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**Submission to the Special Rapporteur on the promotion and protection of the
right to freedom of opinion and expression**

To: Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression, OHCHR

From: Campaign for Free Expression (CFE), South Africa

DATE:

**RE: CAMPAIGN FOR FREE EXPRESSION INPUTS ON THE STRATEGIC
PRIORITIES AND VISION-SETTING OF THE SPECIAL RAPPOREUR ON THE**

Directors

Carol Steinberg, Adriaan Basson, Dr Ismail Mohamed, Anton Harber, Prof. Sizwe Mabizela, Nicole Fritz
(Executive Director)

PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

The Campaign for Free Expression (CFE) thanks the Special Rapporteur for the opportunity to contribute to the 2027 vision-setting report and the mandate's strategic priorities for 2026–2029. CFE is a South African civil society organisation working on freedom of expression, access to information and media freedom. This submission follows the four sections of the questionnaire but is deliberately narrow. It addresses South Africa only, and draws on what CFE has itself done: our litigation, our submissions to Parliament, our research and our published commentary.ⁱ

1. STRATEGIC PRIORITIES

1.1. Does the framework reflect the most significant challenges?

CFE considers the preliminary framework a sound starting point. Our concern is one of emphasis. South Africa has strong constitutional guarantees and courts with a generally good record of upholding them. Yet CFE's review, [*The Landscape is Darkening*](#) (2023), found a persistent gap between those guarantees and practice: rights are given little weight when laws are drafted, and civil society is left to claw them back through submissions to Parliament and litigation. Our casework since then points the same way. We ask the mandate to treat this gap between protection on paper and protection in practice, and the tools that widen it, as a defining theme of the next three years.

1.2. Issues, trends and developments not sufficiently reflected.

- **Lawfare through “neutral” laws and court procedure.** The framework refers to SLAPPs and criminalisation. We ask that it expressly cover laws and procedures designed for other purposes but repurposed against the press: protection-from-harassment orders, ex parte and pre-publication interdicts, private prosecutions, and cybercrime and defamation law. CFE has documented at least nine recent South African cases in which protection orders or their functional equivalents were used to gag or intimidate journalists, whistleblowers and activists (section 2.1). CFE's 2023 review also noted that the Cybercrimes Act contains no protection for sharing information in the public interest.

- **National security justifications in lawmaking.** CFE made detailed submissions to Parliament on the General Intelligence Laws Amendment Bill ([our submission](#)), which became law in March 2025, and has published its [critique of the Act](#). Civil society pressure, including ours, contributed to the removal of a provision that would have allowed the intelligence services to vet any person or organisation, including non-profits and churches. Serious problems remain ([CFE and Intelwatch](#)). The Act still allows vetting of people with access to critical infrastructure, which could reach journalists at the public broadcaster and so threaten editorial independence and source confidentiality; the definitions of “national security” and “national security threat” remain vague and open to abuse; and the detail of mass interception is left to regulations, which we have asked to be published in draft for public comment. The mandate should treat the three-part test in article 19(3) of the ICCPR (legality, legitimate aim, necessity and proportionality) as a standing cross-cutting priority in scrutinising security legislation, not only a doctrinal reference point.
- **Whistleblower and source protection.** Whistleblowers are under attack and are not receiving the interventions they need. CFE’s 2023 report, [Silent Killer](#), found that public health workers who speak out about conditions in hospitals face discipline and intimidation, because public service rules confine them to internal channels. More recently, Martha Ngoye and Tiro Holele, two senior PRASA executives dismissed in 2021 after speaking out against corruption, were found by two courts to have been unlawfully dismissed, yet were left without reinstatement and ordered to pay their employer’s costs. CFE has applied to the Constitutional Court to join their case as a friend of the court, to argue that whistleblowing is an important manifestation of freedom of expression; the Court has yet to rule on the application ([GroundUp](#)). The pattern is visible inside public bodies too: the National Youth Development Agency commissioned a forensic firm to identify staff who had leaked to the press, a step that Parliament’s portfolio committee warned would breach the Protected Disclosures Act ([Daily Maverick](#)). The draft [Protected Disclosures Bill, 2026](#) is a welcome opportunity to strengthen the law. [CFE made these submissions in respect of the Bill](#). The mandate should treat whistleblower protection as integral to freedom of expression, not as a separate anti-corruption issue.
- **Mis- and disinformation.** In South Africa the pressing problem is less overt digital repression than a degraded information environment, and the responses

