



— SELF-REGULATORY —

CODE OF ETHICS AND CONDUCT

FOR NAMIBIAN
PRINT, BROADCAST AND
ONLINE MEDIA

The EFN gratefully acknowledges the support of the Namibia Media Trust (NMT) in facilitating a workshop and the services of a legal expert for the revamp and consolidation of the EFN statutes, including the Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media, and *fesmedia Africa* of the Friedrich-Ebert-Stiftung for its support in the publication of the latter.



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INTRODUCTION

Dear Journalists and general public,

In our quest to raise the standards of journalism in Namibia, and in keeping with the African Union's (AU) principles on media self-regulation, the Editors' Forum of Namibia together with the office of the Media Ombudsman are pleased to share with you the 2017 revamped and consolidated Code of Ethics and Conduct for Namibian print, broadcast and online Media.

The Code adheres to the Namibian Constitution as clearly stated in the preamble and is based on the universal practice of journalism. It was crafted by Namibian editors, senior journalists and key legal stakeholders whose media houses make up the majority members of the Editors' Forum of Namibia (EFN).

This Code incorporates a number of aspects of Section 89 of the Communications Act, Act 08 of 2009 and introduces, for the first time, a Chapter 3 which is applicable to online media.

Included, under the Complaints Procedures of the Code, is a N\$50 000 (Fifty thousand Namibia Dollar) fine that a media house is obliged to pay after two and subsequent violations of the Code. The proceeds collected will be used to further publicise the Code and provide training.

Further, the Code is used by the Media Ombudsman as a yardstick against which any violations of journalism practice in this country can be measured.

Thus, members of the public, especially those who cannot afford to take an alleged erring media to court and merely desire a correction, are free to lay a complaint with the Media Ombudsman in writing within 30-days that such a reported error has been published or broadcast.

To the journalists, our appeal is that as you ply your trade, you should continue to uphold the high standards laid out in this Code of Ethics and Conduct with a view to protecting the journalism practice in Namibia against any designs of statutory regulation of the media.



Clement Daniels
Media Ombudsman



Dani Booyesen
Secretary General
Editor's Forum of Namibia

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

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 story-telling 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 importance 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 provided where appropriate, for example 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 the 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.



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