



**ADJUDICATION NO:38/A/2026**

**NAME OF PROGRAMME:** MONDLI MAKHANYA  
**DATE AND TIME OF BROADCAST:** 3 JUNE 2026  
**BROADCASTER:** POWER FM  
**COMPLAINANT:** SOUTH AFRICAN ZIONIST FEDERATION

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**COMPLAINT**

Complaint that Power FM broadcast a segment concerning South Africa's proceedings against Israel before the International Court of Justice and the broader conflict in the Middle East without fairly presenting an opposing point of view and without affording a right of reply.

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**APPLICABLE CLAUSES**

**FREE-TO-AIR CODE**

**13. Controversial Issues of Public Importance**

- (1) In presenting a programme in which a controversial issue of public importance is discussed, a broadcaster must make reasonable efforts to 9 fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time of the original broadcast and within substantially the same time slot.**
- (2) A person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance must be given the right to reply to such criticism on the same programme. If this is impracticable, reasonable opportunity to respond to the programme should be provided where appropriate, for example in a right to reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned.**

## **ADJUDICATION**

- [1] A complaint was lodged with the BCCSA against Power FM concerning an interview broadcast on Power Talk with Mr. Thembisa Fakude alleging a failure to present opposing views and to afford a right of reply.

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

**“Complaint to the BCCSA: South African Zionist Federation // Power FM & Mondli Makhanya**

**Summary of Complaint**

**Broadcaster:** Power FM

**Radio Presenter:** Mondli Makhanya

**Nature of Programme:** Current Affairs / News Talk

**Guest:** Mr Tembisa Fakude – Senior researcher and director, Africa-Asia Dialogues

**Date of Broadcast:** 3 June 2026

**Platform:** Free-to-Air / Commercial Radio, **Link to Broadcast:** [Listen here](#)

**Key Concern with the Broadcast:** Omission of Alternative Viewpoints: No counterpoint or opposing perspective was presented in the same or any subsequent broadcast, breaching the requirement for balance under Clause 13 of the Code. No Israeli representative, pro-Israel commentator, neutral legal expert or any alternative perspective was afforded airtime at any point during or subsequent to the broadcast.

**Particulars of the Complainant**

1. The complaint is brought by the South African Zionist Federation ("SAZF"), a registered NPO, with the mission to strengthen the relationship between the State of Israel, South Africa and South African Jewry. The SAZF aims to adhere to the foundations of Zionism, which includes the mobilisation of public opinion for the support of Israel. Our members make up the audience as listeners of sound broadcasting service licensees, such as Power FM. We have an interest to ensure that all broadcasts of broadcasting service licensees comply with the Code, especially in relation to controversial issues of public importance that relate to Israel.

**Particulars of the Broadcast**

2. On 3 June 2026, Mondli Makhanya on Power FM broadcast a segment concerning South Africa's ongoing genocide case against Israel at the International Court of Justice ("ICJ"). The programme, Power Talk, featured a discussion with guest Mr Tembisa Fakude, identified as a senior researcher and director at Africa-Asia Dialogues. Throughout the broadcast, the host and his guest made a series of factual claims, characterisations, and editorial judgements regarding Israel, the conflict in Gaza, the ICJ proceedings, and related geopolitical matters. At no point during the broadcast was an Israeli representative, a pro-Israel commentator, a neutral international law expert or any alternative perspective afforded airtime. The host himself made personal political statements – including repeated characterisation of Israel's conduct as "genocide", without editorial qualification or distinction.

### **Particulars of the Host**

3. Mr Makhanya is a journalist, author, and media commentator of considerable standing. He is the editor-in-chief of City Press, former editor-in-chief of the Sunday Times and the Mail & Guardian, and has received numerous awards for his journalism. He is a former chairperson of the South African National Editors' Forum. He hosts Power Talk on Power FM, a programme dedicated to current affairs analysis and public interest journalism. In light of Mr Makhanya's extensive experience as a senior journalist and public affairs broadcaster, it is our reasonable expectation that he should have a proficient working knowledge of the BCCSA Code of Conduct for Free-to-Air Broadcasting Service Licensees ("the Code").