to it. CFE is concerned about what mis- and disinformation do to free expression: they erode the public's ability to receive reliable information and public trust in credible sources, while the responses they provoke can themselves restrict speech (section 2.1).

2. REGIONAL PERSPECTIVE

Africa (South African perspective)

2.1. Three key issues identified as pressing

- **Weaponisation of law and courts against public-interest expression.**
Protection orders. The Protection from Harassment Act 17 of 2011 was designed to give victims of stalking and domestic violence quick, cheap relief. It allows interim orders to be granted without notice to the respondent, and it contains no public-interest defence for journalists. CFE has documented at least nine recent cases in which it has been used against the press ([CFE, April 2025](#); [Daily Maverick, June 2026](#)).

Freelance journalist Thomo Nkgadima in Limpopo was subject to a 2023 order that in effect barred him from reporting on people connected to a local hospital project; he was detained in February 2025 on suspicion of breaching it, the charges were later withdrawn, and the Praktiseer Magistrates' Court set the order aside in November 2025 ([CFE and Media Defence](#)). News24's Karyn Maughan and Kelly Anderson faced an order sought in 2025 by a magistrate whose handling of a murder case they had reported on. In June 2026 Sunday Times journalist Sisanda Mbolekwa was served with an interim order, granted without notice, that barred her from reporting on the chair of a public agency, sending her questions or using her photograph, after she made a standard right-of-reply request. Her matter was heard in a family court closed to press and public, and the application was withdrawn in July 2026 after she filed an affidavit opposing it ([Sunday Times](#)). Even where orders are refused or set aside, the proceedings cost journalists time, money and work, and the chilling effect on editors and sources is the point.

CFE has proposed that the Act be amended to include an explicit public-interest defence, requiring a court to consider whether the conduct complained of is legitimate journalism in the public interest, an approach first urged by SANEF and Avusa in the 2010 parliamentary hearings. Through the Free Expression Legal Network, CFE is engaging the Magistrates' Commission, and it has

announced that it will seek to intervene in court processes aimed at narrowing the definition of “harassment” so that journalists and researchers cannot be silenced by retaliatory claims.

SLAPPs. In 2022 the Constitutional Court recognised a SLAPP defence within the common-law doctrine of abuse of process ([Mineral Sands Resources v Reddell](#)). In 2023 the Pietermaritzburg High Court, in a case in which CFE participated as a friend of the court, held that former President Zuma’s private prosecution of Karyn Maughan had all the elements of a SLAPP suit, and ordered him to pay costs ([CFE, June 2023; judgment](#)), a finding consistent with the Special Rapporteur’s 2023 joint declaration on SLAPP suits. Yet South Africa still has no anti-SLAPP legislation, and CFE has called for laws that provide for early dismissal ([Business Day, 2023](#)).

- **Inconsistent proportionality analysis, in lawmaking and in the courts.** Limits on expression are not reliably tested for necessity and proportionality. The intelligence legislation described in section 1.2 is one example. In the courts, the clearest recent example is the order against the non-profit Open Secrets. An urgent application brought on 5 November 2025 by the arms company Integrated Convoy Protection resulted in an interim order that, as CFE and 22 other organisations understood it, barred Open Secrets from publishing its article and from disclosing even the court, the judge and the date of the order. The Office of the Chief Justice disputed that characterisation, stating that the order was made in open court as a standard interim measure to preserve the status quo ([OCJ statement](#)). According to Open Secrets, the application followed a right-of-reply request ([Polity](#)). On 27 November 2025 the Western Cape High Court dismissed it ([Daily Maverick](#)).

