

RECORD OF UNDERSTANDING

Between

THE MINISTER OF JUSTICE

And

THE MINISTER OF SAFETY AND SECURITY

And

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

And

SOUTH AFRICAN NATIONAL EDITORS' FORUM

1 INTRODUCTION

- 1.1 This record of understanding is the outcome of discussions between the Minister of Justice, the Minister of Safety and Security, the national Director of Public Prosecutions (hereinafter referred to as the National Director) and the South African National Editors' Forum concerning the issues pertaining to the duty of every citizen or everyone else subject to the Constitution to testify regarding his or her knowledge of the commission of crime as well as the protection of journalists' sources and information.
- 1.2 The Minister of Justice, the Minister of Safety and Security and the National Director on the one hand and the South African National Editors' Forum on behalf of the press and the media on the other hand have reached an understanding with regard to the implementation of the existing laws relative to the duty to testify and the protection of journalists' sources and information which understanding they hereby record.

2. PRINCIPLES

All parties hereto accept –

- 2.1 the supremacy of the Constitution of the Republic of South Africa 1996, (Act 108 of 1996), and the rule of law;

- 2.2 that the maintenance of law and order and the administration of justice in the Republic of South Africa are the responsibility of the State, all the citizens of this land including the members of the press and media and everyone else subject to the Constitution;
- 2.3 that unless there exist special grounds, in the interest of the maintenance of law and order and the administration of justice, it is the duty of every citizen and every one else subject to the Constitution, to testify and give evidence of his or her knowledge of a crime, when called upon to do so by the State;
- 2.4 that the press and the media in a democratic society and a right have a duty, in the public interest, to collect and disseminate newsworthy information and in order to exercise this right and duty it is necessary, under appropriate circumstances, that their sources and information should be protected; and
- 2.5 that there is a need to balance the interests of the maintenance of law and order and the administration of justice on the one hand with the right of freedom of expression and specifically freedom of the press and media.

3 CONTINUING NEGOTIATIONS

- 3.1 The parties, including the press and the media, recognize that it is necessary to retain the provisions in our law in terms of which persons may be called to court to disclose information which may be required for the effective administration of justice, which would include, but not limited to, section 179 and section 205 of the Criminal Procedure Act, 1977 (Act 51 of 1977).
- 3.2 However, the parties also recognize that it is in the interest of the State, the press, the media and the community if the principles referred to in paragraph 2 above are clearly defined in our laws.
- 3.3 The parties accordingly agree to urgently investigate the possibility and desirability to amend the Criminal Procedure Act, 1977, so as to incorporate the abovementioned principles and they agree to continue with the present negotiations.

4 INTERIM ARRANGEMENT

Pending finalization of the investigation referred to in paragraph 3.3, the Minister of Justice, the Minister of Safety and Security and the National Director are prepared to accommodate the concerns of the press and the media by implementing the following procedures to be applicable when a subpoena is caused to be issued by the State in respect of the press and the media:

- 4.1 When the prosecuting authority or an official under the authority of the Minister of Safety and Security wishes to compel a member of the press or the media to testify or deliver documents in relation to information obtained by that person for the purpose of publication in the press or the media, the matter shall at the request of the member of the press or the media be referred to the National Director of Public Prosecutions for consideration.

- 4.2 . The National Director shall afford the person referred to in paragraph 4.1 or his or her representative and any other interested party the opportunity to make representation to the National Director and the National Director may initiate a process of mediation and negotiation between all the relevant stakeholders in an attempt to resolve a particular dispute or disputes in an attempt to avoid legal proceedings in respect of the issue of testifying or delivering documents.
- 4.3 After the process referred to in paragraph 4.2 above, the National Director undertakes to make a determination with regard to the issuing of the subpoena by weighing the need to uphold the maintenance of law and order and the administration of justice against the right of freedom of expression and freedom of the press and the media.
- 4.4 The South African National Editors' Forum will utilise its best endeavours to ensure that its members comply with this interim arrangement and further agrees to use its best endeavours to ensure that matters are settled in accordance with the principles set out in paragraph 2 above.
- 4.5 The procedures described in this paragraph shall not deprive any party to revert to the normal legal process if a subpoena is issued after the conclusion of procedures.
- 4.6 Nothing contained in this document shall be interpreted so as to interfere with the judiciary or with any lawful power or competency that may be exercised by the judiciary.

DATED at CAPE TOWN this the 19th day of February 1999.

(Signed by Dullah Omar)
MINISTER OF JUSTICE

(Signed on behalf of the Minister by Azalia Cachalia)
MINISTER OF SAFETY AND SECURITY

(Signed by Bulelani Ngcuka)
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

(Signed by Moegsien Williams)
SANEF VICE CHAIRMAN