variety of media.
- 1.4 The Media Ombudsman shall be appointed by the EFN by a majority of members present at an Annual General or Special General Meeting called for this purpose, from the list of candidates nominated by the public, for a period of three years. The term of office of the Media Ombudsman may be extended for a second term by the EFN. In the absence of any public nominations the EFN may still proceed with the appointments.
- 1.5 The Media Ombudsman shall be a Namibian citizen with a high level of integrity, knowledge of the Namibian media landscape and an efficient administrator.
- 1.6 The Secretary shall similarly call for public nominations for a panel of persons to serve on the Media Complaints Committee from the general public. The EFN, by a majority of members present at an Annual General or Special General Meeting called for this purpose, shall appoint, from the list of candidates nominated by the public, for a period of three years, four members to serve on the Media Complaints Committee Panel.
- 1.7 The Secretary shall similarly call for media nominations for a panel of persons to serve on the Media Complaints Committee from the media. The EFN, by a majority of members present at present at an Annual General or Special General Meeting called for this purpose, shall appoint, from the list of candidates nominated by the media, for a period of three years, four members to serve on the Media Complaints Committee Panel.
- 1.8 The Media Ombudsman shall, on an ad hoc basis, constitute the Media Complaints Committee Panel which is to be made up of five members to hear any matter: two from the public panel, two from the media panel, with the Chair being the Media Ombudsman. Decisions of the Media Complaints Committee shall be by a majority vote.

- 1.9 The Secretary shall similarly call for public nominations for a panel of persons to serve on the Media Appeals Committee from the general public. The EFN, by a majority of members present at present at an Annual General or Special General Meeting called for this purpose, shall appoint, from the list of candidates nominated by the public, for a period of three years, three members to serve on the Media Appeals Committee.
- 1.10 The Secretary shall similarly call for media nominations for a panel of persons to serve on the Media Appeals Committee from the media. The EFN, by a majority of members present at present at an Annual General or Special General Meeting called for this purpose, shall appoint, from the list of candidates nominated by the media, for a period of three years, three members to serve on the Media Appeals Committee Panel.
- 1.11 The Media Ombudsman shall, on an ad hoc basis, constitute the Media Appeals Committee which is to be made up of three members to hear any appeal matter: one from the public panel, one from the media panel with the Chair being chosen from either panel on an alternating basis. Decisions of the Media Appeals Committee shall be by a majority vote.
- 1.12 Subject to the approval of the Executive Committee, the Media Ombudsman may approve and implement additional guidelines for the adjudication of complaints and appeals.

2 COMPLAINTS

- 2.1 "Complainant" shall mean and include any person or body of persons who lodges a complaint alleging a violation of the Code.
- 2.2 The "respondent" in respect of a complaint shall be a duly authorised representative (including a legal representative) of the publication, radio or television station or online media outlet in question, to act and appear in respect of any such complaint.
- 2.3 A complaint shall be made as soon as possible, but not later than 30 (thirty) days after the date of the publication or broadcast giving rise to the complaint. The Media Ombudsman may, on reasonable grounds, accept late complaints.
- 2.4 The complaint shall be made to the Media Ombudsman either in person, by telephone or in writing, including email. Upon the receipt of a complaint, the Media Ombudsman shall be entitled to request from the respondent, a copy of the material published or broadcast giving rise to the complaint, and the respondent shall be obliged to forward such a copy to the Media Ombudsman forthwith.
- 2.5 The Media Ombudsman shall not accept a complaint:

- 2.5.1 Which is anonymous or which, in his or her opinion, is fraudulent, frivolous, malicious or vexatious and which *prima facie* falls outside the ambit of the Code;
 - 2.5.2 Unless the complainant in writing waives any right to claim civil relief of whatsoever nature directly or indirectly related to or arising out of the complaint;
 - 2.5.3 Which is directed at a newspaper, radio or television station, or online media which is not a member of the EFN.
- 2.6 Where the Media Ombudsman has accepted a complaint and the respondent offers to settle the matter complained of by way of publication, broadcast or otherwise, which offer, in the opinion of the Media Ombudsman, constitutes a reasonable and sufficient offer of settlement of such complaint, the Media Ombudsman may withdraw his or her acceptance of the complaint.

3 CONCILIATION AND ADJUDICATION PROCEDURE BY THE MEDIA OMBUDSMAN

- 3.1 Upon acceptance of a complaint by the Media Ombudsman, he or she shall immediately notify the respondent in writing of the complaint, giving sufficient details to enable the respondent to investigate the matter and respond.
- 3.2 The Media Ombudsman shall forthwith endeavour to achieve a settlement between the parties.
- 3.3 The Media Ombudsman shall hold discussions with the parties on an informal basis with the object of achieving a speedy settlement. Legal representation is permitted.
- 3.4 Within a period of 21 days (if the respondent fails to respond), the Media Ombudsman may proceed to consider the matter and may make a ruling on the complaint and such ruling shall be binding on the respondent and complainant. Any party affected by the Media Ombudsman's ruling may request that the ruling be appealed to the Media Appeals Committee for further adjudication.
- 3.5 Alternatively, where the Media Ombudsman decides to hold a formal hearing on the complaint (which decision is entirely within his or her discretion), the Media Ombudsman shall refer the matter to a duly constituted Media Complaints Committee for adjudication. Legal representation shall be permitted at hearings. The hearings of the Media Complaints Committee appeal shall be open to the public unless the identity of a sexual assault victim or a child is at issue.
- 3.6 Within 7 days of receipt of the decision of the Media Complaints Committee, any one of the parties may appeal to the Appeals Complaints Committee which is to be duly constituted by Media Ombudsman.

