

Record of understanding

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 representations 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

Sanef Guidelines on Confidential briefings and sources

Adopted at Sanef Council, 30 May 2004, Durban.

General principles:

Sanef stands for values of openness, transparency, non-racialism and the public interest, and this informs our approach to confidential briefings whether given to a group or an individual journalist.

In general, on-the-record information sources are desirable. Efforts should be made to get anonymous sources to go on-the-record. Anonymous sources should generally be used only as a last resort – i.e. when there is no other way to get and publish the story. Anonymous sources should not be used routinely in minor stories or to cover up lazy reporting.

Multisourcing is preferable where sources set “off-the-record” conditions. Anonymous sources should have direct knowledge and evidence of the story, and independent checking of their information is strongly recommended. Editor-level approval should be required for use of anonymous sources. The question of then identifying the source to the editor is a distinct issue which depends on the institution’s policy.

A story should usually indicate in its contents the reason why the source wishes to remain anonymous. Whatever commitment a journalist has given a source should ethically bind that journalist. There may be exceptions such as if the information turns out to have been given with malicious intent or inclusion of deliberate falsehoods. However, qualifying a commitment to confidentiality in this manner ought to be made clear to the source at the outset.

Sanef members should be sensitive to the possible implications of attending off-the-record briefings convened along selective lines such as race, or hand-picked briefings convened by public officials whose job requires them to be even-handed in regard to all media.

Checklist of questions journalists should consider when dealing with confidential sourcing:

1. Are the terms of the briefing or interview clarified before it begins?
2. If the source wants it “off the record” at either the outset, or asks for this to commence at a later point in the proceedings, are you prepared to begin immediate negotiations on this?
3. Are you asking yourself the following questions:
 - Does the source supplying the information/briefing need the media more than vice versa?
 - Are you as a journalist using the source (in the interests of informing the public), or is the source using you for a different agenda? What is that agenda? What information is the source likely to be leaving out of the briefing? Can you, rather than the source, set the terms of the engagement?
4. Consider these options:
 - If the source argues for the briefing to be “confidential” in one form or another, is this absolutely necessary? Can you persuade him or her to go “on the record” before or after the engagement? Can you convince the person to take named responsibility for the sake of credibility of the story and veracity of the information?

- Have you assessed how much trust and reliability is there in the relationship, before agreeing to confidentiality?
 - Are both the contents of the briefing, as well as the fact of its occurrence, supposed to be “confidential”? Does the source realise whether this is practical or not?
 - If the source is not savvy, do you have a responsibility to explain the implications of his or her name going into the media? Are there legitimate reasons why the source should be advised to operate in confidence?
5. If the source speaks “on-the-record” and then retrospectively declares something “off-the-record”, you must argue that this was not agreed by you beforehand, and that it is therefore something that you are not bound to respect.
 6. If the confidential engagement is agreed (in advance) as being “off-the-record”, “background”, or “deep background”, etc., is the meaning of these words mutually understood and agreed? In particular, do they mean either one of two things: “not for attribution” or “not for use”?
 - a. “Not for attribution” – i.e. the information may be used but not attributed to the particular source:
 - i. In such a case, is the precise public form of the sourcing – eg. “a source close to the Minister” – agreed by both parties?
 - ii. Is it possible to increase the credibility of the source by getting as close an identification as possible without jeopardising the individual (eg. an “official in the Presidency”, not just “a government source”)?
 - b “Not for use” – i.e. the information may not be used:
 - i. In such a case, may the info still be followed up independently through pursuing other avenues?
 - ii. If not, is it possible to point out to the source that no point is served by the briefing if the information or perspective given is not to have some manifestation in the media?
 - iii. If not, is it possible to go back to the source at a later point and persuade him/her to drop the restrictions? Will changing situations affect the status of the information and enable you to re-negotiate?
 - iv. If the source begins to touch on information which you already possess, and you do not want to be bound by “not-for-use-nor-for-independent-follow-up”, are you ready to promptly and explicitly terminate your participation in the confidential briefing/interview or particular phase thereof?
 7. Does the source know whether you may need to disclose his or her identity to your editor?
 8. Does the source require that he or she can see your story before publication and have veto rights over what you will publish? Do you know your newsroom’s policy on this?
 9. Are you abiding by professional ethics and respecting the terms of a commitment to confidentiality which you have given in the name of journalism?
 10. Is your negotiation on confidentiality really the best deal that can be secured for the public interest? Will you be able to defend your participation in it if the need ever arises?



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Introduction

The MDDA was established in terms of the MDDA Act, 2002 (Act 14 of 2002), which provides for the establishment of an independent, statutory body, jointly funded in partnership between the government, the media industry and other donors.

