

Media bodies to fight "Ranjeni Ruling"

The SA Chapter of the Media Institute of Southern Africa (MISA-SA), The Freedom of Expression Institute (FXI), The SA National Editors' Forum (SANEF) and the Media Workers Association of Southern Africa (MWASA) are deeply disappointed with the decision of the Bloemfontein High Court to dismiss with costs the application of former Sunday Times senior political journalist, Ranjeni Munusamy.

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The bodies plan to join Munusamy as *amici curiae* if she chooses to appeal to the Constitutional Court later this month. (A *amicus curiae* is a legal term for an adviser to the court on some matter of law who is not a party to the case; usually someone who wants to influence the outcome of a lawsuit involving matters of wide public interest).

Munusamy had applied to the court for review of a ruling by Judge Joos Hefer that she must give evidence to the commission about her story that the African National Congress investigated National Director of Public Prosecutions Bulel Ngcuka as an apartheid government spy.

The judgment disregarded substantive arguments and legal authority presented by the four organisations that journalists should only be required to testify as a matter of last resort and only after all sources of information have been sought and exhausted. Furthermore, the four organisations had in their submission emphasised to the court the essential role that media plays in our democracy and the danger of restricting their activities unless there is a reasonable and justifiable basis for doing so.

We are particularly alarmed by the judges' argument that nowhere in local jurisprudence is there a clear statement that a journalist has the right to be called as a witness only as a last resort. It is important to point out that all the existing cases relating to the subpoenaing of journalists in our country were decided before the final 1996 Constitution. The supreme law of the land now sanctions the right of the media to operate freely without unreasonable restraints. Furthermore the court's argument fails to acknowledge the injunction prescribed by our Constitution that when interpreting the Bill of Rights, a tribunal must promote the values that underlie an open and democratic society based on human dignity, equality and freedom. One of the values that underlie such a society is the existence of a vibrant media and the protection against compelling journalists to testify-except as a matter of last resort- is a core pillar of media freedom.

We view with concern the court's motivation that because Ranjeni's article to City Press constituted the "beginning of the story", she is therefore "the primary source of information" and the Hefer Commission "is entitled to know how she conducted her investigations".

This judgment would set a frightening precedent where in future, journalists - as the most easily identifiable sources of stories - would become by definition "the primary sources" of information and hence obligated to testify or reveal their sources to prosecuting authorities, courts of law or other judicial forums at whim.

The judgment has largely ignored the persuasive wisdom of international tribunals such as the European Court of Human Rights and the International Criminal Tribunal for the Former Yugoslavia which have held the "last resort principle" to be an important pillar of media freedom. This principle may only be violated in the strictest of circumstances. The judgment also takes no notice of the argument by these two international bodies that by compelling journalists to testify before all other avenues of information have been exhausted, the work of journalists will become much more difficult and as a consequence the right of the public to be informed about matters of public interest will be impermissibly truncated.

The four organisations are meanwhile considering further avenues of legal recourse including joining in Munusamy's case *amici curiae* when her counsel appeals to the Constitutional Court.

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