



**ADJUDICATION NO:24/A/2023**

**NAME OF PROGRAMME:** EYEWITNESS NEWS  
**DATE AND TIME OF BROADCAST:** 13 OCTOBER AT 12:00  
**BROADCASTER:** 94.7  
**COMPLAINANT:** MARK

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**COMPLAINT**

**Complaint against radio station for broadcasting allegedly biased and unfair news reports on 13 October 2023.**

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**APPLICABLE CLAUSE**

- 11. News**
- (1) Broadcasting service Licensees must report news truthfully, accurately and fairly.**
  - (2) News must be presented in the correct context and in a fair manner, without intentional or negligent departure from the facts, whether by:
    - (a) Distortion, exaggeration or misrepresentation.**
    - (b) Material omissions; or**
    - (c) Summarisation****
  - (3) Only that which may reasonably be true, having reasonable regard to the source of the news, may be presented as fact, and such fact must be broadcast fairly with reasonable regard to context and importance.**

- (4) **Where a report is not based on fact or is founded on opinion, supposition, rumours or allegations, it must be presented in such manner as to indicate, clearly that such is the case.**
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## ADJUDICATION

[1] A complaint was lodged with the BCCSA against Radio 94.7 for broadcasting allegedly biased news reports regarding the Palestine/Israel conflict on 13 October 2023.

[2] **The complaint reads as follows:**

“On the 13th of October, at around 12pm today during the news briefing.

The presenter stated the number of casualties in the Israel - Gaza conflict, and further mentioned that there were women and children included in the deaths. When mentioning Israel, I can't remember the exact wording, but the reporter stated that there were reportedly children beheaded.

This language is not fair, nor accurate.

In line with the Free to air Code of Conduct, section 11 (news), paragraph 1, "Broadcasting service licensees must report news truthfully, accurately and fairly".

I have transcribed the recording, in order to properly explain the complaint. The choice of wording, resulting in bias reporting is clear:

1. At around **02:22**, the presenter says that "1500 Palistinians have been killed, **including women and children**" (*first highlight*).
2. Around **02:37** the presenter says that "Hammas has killed more than 1 300 people, **including civilians**" (*why no mention of women and children here?. See second highlight*).
3. Around **02:42** the presenter says that" Netanyahu's office has published pictures of babies **it says** (*why include the words "it says" implying allegations rather than facts, but when there is mention of Palestinian women and children killed, this is stated as fact. See third highlight*) were murdered ... "

For clarity's sake:

1. My complaint was specifically regarding the language, which does not provide for news reporting which is truthful, accurate and fair. Unfortunately I do not have a photographic memory, so I am not able to remember the exact wording without a copy of the recording.
2. I don't want reports to be worded my way, but rather for reports to be worded in a manner which is fair and unbiased, in line with the code of conduct.

## Transcript

00:01:16 Speaker 2

The Department of International Relations says the verification process of the identities of the two South Africans, who have reportedly been killed in the conflict, currently gripping the Middle East is underway. This follows a surprise attack by the militant wing of Hamas on Israel almost a week ago, followed by retaliatory attacks on Gaza by the Israeli military. The death toll from both sides is at almost 3000 since the conflict began on Saturday. DIRCO spokesperson Clayson Manuela.

00:01:40 Speaker 4

The verification process is currently underway because one of the individuals is reported to have an Israeli ID number so we need to determine whether there is dual citizenship or what the picture is.

00:01:58 Speaker 2

And meanwhile, more than 1.1 million people in Gaza have been given 24 hour notice to evacuate the area. At the same time, the United Nations is deeply worried about the humanitarian crisis unfolding in Gaza. Earlier this week, Israel cut off critical supplies as it declared war on Hamas and promised a total siege. Israel is expected to launch a ground offensive into Gaza to root out militant group Hamas possibly this weekend. A series of air strikes from Israel have already killed close to 1500 Palestinians, including women and children.