In November 2025 CFE and 22 other organisations wrote to the Chief Justice asking for guidance to judicial officers reaffirming the presumption of open justice and cautioning against pre-publication interdicts, and for judicial education on balancing freedom of expression, media freedom, privacy and reputation ([our letter](#)). The problem is not isolated: in 2023 the High Court set aside, as an abuse of process, an ex parte order obtained by the Moti Group against amaBhungane (CFE, *The Landscape is Darkening*). CFE believes that training for judges and magistrates on prior restraint and ex parte relief against the press is a practical and achievable response, and one on which the mandate can help.

- **Mis- and disinformation.** CFE’s 2023 review found that false and misleading information in South Africa comes from politicians, social media, the news media and at times the state itself, in an environment where many people struggle to tell fact from fiction. It also found that official responses can threaten expression: the 2020 Covid-19 regulations made it an offence to publish false statements about the pandemic or the government’s response, and the Cybercrimes Act criminalises harmful data messages on the basis of loosely defined “harm”. Few prosecutions have followed (the review records a single prosecution under the regulations), but the risks of selective enforcement and self-censorship remain. CFE has therefore pressed the platforms rather than the criminal law. Ahead of the 2024 elections it wrote to Meta, Google, TikTok and X asking what they were doing to protect the ballot ([our letters](#)), and wrote in May 2024 that they had been largely silent ([Business Day](#)). CFE has also testified to the Competition Commission’s Media and Digital Platforms Market Inquiry and made a submission to the Facebook Oversight Board.

2.2. Groups facing disproportionate barriers

- **Women journalists.** CFE’s 2023 review documented gendered online attacks on women journalists in South Africa, including campaigns by political supporters that combined threats of rape and death, sexual abuse and the publication of home addresses; many such attacks now go unreported and are accepted as part of the job. Women journalists are also targeted through the courts: Karyn Maughan was trolled relentlessly online by supporters and family of the former president while she defended his private prosecution, and she and Kelly Anderson later faced a protection order.
- **Freelance and local journalists.** Journalists without institutional backing carry the heaviest cost of lawfare. Mr Nkgadima lost commissions and income while the order against him stood, and CFE has observed that the worst cases tend to arise in rural municipalities and local government, where accountability journalism matters most.
- **Whistleblowers and public-sector workers,** including public health workers and the former PRASA executives described above, who face dismissal, discipline and intimidation, often without adequate legal or financial support. CFE’s [#IStandWithHealthWorkers](#) campaign aims to build a solidarity network for health workers who are victimised after speaking out.

- **Civil society organisations and defenders.** Non-profit watchdogs such as Open Secrets, and the activists and lawyers sued by a mining company in the case in which the Constitutional Court recognised the SLAPP defence, face the same tactics. The vetting provision initially proposed in the intelligence bill would have reached non-profits and churches.

3. MAXIMISING IMPACT

3.1. Actions and types of interventions

Over the next three years, CFE recommends that the mandate prioritise interventions that translate normative standards into tools that judges, legislators and practitioners can actually apply:

- **Judicial education on prior restraint.** Support and disseminate practical guidance and training for judges and magistrates on pre-publication and ex parte relief against the press, the presumption of open justice, and a structured proportionality analysis under article 19(3).
- **Lawfare.** Track and report on the use of SLAPPs, prior restraints and the repurposing of harassment, cybercrime and defamation laws against journalists and civil society, and recommend safeguards: anti-SLAPP laws with early dismissal and costs consequences for abusive claimants; explicit public-interest defences in harassment and cybercrime legislation; and procedural limits on ex parte gagging orders, including notice to media respondents.
- **Whistleblowers and sources.** Issue thematic guidance that treats whistleblower protection as part of freedom of expression, including effective remedies (reinstatement and protection from adverse costs orders), confidentiality and safe reporting channels, and encourage third-party interventions in courts.
- **Security and intelligence legislation.** Engage with States on draft intelligence and national security laws, recommending narrow definitions, express exemptions for journalists from vetting, and publication of draft surveillance regulations for public comment.
- **Information integrity.** Issue guidance on responding to mis- and disinformation consistently with article 19(3), favouring platform transparency and accountability, including about election preparations, over criminalisation.