The MDDA Act, 2002 was enacted after extensive discussion with major media players who agreed to jointly fund such an agency with government to facilitate and promote media development and diversity. The MDDA is tasked with creating an enabling environment for media diversity and development by providing support to media projects, and facilitating research into media development and diversity issues. The agency functions independently from and at arm's length of its funders, political-party and commercial interests. This arrangement enables a public private partnership to work together in addressing the legacy of imbalances in access to, ownership and control of the media.

The MDDA helps create an enabling environment for media development and diversity that is conducive to public discourse and which reflects the needs and aspirations of South Africans.



Description

The Constitution Act No. 108 of 1996, in sections 16 and 32 (under Chapter 2, Bill of Rights) provides for the freedom of expression and access to information. To deepen media diversity, government, together with commercial media entities, partnered in order to assist the establishment of the Media Development and Diversity Agency (MDDA), which is tasked with (amongst other things) providing financial and other support to community and small commercial media projects.

The MDDA is therefore a development agency

that will assist in building an environment where a diverse, vibrant and creative media flourishes and reflects the needs of all South Africans.

The MDDA works primarily with historically disadvantaged persons and communities; priority in the years ahead is especially going to focus on rural and poor areas outside of Gauteng and the Western Cape and historically diminished language and cultural groups, and inadequately served communities. This does not therefore mean at the exclusion of these provinces (i.e. Gauteng and Western Cape).

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Main services, programmes, projects and initiatives

The purpose of the MDDA programs is to “strengthen the sector through the provision of resources, knowledge and skills in pursuit of promoting media development and diversity”

The MDDA pursues its mandate through;

- The provision of grants and subsidies to media projects and the promotion of media development and diversity
- Leveraging resources and support through technical assistance
- Conducting and funding research
- Facilitating capacity building
- Advocating for media diversity

In this context, the MDDA will in the ensuing period, focus its work on advocacy for the alternative sector, giving grants and seed funding support for the newly licensed community radio stations in the nodal areas, for both small commercial print media and community media projects, capacity building interventions with beneficiaries including mentorship and monitoring and evaluation, research and increasing knowledge of the MDDA to better structure program intervention and innovation, stakeholder management and resource mobilisation. Monitoring and Evaluation will play a key role in structuring future program involvement, design and development.

Interventions in the print media sector include addressing printing and distribution challenges by assisting in the setting up of provincial hubs where resources can be shared amongst projects.

Accordingly, the Agency has set itself the following indicators for the years ahead, in terms of its mandate in the promotion and strengthening small commercial print and community media:

- At least 1 community radio per district municipality funded
- At least 1 community newspaper per district municipality funded
- At least 1 community television per province funded
- 1 media co-operative per district funded guided by the feasibility study on the viability of co-operatives
- At least 1 multimedia hub per province (print & radio) funded
- Fund student media, atypical media, new media and content development initiatives
- Fund a spread of small commercial newspapers, magazines, online newspapers or magazines.



The Association of Independent Publishers (AIP) is the region's largest 'union' for independent and grassroots publishers.

Founded as a self-help association, AIP is dedicated to growing the diversity and pluralism of the region's grassroots media by proactively improving the editorial quality and commercial sustainability of independent publications.

AIP seeks to achieve this by focusing on the business of publishing.

Good content is good business. AIP believes that the only sustainable way to consistently get good content is to invest in the people and systems that produce it.

AIP therefore champions projects such as this newsroom management manual in a bid to improve both the quality of content published in independent media, as well as the calibre of the media managers who produce it.

This manual forms part of AIP's Newspaper-in-a-Box (NiB) project, which seeks to give even the smallest publications access to the same kinds of support systems, automated production software, and management toolkits that larger media enjoy.

Other newsroom management books in NiB include the Reporting the Courts guidebooks.

With members throughout the Southern African Development Community (SADC), AIP affiliate publications include everything from deep rural newspapers printed on hand-operated presses, to international-standard glossy magazines, and everything inbetween.

To find out about AIP's other programmes, visit www.independentpublisher.org





Konrad Adenauer Stiftung

The KAS and its media programme sub-Sahara Africa

For over 40 years now, the German Konrad Adenauer Foundation (KAS) has been engaged with Africa. Named after Germany's first democratic chancellor after World War II, the foundation has worked at its many offices around Africa to strengthen democracy, build good political governance and buttress a free media. To reach these goals, KAS runs offices in over 100 countries around the world.

Since 2002 the foundation has added a regional media programme for sub-Sahara Africa, which is based in Johannesburg. The major task of this programme has been the building and strengthening of independent news media in the region. To achieve this goal, KAS media offers a variety of courses, training workshops, publications and conferences.

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Words for Africa

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