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Statement by the South African National Editors' Forum (Sanef) **10 March 2010**

The South African National Editors' Forum (Sanef) has decided to apply to be an *amicus curiae* in The Citizen's Constitutional Court challenge against the Supreme Court of Appeal (SCA) ruling in McBride vs Citizen.

SANEF has taken the decision because it is deeply concerned that through a majority SCA ruling, a law intended to foster reconciliation in the country has the extraordinary power to censor historical fact by declaring that a particular conviction did not take place and that to state that the conviction did occur is "false".

While SANEF is not involving itself in The Citizen's views on McBride, the organisation is expressing its deep concern about the wording of the amnesty legislation which turns fact into falsehood and campaigns for it to be amended.

The SCA decision was based on a section in the Promotion of National Unity and Reconciliation Act Act which states that amnesty expunges the conviction and sentence from all official records and also that "the conviction shall for all purposes be deemed not to have taken place" -- the sentence that turns fact into falsehood.

The SCA ruling raises a fundamental issue of press freedom in that it would compel the media to be party to the falsification of history, with dire consequences for their credibility.

The case arose because in 2003 The Citizen protested at Ekurhuleni Metropolitan Municipality's decision to appoint Robert McBride to head the metro police. The paper said McBride was a murderer and thus unfit for the post.

McBride, who had been sentenced to death for planting the bomb, which killed three women and injured 69 people, was subsequently given amnesty by the Truth and Reconciliation Commission and released from prison.

The SCA, by a majority decision found on Friday, February 26, that the Citizen had defamed McBride because, according to the Promotion of National Unity and Reconciliation Act once he had been given amnesty it was "false" to call McBride a murderer.

Appeal Judge K K Mthiyane disagreed with the SCA majority finding. In a dissenting judgment he argued that The Citizen's description of McBride was fair comment. He said that altering public

records was one thing but expunging from the historical record the fact of what the plaintiff did is another.

He said the interpretation of the Act by the majority of the judges “will have a chilling effect on freedom of expression guaranteed under the Constitution and is not required” by the Act.

Sanef welcomes Judge Mthiyane's view that the interpretation of the law is unconstitutional. The forum believes it cannot be accepted as a just verdict that truth is turned into falsity. And by all journalistic standards such a partially told story would be regarded as unacceptable and a breach of the Press Code.

Sanef calls for the SCA finding to be reviewed and the law to be amended to comply with Constitutional values. It intends to apply as an amicus curiae in the appeal that The Citizen is making to the Constitutional Court.

Sanef wants to emphasize that its stance against the falsification of history should not, in any way, be construed as passing judgment on the conduct of the liberation struggle.

Issued by: SA National Editors' Forum (SANEF)

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