

## Complaints Procedures under this Code

### 1. Introduction

- 1.1 The Namibia Editors' Forum and the Media Ombudsman ("the Ombudsman") shall ensure that all complaints are considered and adjudicated upon within the shortest possible time after the publication or broadcast of the matter giving rise to the complaint.
- 1.2 Complaints shall be considered and adjudicated upon in a user-friendly manner.
- 1.3 The Ombudsman and the Media Appeals Chairperson ("the Appeals Chairperson") shall be appointed by the Editors' Forum, by a majority of members present at an ordinary or special meeting called for this purpose, from a list of candidates nominated by the public.
- 1.4 **The Ombudsman shall be a Namibian citizen with a high level of integrity, knowledge of the Namibian media landscape and an efficient administrator.**
- 1.5 **The Appeals Chairperson shall be a retired judge or magistrate with knowledge of the Namibian media landscape.**
- 1.6 The public shall nominate a panel of persons to serve on the Media Complaints Committee from both the general public and the media. The Editors' Forum, by a majority of members present at an ordinary or special meeting called for this purpose, shall appoint twelve persons, six from the general public and six from the media, from the candidates nominated by the public. Of the media representatives, three shall be from print and three from broadcasting. The panel members so appointed shall serve a renewable term of two years on the Media Complaints Committee.
- 1.7 The Editors' Forum shall call for public nominations within three months should the Ombudsman, Appeals Chairperson or a panel member of the Media Complaints Committee resign, dies or become of unsound mind.
- 1.8 The Editors' Forum and the Ombudsman may approve and implement additional guidelines for the adjudication of complaints and appeals.

### 2. Complaints

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

- 2.2 The "respondent" in respect of a complaint shall be the proprietor of the publication, radio or television station which may delegate its editor or, in his or her absence, an assistant editor or other suitable editorial representative of the member concerned, to act and appear in its stead in respect of any complaints dealt with by the Ombudsman.
- 2.3 A complaint shall be made as soon as possible, but not later than fourteen days after the date of the publication or broadcast giving rise to the complaint. The Ombudsman may on reasonable grounds accept late complaints if in his or her opinion there is good and satisfactory explanation for the delay.
- 2.4 The complaint shall be made to the Ombudsman either in person, by telephone or in writing. "Writing" shall include telegram, telex, e-mail and fax messages. Upon the receipt of a complaint by the Ombudsman, the Ombudsman shall be entitled to request from the complainant a copy of the material published or broadcast giving rise to the complaint, and the complainant shall be obliged to forward such a copy to the Ombudsman forthwith. If the matter relates to broadcast material, the respondent shall be obliged to assist the Ombudsman obtain the relevant material.
- 2.5 The Ombudsman shall not accept a complaint:
- 2.5.1 Which is anonymous or which, in his or her opinion, is fraudulent, frivolous, malicious or vexatious and which prima facie falls outside the ambit of the Code;
- 2.5.2 Unless the complainant in writing waives any right to claim civil relief of whatsoever nature directly or indirectly related to or arising out of the complaint;
- 2.5.3 Which is directed at a newspaper, radio or television station outside his or her jurisdiction.
- 2.6 Where the Ombudsman has accepted a complaint and the respondent offers to settle the matter complained of by way of publication, broadcast or otherwise, which in the opinion of the Ombudsman constitutes a reasonable and sufficient offer of settlement of such complaint, the Ombudsman may withdraw his or her acceptance of the complaint.