### **Particulars of the Guest**

4. Mr Tembisa Fakude is described as a senior researcher and director at Africa-Asia Dialogues. Mr Fakude is also publicly described as having "a wealth of experience in media and communications".<sup>1</sup> He holds a Master's Degree in Politics as well as a Bachelor of Arts with Honours both from the University of the Witwatersrand South Africa. He has held Chairpersonship in the Foreign Correspondents Association of Southern Africa (FCASA), he is a Board member of the Mail and Guardian Newspaper. He was also a member of the Organizing Committee Women Deliver 4th Conference, Copenhagen in 2016. Mr Fakude is also a Research Fellow at the Al Sharq Forum in Istanbul, Turkey.
5. Mr Fakude was part of the Al Jazeera Media Network for over ten years and worked as a senior news producer, researcher and Head of the English Unit Research for the Network. Mr Fakude was also a Member of the Organizing Committee for the World Media Summit at Doha, Qatar in 2016. Mr Fakude is a columnist for the Middle East Monitor in London, United Kingdom (UK). He is also the Deputy Chairperson of the Common Action Forum in Madrid.
6. In light of Mr Fakude's extensive experience, it is similarly our reasonable expectation that he should have a proficient working knowledge of the BCCSA Code of Conduct for Free-to-Air Broadcasting Service Licensees ("the Code").

### **Particulars of the Interview Topic**

7. Mr Makhanya introduced the subject matter as South Africa's ICJ genocide case against Israel and the broader international response to the conflict in Gaza. The discussion ranged across the ICJ case and processes (interim orders, extension granted to South Africa), conduct of the Israeli government and military in Gaza, West Bank and Southern Lebanon, the characterisation of events in Gaza as genocide, the domestic destabilisation of South Africa rumoured to be orchestrated by Israel, and the electoral prospects of Prime Minister Benjamin Netanyahu and the US-Iran war.

### **Obvious Bias of Mr Fakude as a Guest**

8. We contend that Mr Fakude was not in a position to give balanced commentary.
9. Mr Fakude is overtly anti-Israel and pro-Hamas.
10. This is relevant because on October 7, 2023, Hamas and several other Palestinian militant groups launched coordinated armed incursions from the Gaza Strip into southern Israel. Hamas militants breached the Gaza-Israel barrier, attacking military bases and massacring civilians in 21 communities. In total, 1,195 people were killed, of which 736 were Israeli civilians (including 36 children), 79 were foreign nationals, and 379 were members of the Israeli security forces.

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<sup>1</sup> <https://thespeakersfirm.co.za/thembisa-fakude>

364 civilians were killed and many more wounded while attending the Nova music festival. About 250 Israeli civilians (including children and the elderly) and soldiers were taken as hostages to the Gaza Strip. The Interview makes mention of the date of October 7th 2023.

11. Ismail Haniyeh became the “public face” of this Hamas attack and was sanctioned as a terrorist in multiple countries across the world. Haniyeh was assassinated by the IDF on 31 July 2024.
12. In early August 2024, Mr Fakude authored a tribute to slain Hamas leader Ismail Haniyeh entitled “*From one anti-apartheid activist to another, a South African pays tribute to Ismail Haniyeh – Middle East Monitor*”.<sup>2</sup> Mr Fakude describes Haniyeh as follows:

*“Ismail Haniyeh’s face and personality shone, giving the place an immediate sense of his presence whenever he entered a room. Whether wearing a formal suit or a traditional thobe, he had the dignity and charm that very few people in his position are blessed with. When he smiled, he did so from the heart, and when he spoke to you, he gave you his full attention. With his murder by Israel, the Palestinians have lost a great leader. May his example live on and continue to inspire generations of Palestinians to come.”*

