

South African National Editors' Forum

SA National Editors' Forum rejects proposed Weather Amendment Bill as unconstitutional censorship and calls for its repeal or amendment.

FXI was established in 1994 to protect and foster the rights to freedom of expression and access to information, and to oppose censorship. The FXI's primary objectives are to fight for and defend freedom of expression; to oppose censorship; to fight for the right of equal access to information and knowledge; and to promote access to media and a free press.

Its subsidiary objectives are the opposition of any limitations imposed on the freedoms aforementioned be they at the instance of the State, the private sector or civil society, through public pronouncements and litigation; provide support, solidarity and unity of purpose among those subject to censorship; educating the public about the dangers of censorship; monitoring the effect and implementation of censorship in South Africa; network and engage in solidarity with groups opposing censorship locally and internationally; promoting access to information and knowledge and information generally and by monitoring proposed legislation that may make this possible; campaigning for the freedom and independence of all media.

The FXI undertakes a wide range of activities in support of these objectives, including lobbying, education, monitoring, research, publicity and litigation and the funding of legal cases that advance these rights.

In the light of this we have prepared this submission for presentation to the Committee. Sanef requests an opportunity to present an oral submission to the Parliamentary committee dealing with this matter.

Sanef apologises for the delay in presenting this submission. It only became aware of the Bill and its likely effects on the reporting of news and information in the last few days

The South African National Editors' Forum (Sanef) is gravely concerned about the contents of certain amendments to the South African Weather Service Act No 8 of 2001 contained in the SA Weather Service Amendment Bill B22 2011 because of the provisions for censorship of news relating to weather forecasting and news or information relating to the pollution of the atmosphere. In particular Sanef is alarmed at the provisions in the bill for lengthy periods of imprisonment and excessive fines that can be imposed.

Sanef believes the restrictions imposed on the publication or broadcast of the information by the media that are proposed in the bill could constitute a breach of the Constitution and calls on the Ministry of Water and Environmental Affairs to repeal or drastically amend those proposals.

Sanef recognises that the intentions of the Bill are to prevent harmful false weather forecasting and false information about air pollution from reaching the public but fears that the proposals will seriously inhibit the media from carrying out its functions of informing the public accurately on these issues.

The Bill proposes the expansion of the definition of weather forecasting and advice about the quality of air under "advisory services" to mean any climatological advice or advice on ambient air quality, and includes advice on weather outlooks, weather forecasts, weather warnings, air pollution,

concentrations of criteria pollutants in ambient air, emissions of pollutants to ambient air and air pollution warnings.

The Bill provides for information in these categories being published only with permission being granted by the SA Weather Service.

This will seriously inhibit the media from publishing stories obtained from reputable sources other than the SA Weather Service such as international, academic or scientific institutions dealing with weather and the quality of air and the appearance of air pollution. Apart from the practical difficulties of obtaining Weather Service permission to publish the stories such as would occur late at night or on holidays or weekends or when the officials concerned were not available the media is totally opposed to having an outside organisation being given legal powers to decide what the media may or may not publish. That constitutes censorship which is contrary to the freedom of the media provisions in the Constitution.

Sanef also foresees the grave difficulties that the Bill will bring about when the media publishes stories about the output of pollution by factories, mines, steel plants and other industrial enterprises and the protests that are frequently raised by citizens about the generation of pollution by them. There have been a number of instances where refuse workers have gone on strike and trashed rubbish containers in city streets. This conduct and the accumulation of refuse in the streets frequently results in "emissions of pollutants to ambient air". Difficulties will arise under the law when the media publishes or broadcasts reports on this activity.

The media is aware that it is under legal constraint not to publish certain types of information mostly related to the arrest and detention of alleged criminals, the conduct of court proceedings and the identification of accused children and certain witnesses as well as information relating to the defence and security of the country but it believes this information falls into a different category. This information either provides a juridical foundation for SA's democracy or is instrumental in protecting democracy and the country.

Sanef is strongly opposed to the provisions contained in Section 30A which criminalises the publication of information about "severe" weather and pollution and which is to be inserted into the 2001 Act .

Under the heading of "Offences and penalties" this section states that (a) no person may issue a severe weather or air pollution-related warning without the "necessary written permission" from the Weather Service; (b) supply false or misleading information about the Weather Service; or (c) unlawfully, intentionally or negligently commit any act or omission which detrimentally affects or is likely to detrimentally affect the Weather Service.

Apart from the other objections, the section does not define "severe weather", a failure that is likely to lead to much argument should that issue lead to a dispute with officials of the Weather Service or come before court. A charge of supplying "false and misleading" information about the Weather Service will also raise controversy. As the Weather Service will decide what is "false and misleading", an accused person would have difficulty to prove the contrary, especially over such a vague term as "misleading". Indeed, "false and misleading", as journalists who are accused of publishing such information have found, is a quagmire. Item (c) is also vague, open to being misconstrued and subject to lengthy argument should a person facing such a charge come before court. It also raises the question whether, say, a report on a labour dispute at the Weather Service be

regarded as falling under that sub-section and would editors or reporters be forced into self-censorship rather than face a charge?

Indeed the section constitutes unacceptable censorship.

Sub-section (2) deals with punishment for offences under the Act. The provisions are excessively harsh with a first conviction resulting in a fine of up to R5-million or imprisonment of up to five years or both. The sentence is doubled for a second conviction – a fine up to R10-million or up to 10 years' imprisonment or both.

In addition, if it appears that the offence has caused loss to any organ of state or "other person" and proof of the loss is provided, the court may at the request of the injured party or the Water Affairs and Environment Minister award damages, the judgment having the same force and effect as a competent court.

On top of that, the court can also inquire whether the convicted person gained or is likely to gain any financial advantage from the crime and award compensation or impose a fine based on the court's assessment of that gain. Alternatively, the court may impose remedial measures to be undertaken by the convicted person.

These are extremely harsh punishments which have no place in the SA legal system for this type of offence. Indeed, similarities can be drawn between these sentences and the excessive penalties contained in the Protection of State Information Bill and be rejected for the same reasons.

Sanef wishes to record its disappointment that it or other media representative bodies were not consulted on the Bill either before its formulation or after it had been drawn up and placed before Parliament. It notes that under Section 5 (2) (b) (iv) of the SA Weather Service Act 8 of 2001 provision is made for the Board of the Weather Service to have at least one member who is charged with taking into account the needs of such stake holders as "the media, which may include radio, TV and newspapers".

Sanef believes that if such a person is included on the board and if he/she had followed the directive to take account of media needs, this issue could have been dealt with before the Bill had progressed to the extent it has.

Sanef requests an opportunity to present an oral submission to the Parliamentary committee dealing with this matter.

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