### **3. Conciliation and Adjudication Procedure by the Ombudsman**

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

- 3.2 The Ombudsman shall forthwith endeavour to achieve a settlement between the parties.
- 3.3 The Ombudsman shall hold discussions with the parties on an informal basis with the object of achieving a speedy settlement. Legal representation is permitted.
- 3.4 If the complaint is not settled within 14 days of its notification to the respondent, the Ombudsman may, if it is reasonable not to hear the parties, decide the matter on the papers. Where the Ombudsman decides to hold a hearing, the Ombudsman shall appoint a public and a media member of the Media Complaints Committee to adjudicate the matter with him or her at the hearing. If the complaint is against a newspaper or magazine, the media representative selected for the panel shall be from print. If it is against a TV or radio broadcaster, the media representative shall be from broadcast. Decisions shall be by a majority vote. Legal representation shall be permitted at hearings.
- 3.5 Within 7 days of receipt of the decision, any one of the parties may appeal to the Appeals Chairperson and the grounds of appeal shall be fully set out.
- 3.6 The application and grounds of appeal must be filed at the Ombudsman's office.
- 3.7 The Ombudsman shall inform the other party of the appeal and shall advise the party that he or she may file a response to the appeal within 7 days of receipt thereof.

#### **4. Appeal Procedure to the Media Appeals Chairperson**

- 4.1 The Ombudsman shall place before the Appeals Chairperson all the documentation that he or she had before him or her and the Ombudsman shall also inform both parties of the date and venue of the appeal hearing.
- 4.2 The Appeals Chairperson shall determine a date, time and venue for adjudication of the appeal, which shall be heard as soon as possible after receipt by him or her of the documents referred to in Rule 4.1.
- 4.3 It shall not be obligatory for either party to appear personally before the Appeals Chairperson, but they are entitled to attend and to address the Appeals Chairperson which is, in any case, entitled to question them on the matter, provided that a respondent is not under a duty to disclose the identity of an informant.
- 4.4 The Appeals Chairperson may request the parties to appear personally. He /she shall advise parties that, in the circumstances, an adverse inference may be drawn from failure to comply with such request without good cause.
- 4.5 The parties shall be entitled to legal representation when appearing before the Appeals Chairperson.

- 4.6 If the Appeals Chairperson finds against a respondent who is present, the respondent shall be given an opportunity to address him / her in mitigation of any order that may be made.
- 4.7 The hearings of the appeal shall be open to the public unless the identity of a rape or sexual victim or a child or a victim of extortion is at issue.

## **5. Variation of Procedure**

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

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

## **6. Findings of the Media Complaints Committee and the Appeals Chairperson**

- 6.1 The Media Complaints Committee or the Appeals Chairperson may uphold or dismiss a complaint or appeal, as the case may be.
- 6.2 If a finding is made against a member of the Editors' Forum or a publication that has voluntarily become subject to the Code of Ethics, the Media Complaints Committee or the Appeals Chairperson, as the case may be, may make any one or more of the following orders against the proprietor of the publication, radio or television station:
  - 6.2.1 Caution or reprimand a respondent;
  - 6.2.2 Direct that a correction, retraction or explanation and, where appropriate, an apology and/or the findings of the Media Complaints Committee be published or broadcast by the respondent in such manner as may be determined by the Media Complaints Committee or the Appeals Chairperson, as the case may be.
  - 6.2.3 Order that a complainant's reply to a published or broadcast article, comment or letter be published or broadcast by the respondent;
  - 6.2.4 Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of the Media Complaints Committee or the Appeals Chairperson.

- 6.3 In the reasons for the decision and/or sanction the Media Complaints Committee or the Appeals Chairperson is entitled to criticise the conduct of the complainant in relation to the complaint, where such criticism is warranted in the view of Media Complaints Committee or the Appeals Chairperson.
- 6.4 The Ombudsman shall cause any findings, reasons for a finding and/or requirements of a tribunal to be sent to the complainant and to the respondent who shall comply with the Media Complaints Committee or the Appeals Chairperson orders or directives, if any.
- 6.5 The Ombudsman shall keep on record all findings and reasons for findings by the Media Complaints Committee or the Appeals Chairperson for a period of five years.
- 6.6 The records referred to in rule 6.5 shall be public documents except insofar as those documents, might identify a rape victim, a person who has been sexually assaulted or a child, or a victim of extortion.