- 3.7 The application and grounds of appeal must be fully set out in writing and filed at the Media Ombudsman's office.
- 3.8 The Media Ombudsman shall inform the other party of the appeal and shall advise the party that he, she or it may file a response to the appeal within 7 days of receipt thereof.

4 APPEAL PROCEDURE TO THE MEDIA APPEALS COMMITTEE

- 4.1 The Media Ombudsman shall place before the Media Appeals Committee all the documentation that he or she had before him or that the Media Complaints Committee had before it, and the Media Ombudsman shall also inform all parties of the date, time and venue of the appeal hearing.
- 4.2 The duly-appointed Chairperson of that Media Appeals Committee shall determine a date, time and venue for adjudication of the appeal, which shall be heard as soon as possible after receipt of the documents referred to in rule 4.1.
- 4.3 It shall not be obligatory for either party to appear personally before the Media Appeals Committee, but they are entitled to attend and to address the Media Appeals Committee which is, in any case, entitled to question them on the matter, provided that a respondent is not under a duty to disclose the identity of a news source.
- 4.4 The Media Appeals Committee may request the parties to appear personally. He/she shall advise parties that, in the circumstances, an adverse inference may be drawn from failure to comply with such request without good cause.
- 4.5 The parties shall be entitled to legal representation when appearing before the Media Appeals Committee.
- 4.6 The Media Appeals Committee should vary a ruling of the Media Complaints Committee only if it is of the view that the ruling is clearly wrong.
- 4.7 If the Media Appeals Committee finds against a respondent who is present, the respondent shall be given an opportunity to address the Media Appeals Committee in mitigation of any order that may be made.
- 4.8 The hearings of the appeal shall be open to the public unless the identity of a sexual assault victim or a child is at issue.

5 VARIATION OF PROCEDURE

The Media Ombudsman, the Media Complaints Committee or Media Appeals Committee may, if satisfied that no injustice will result, and upon such conditions as he, she or it may impose:

- 5.1 Extend any time period contemplated in these rules; and/or

- 5.2 Call upon the parties to a dispute to furnish such further information as he, or it she may consider necessary.

6 FINDINGS OF THE MEDIA OMBUDSMAN, THE MEDIA COMPLAINTS COMMITTEE AND/OR THE MEDIA APPEALS COMMITTEE

- 6.1 The Media Ombudsman, the Media Complaints Committee or the Media Appeals Committee may uphold or dismiss a complaint or appeal, as the case may be.
- 6.2 The Media Ombudsman, the Media Complaints Committee or the Media Appeals Committee, as the case may be, may make any one or more of the following sanction orders against the publication, radio or television station or online publication in question:
- 6.2.1 Caution or reprimand a respondent;
- 6.2.2 Direct that a correction, retraction or explanation and, where appropriate, an apology and/or the findings of the Media Complaints Committee and or the Media Appeals Committee, as the case may be, be published or broadcast by the respondent in such manner as may be determined by the Media Complaints Committee or the Media Appeals Committee, as the case may be.
- 6.2.3 Order that a complainant's reply to a published or broadcast article, comment or letter be published, whether in print or online, or broadcast by the respondent;
- 6.2.4 Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of the Media Complaints Committee or the Media Appeals Committee, as the case may be.
- 6.2.5 A fine not exceeding N\$50 000, may be imposed for a second or subsequent violations of the Code. Fines collected in this manner shall be utilised solely for the purpose of promoting the Code through publicity campaigns and training.
- 6.3 In the reasons for the decision and/or sanction, the Media Ombudsman, the Media Complaints Committee or the Media Appeals Committee is entitled to criticise the conduct of the complainant and/or respondent in relation to the complaint, where such criticism is warranted in the view of the Media Ombudsman, the Media Complaints Committee or the Media Appeals Committee.
- 6.4 The Media Ombudsman shall cause any findings, reasons for a finding and/or sanction orders to be sent to the complainant and to the respondent who shall comply with the Media Ombudsman, the Media Complaints Committee or the Media Appeals Committee's orders or directives, if any.

- 6.5 The Media Ombudsman shall keep on record all findings and reasons for findings by the Media Ombudsman, the Media Complaints Committee or the Media Appeals Committee for a period of five years on the Media Ombudsman's website and shall notify the Chairperson of the Communications Regulatory Authority of Namibia in writing of any finding of a broadcaster having violated the provisions of the Code.
- 6.6 The records referred to in Rule 6.5 shall be public documents except insofar as those documents might identify the victim of a sexual assault or a child.