00:02:28 Speaker 2

Prime Minister Benjamin Netanyahu and his allies, including America believe the bombardment is justified because Hamas has killed more than 1300 people, including civilians, since it launched attacks on Saturday. Netanyahu's office has published pictures of babies it says were murdered by Hamas when it launched attacks on Israel on Saturday.

00:02:48

Hamas is Isis and just as ISIS was crushed, so too will Hamas be crushed.

### [3] **The Broadcaster responded as follows:**

“Clause 11.1 of the Free to air code of conduct requires broadcasting service licensees to report news truthfully, accurately and fairly.

Primedia makes every effort to ensure that it upholds the Code in its entirety in order to provide its listeners with accurate news particularly in respect of matters of global importance.

The complaint under consideration is in respect of the use of the descriptions in respect of estimated number of Palestinians who have been killed vis-à-vis the estimated number people killed by Hamas.

In particular, the complaint is in respect of the inclusion of the words “women and children” in respect of Palestinian casualties and the words “including civilians” in respect of the people killed by Hamas.

It is important to understand that the reference to civilians distinguishes between the persons in armed forces who were killed and ordinary members of the public, who are not in any armed

service, who also lost their lives. The term civilian is therefore a broad term and does not distinguish between men and women or even children. However, the use of the term "civilian" cannot be construed as a breach of clause 11.1.

In respect of the second aspect of the complaint regarding the published pictures of babies, it is important to understand that the report, in line with the clause 11.1, stipulates for the benefit of the listener, the allegations which have been levelled against Hamas by the Prime Minister's office. The report therefore informs the listener of the position taken by the Prime Minister's office in respect of the pictures posted by the very same office.

Primedia acknowledges the impact that the on-going conflict and the gravity of the loss of lives. It is for this very reason that Primedia ensures that it complies with both the letter and the spirit of the Code.

Primedia therefore respectfully submit that it has not breached clause 11.1 of the Code and also thanks the Complainant for engaging with its content as it also provides for an opportunity to reflect on the content which is broadcast on Primedia's platforms.

**[4] The Complainant replied as follows:**

"I do not agree with the response provided.

Clause 11.1 of the Free to air code of conduct requires broadcasting service licensees to report news truthfully, accurately and fairly.

Primedia through its response, fails to take accountability for its use of intentional and misleading reporting. The use of the word civilians to describe casualties on the Israel side of the conflict against the use of the wording "woman and children " on the Palestinian side of the conflict is a DELIBERATE attempt to direct the narrative to the side of the Palestinian cause in reporting the conflict.

It is insufficient to rely on linguistic ambiguity as a defense to their reporting obligations, when it is without doubt that the intention of the Primedia news team was to drive a narrative that supports and represents one side of the conflict more than the other. The essence of the complaint is that wording used in such reporting is a deliberate attempt to dehumanize one side in a conflict whilst simultaneously adding a humanitarian face to the other.

Primedia has clearly breached its reporting obligations deliberately and failed to adhere to clause 11.1 regarding news reporting that is accurate and fair.

**[5] The Respondent submitted a supplementary response:**

**"947'S RESPONSE TO MARK COMPLAINT**

**1. INTRODUCTION**

- 1.1. We act on behalf of 947, a commercial sound broadcasting service that broadcasts in an adult contemporary format in accordance with clause 4 of its licence issued by the Independent Communications Authority of South Africa (ICASA).
- 1.2. 947 is a member of the National Association of Broadcasters and is bound by the Code of Conduct for Free to Air Broadcasters (2011) (the Code) as developed and

administered by the Broadcasting Complaints Commission of South Africa (the BCCSA).

- 1.3. The BCCSA has provided us with a copy of the complaint lodged by Mr Yishai Mark who alleges that 947 has violated the provisions of clause 11.1 of the Code.