- **Timely communications.** Issue public interventions and communications to States when ordinary laws are used to silence journalists or whistleblowers.

3.2. Emerging trends likely to have a significant impact

- **Ordinary laws repurposed as gagging tools.** The shift from defamation suits to harassment orders and urgent ex parte interdicts gives claimants cheap, fast relief obtained without notice. CFE expects the tactic to spread to other statutes that offer low thresholds and quick remedies.
- **Mis- and disinformation, platform accountability and elections.** The forthcoming local government elections will test the platforms' preparedness. So far they have offered little public transparency about what they are doing to protect South African elections.
- **Implementation of the new intelligence law.** The regulations on mass interception and the application of the vetting provisions will determine in practice whether journalists and their sources are protected.

4. INCLUSION AND PARTICIPATION

To ensure that women, children and youth, and historically marginalised communities shape, rather than merely feature in, the mandate's work, CFE recommends that the mandate:

- Hold targeted, resourced consultations with women journalists and defenders, including those who have been targeted online, as a standing feature of its programme.
- Reach freelance and local journalists and whistleblowers outside the major urban centres, who often lack institutional legal support, through accessible, low-bandwidth and multilingual channels for submissions.
- Involve young people and student journalists. CFE's [Speak Up SA](#) programme, run with Rhodes University's School of Journalism and Media Studies, gives students a platform and access to practitioners.
- Partner with national legal-support networks and civil society organisations that already work with at-risk journalists, such as CFE and the Free Expression Legal Network, to identify voices otherwise excluded, and publish feedback on how input is reflected, ensuring that consultations are safe for participants at risk of retaliation.

ⁱ Sources: CFE, [The Landscape is Darkening](#): A review of freedom of expression in South Africa 2018–2023 (November 2023); CFE, [Silent Killer](#): When institutional obligations restrict public health workers’ moral duty to save lives (March 2023); CFE and Intelwatch, [joint statement on the General Intelligence Laws Amendment Bill](#) (April 2024); CFE, [Critique of the New Intelligence Act](#) (April 2025); Harber, [“Courts are being used to silence journalists and activists”](#) (April 2025); Ngqulunga and Morrison (CFE), [“Protection orders are being repurposed as gag orders across SA”](#), Daily Maverick (25 June 2026); Media Defence and CFE, [statement on Thomo Nkgadima](#); Sunday Times, [withdrawal of the order against Sisanda Mbolekwa](#) (11 July 2026); CFE, Media Monitoring Africa and SANEF, [media release on the Zuma v Maughan judgment](#) (7 June 2023), and [the judgment: Mineral Sands Resources v Reddell \[2022\] ZACC 37](#); Harber, [“Laws needed to stop SLAPPs against journalists”](#), Business Day (6 July 2023); CFE and others, [letter to the Chief Justice on gagging orders](#) (November 2025); Office of the Chief Justice, [media statement on Open Secrets](#); Daily Maverick, [court dismisses gag order against Open Secrets](#) (27 November 2025); Polity, [Open Secrets interdict](#) (28 November 2025); GroundUp, [CFE applies to join the Ngoye and Holele case](#) (9 October 2026); [Draft Protected Disclosures Bill, 2026](#); CFE, [questions for the social media platforms](#); CFE, [Speak Up SA](#); ICCPR, art. 19.