## **2. THE COMPLAINT**

- 2.1. In his complaint Mr Mark makes it clear that he is complaining about use of particular words in an Eye-Witness News (EWN) news bulletin broadcast on 947 at 12h00 on Friday 13 October concerning the ongoing conflict in the Middle East, particularly concerning the Hamas attacks in Southern Israel and the Israeli bombings of Gaza.
- 2.2. Mr Mark essentially accuses 947 using differential language in respect of the conflict:
  - 2.2.1. in “a DELIBERATE (emphasis in the original) attempt to direct the narrative to the side of the Palestinian cause in reporting the conflict” and
  - 2.2.2. that “is a deliberate attempt to dehumanize one side in a conflict whilst simultaneously adding a humanitarian face to the other”, thereby failing “to adhere to clause 11.1 of the Code regarding news reporting that is accurate and fair”.
- 2.3. We have provided the Complainant and the BCCSA with a copy of the audio. Please find 947’s response thereto, below.

## **3. 947’S RESPONSES**

- 3.1. Clause 11.1 of the Code, which is the clause in question in this complaint, provides that broadcasters “must report news truthfully, accurately and fairly”.
- 3.2. Mr Mark does not allege that anything in the news bulletin broadcast was untrue or inaccurate. Consequently, his complaint hinges on the issue of “fairness” in reporting.
- 3.3. Further Mr Mark does not allege a violation of clause 11.2 which, we respectfully submit, gives greater insight into how news reporting is to be done so as to avoid untruthful, inaccurate or unfair reporting, that is, the clause requires correct contextualization and prohibits intentional or negligent departure from the facts through: distortion, exaggeration or misrepresentation; material omissions; or summarization.
- 3.4. Mr Mark’s complaint ultimately rests on the use by EWN of the word “civilians” to describe Israeli casualties vs (his characterization) the use of the words “women and children” to describe Palestinian casualties. In this regard, 947 notes that the news bulletin actually refers:
  - 3.4.1. when reporting on the victims of the Israeli bombardment of Gaza, to “Palestinians, *including women and children*”; (our emphasis) and
  - 3.4.2. when reporting on the victims of the Hamas attacks in Israel to “people, *including civilians*” (our emphasis).
- 3.5. 947 respectfully submits that it is not required of it to use exactly the same terminology, nomenclature, words etc. when referring to the victims of a conflict. 947, as is the case with any other broadcaster, or indeed any individual, enjoys the right to freedom of expression, that is, it is allowed to express itself in a manner of its

choosing, protected and guaranteed in terms of section 16(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution). In this regard:

3.5.1. The limitations on any right contained in the Bill of Rights (Chapter 2 of the Constitution) are specifically circumscribed by section 16(2) of the Constitution (forms of expression which the right in section 16(1) does not extend to) and by section 36, the Limitations Clause. As the BCCSA is aware, section 36(1) specifies that a right in the Bill of Rights “*may be limited only in terms of law of general application to the extent the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –*

- (a) the nature of the right;*
- (b) the importance of the purpose of the limitation;*
- (c) the nature and extent of the limitation;*
- (d) the relation between the limitation and its purpose; and*
- (e) less restrictive means to achieve the purpose.”*

3.5.2. Further, section 36(2) specifies that “*Except as provided in subsection (1) or in any other provision of the constitution, no law may limit any rights entrenched in the Bill of Rights.*”

3.5.3. In relation to broadcasting, a law of general application has indeed been passed that limits what may be broadcast on-air, and which meets the test for rights limitations in terms of the Constitution, namely section 54 of the Electronic Communications Act, 2005 (the ECA).

3.5.3.1. Section 54(2) provides that “Subject to the provisions of subsection (3) all broadcasters must adhere to the code of conduct for broadcasting services as prescribed [by the Independent Communications Authority of South Africa (ICASA)].

3.5.3.2. However, section 54(3) makes provision for ICASA to approve a Code and disciplinary mechanisms of a body which the broadcaster is a member of. The BCCSA is such a body and Primedia is bound by the BCCSA Code as has been set out above.

3.5.4. The effect of this is that the BCCSA Code constitutes a set of justifiable limitations on Primedia’s freedom of expression that the BCCSA is capable of adjudicating upon and which, properly interpreted, meets the test of the limitations clause set out in section 36 of the Constitution.

3.5.5. Consequently, only if Mr Mark can demonstrate that the use of the words “Palestinians, including women and children” and the use of the words “people, including civilians”, properly contextualised, to refer to either side of the conflict does indeed constitute unfair treatment of one of the sides to the conflict in the news bulletin would there be an actual violation of a provision of the Code, entitling Mr Mark to secure the BCCSA’s enforcement of a limitation on Primedia’s (and 947’s) right to freedom of expression in how to report the news.

3.6. We submit that Mr Mark has not and cannot demonstrate the above.

3.7. The Israeli army is the recognised military of the state of Israel. It is not incorrect in law or in fact to distinguish between military personnel and civilians. Further women in Israel also serve in the Israeli army and are not therefor, automatically classed as

civilians. Hence it is not incorrect or unfair to clarify that the hundreds of Israelis killed in the Hamas attacks included civilians – defined as “people not in the armed services”<sup>1</sup>.

3.8. Similarly, it is not incorrect in law or in fact to state that the hundreds of Palestinians killed in the Israeli bombardment of Gaza include women and children.

3.9. A crucial issue in determining whether the use of particular (and different) wording to describe casualties in a conflict is fair or unfair is the context, that is, the specific situating of the words themselves. In this regard, 947 thinks it is incorrect to suggest that 947 was engaging in the dehumanization of Israelis when the same bulletin featured a recording of the Israeli Prime Minister, Mr Benjamin Netanyahu, putting forward Israel’s viewpoint on the nature of the conflict, in particular that:

3.9.1. Hamas is ISIS; and

3.9.2. Hamas will, as ISIS was, “be crushed”.

3.10. 947 therefore rejects the assertion that the bulletin deliberately sought to direct the narrative to the side of the Palestinian cause in reporting the conflict and to dehumanize the Israeli side. Indeed, properly contextualised, it is clear that 947 was attempting to be informative and even-handed about the number and nature of the casualties and of the conflict, in general and went out of its way to ensure Mr Netanyahu’s views were conveyed to 947’s listeners.

#### 4. CONCLUSION

In the circumstances, 947 denies that the broadcast in question contravened clause 11(1) of the Code.

5. 947 submits that given the nature of the ongoing conflict it would be useful to have this complaint adjudicated by the Tribunal to hear oral argument on the approaches to reporting on the conflict and requests that the matter be referred to the Tribunal accordingly.”

## EVALUATION

[6] The gist of the complaint is that on 13 October 2023, in the *EyeWitness News* bulletin, the choice of wording allegedly resulted in biased and unfair reporting regarding the Palestine/Israel conflict. The Complainant argues that when referring to Palestinians who were killed by Israel, women and children were mentioned specifically, but when referring to Israelis killed by Hamas, no mention was made of women and children, only to people, including civilians.

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<sup>1</sup>[https://www.google.com/search?q=definition+civilians&oq=definition+civilians&gs\\_lcrp=EgZjaHJvbWUyBggAEEU YOTIICAEQABgWGB4yCggCEAAYhgMYigUyCggDEAAYhgMYigUyCggEEAAYhgMYigUyCggFEAAYhgMYigXSAQg1NDUy ajFqN6gCALACAA&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=definition+civilians&oq=definition+civilians&gs_lcrp=EgZjaHJvbWUyBggAEEU YOTIICAEQABgWGB4yCggCEAAYhgMYigUyCggDEAAYhgMYigUyCggEEAAYhgMYigUyCggFEAAYhgMYigXSAQg1NDUy ajFqN6gCALACAA&sourceid=chrome&ie=UTF-8)

- [7] The Broadcaster argues that the term 'civilians' distinguishes between persons in the armed forces who were killed and ordinary members of the public (not in any armed service) who also lost their lives. The term 'civilian' is therefore a broad term and does not distinguish between men, women or children. In his response to the Broadcaster's explanation, the Complainant maintains that it was "*a deliberate attempt to dehumanize one side in a conflict whilst simultaneously adding a humanitarian face to the other*".
- [8] In my opinion, by implication the Complainant argues that by specifying the killing of women and children, more sympathy/empathy for Palestinians was evoked from listeners since children especially is a subject laden with emotion. However, later, in the same news bulletin, specific mention was made of Israeli babies that were murdered by Hamas. This provided fair and balanced coverage of the story. The Code of Conduct does not require broadcasters to use the exact same phrasing, terminology or words when referring to two sides of a news story.
- [9] The Complainant further argues that the phrasing of the statement "*Netanyahu's office has published pictures of babies it says were murdered by Hamas*" further contributed to biased reporting. He argues that the words 'it says' implied that it was allegations in the case of Israeli children, but when mention was made of Palestinian women and children who were killed, it was stated as fact. However, (in compliance with Clause 11.4 of the Code) the words '*it says*' were used to indicate that the statement regarding Israeli children was not absolutely confirmed.
- [10] When reporting on international news events, South African news reporters rely heavily on reports published by reputable international news organisations around the world. Numerous international news organisations, for example,



*The Times of Israel*<sup>2</sup>, CNN<sup>3</sup>, India's NDTV<sup>4</sup>, and Fox News<sup>5</sup> reported on the statement by Prime Minister Netanyahu's office about the murdering of Israeli children. It was a breaking story that was still developing, and the production team of *EyeWitness News* had no reason, at the time of the report, to doubt the correctness or wording of reports emerging from the scene of the attack.

- [11] In one of the BCCSA Tribunal judgments (Case No. 19/98), the Tribunal indicated the following regarding broadcasters' duties:

"This Commission would be disregarding the Constitution if it were too readily to find bias in a programme that deals with matters of public interest.... What is more, what is bias for one person would be a truth and a balanced perspective for another .... Accordingly, if bias is not clear and unequivocal, the Commission should not venture into this hazardous field. **One should also not underestimate the likely South African viewers of a programme .... They would be in a position to judge for themselves what, to their minds, is one-sided, what is true, and what amounts to fair comment.**" (Own emphasis)

- [12] The BCCSA's primary task is to ascertain whether an impugned broadcast has contravened one or more of the clauses of its Codes of Conduct. By lodging this complaint, the Complainant exercised his right to freedom of opinion as stated in section 15 of the Constitution of South Africa. By broadcasting the news items, the Broadcaster exercised its right to freedom of expression as guaranteed in section 16 of the Constitution and in the Code of Conduct. It is broadcasters' editorial prerogative (even more so in the case of developing stories) to determine what in their view should form the contents of their programmes, including the language/phrasing that is used.

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<sup>2</sup> Available on the Internet at <https://www.timesofisrael.com/netanyahus-office-releases-horrifying-images-of-infants-murdered-by-amas/> Accessed 25 October 2023

<sup>3</sup> Available on the Internet at [https://edition.cnn.com/middleeast/live-news/israel-news-hamas-war-10-12-23/h\\_4326bdad3ad54b740f850c5aca930d05](https://edition.cnn.com/middleeast/live-news/israel-news-hamas-war-10-12-23/h_4326bdad3ad54b740f850c5aca930d05) Accessed 25 October 2023

<sup>4</sup> Available on the Internet at <https://www.youtube.com/watch?v=tRL5UamxTNs> Accessed 25 October 2023

<sup>5</sup> Available on the Internet at <https://www.foxnews.com/world/israeli-pms-office-releases-g>. Accessed 25 October 2023

[13] The Broadcaster followed general accepted modus operandi by relying on information and phrasing as reported by international reputable news organisations regarding this breaking, developing story. It exercised its editorial prerogative regarding the news items in question, which were balanced, accurate and fair. The impugned words were used in the correct context and there was no intentional or negligent departure from facts through distortion, exaggeration, misrepresentation, material omissions or summarisation. Since no contravention of Clause 11 of the Code could be found, the complaint is not upheld.

A handwritten signature in black ink, appearing to read 'L. Venter', is positioned above the typed name.

**DR LINDA VENTER  
BCCSA COMMISSIONER**