13. As such, it is reasonable to expect that Mr Makhanya should have been aware of Mr Fakude’s personal bias against Israel, open support of Hamas and his multiple meetings of Haniyeh. Mr Fakude’s admiration for Haniyeh is not incidental to his views on Israel, it is the logical corollary of them. Hamas’s foundational purpose is the destruction of the State of Israel; its governing charter calls for the elimination of Israel as a political and territorial entity. Hamas is a belligerent in an armed conflict with the State of Israel, and Mr Fakude has publicly and unambiguously aligned himself with that belligerent. A commentator who sides with one party to a war cannot be presented as an objective analyst of that war’s conduct and the ICJ case against Israel. His appearance on *Power Talk* as an unchallenged expert voice was therefore the equivalent of broadcasting a partisan combatant as a neutral observer.
14. Mr Makhanya should therefore reasonably have been aware of the need to include a balancing voice given the deeply contested nature of the subject matter and the guest’s evident advocacy posture.
15. This is particularly clear in light of the fact that the SAZF previously complained to the BCCSA about Power FM in June 2025 about Mr Fakude’s bias and lack of balance. All of the above information about Mr Fakude was made known to Power FM over a year ago. Their choice to continue using Mr Fakude as if he is a neutral, balanced commentator, is made intentionally.

### **Failure to Make Reasonable Efforts to Present Opposing Views**

16. The broadcast deals with controversial issues of public importance within the meaning of Clause 13 of the Code. Mr Makhanya, the producers of Power Talk and Power FM failed to make any effort to present opposing points of view either in the broadcast itself or in any subsequent programme forming part of the same series, within a reasonable period of time of the original broadcast and within substantially the same time slot. Power FM failed to afford any party holding a pro-Israel or even an impartial viewpoint the opportunity to present an opposing perspective.
17. The conflict in Gaza, South Africa’s ICJ case against Israel, the conduct of the Israeli government and military, and the history of Israel’s relationship with the international

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<sup>2</sup> <https://www.middleeastmonitor.com/20240805-from-one-anti-apartheid-activist-to-another-a-south-african-pays-tribute-to-ismail-haniyeh/>

community are among the most contested geopolitical and legal questions of our time. They are matters on which reasonable, informed, and credible persons hold fundamentally different views.

18. The broadcast was conducted entirely from one perspective. The sole guest was a researcher whose public profile and commentary are aligned with the pro-Palestinian advocacy position. No Israeli government representative, no Israeli civil society voice, no legal expert offering an alternative view on the ICJ proceedings or the applicable law of armed conflict, and no commentator offering a different historical or geopolitical perspective was included in the programme.
19. Clause 13 of the Code requires that controversial issues of public importance be discussed in a balanced manner, and that where a third party's conduct or views are subject to sustained adverse comment, that party be afforded either an opportunity to participate in the same programme or to do so in a subsequent programme on the topic. It is well established in the interpretation of the Code that this requirement is aimed at providing listeners with sufficient knowledge to enable them to determine how much weight to attach to the views expressed. Listeners to Mr Makhanya's programme were afforded no such opportunity.
20. The obligation to present balance is made more acute where the content broadcast includes claims that are factually contested, legally undefined, or politically loaded, and where those claims are presented to listeners as though they were settled and uncontroversial. We set out below the principal categories of such claims made during the broadcast, each of which called for a balancing perspective that was never provided.
21. The first category concerns the characterisation of the conflict in Gaza as genocide. The following statements were made during the broadcast, without challenge, correction, or contextualisation by the host. The guest stated:

*"Well, by 2029, if Benjamin Netanyahu is still alive, he will have continued with this genocide, as he is currently doing in Gaza, notwithstanding the ceasefire. And as you correctly put it, the injunction by the ICJ in 2023 was to basically ask Israel to cease continuing to kill people, at least for the period after the case was instituted by South Africa. And Israel has continued to violate and ignore whatever the ICJ has been saying. So we are in a situation where the genocide continues and Israel and its IDF — which is the force perpetuating this genocide — is continuing to kill the Gazans."*

22. This characterisation was further amplified later in the broadcast, when the guest stated:

*"And I think the world will begin to understand in earnest the evil and the atrocity and the genocide and how bad it was for the Palestinians. And only then will the truth be revealed."*

23. Critically, the host himself, not merely the guest, presented genocide as an established fact, without editorial qualification, stating at the outset of the broadcast:

*"Yes, but in the meantime — the ICJ issued some interim orders a few years ago, which Israel largely ignored, and the genocide continued. And then there was a ceasefire, but it has been basically breached repeatedly by Israel."*

24. The characterisation of the conflict in Gaza as a "genocide" is a matter of profound legal and political controversy. The ICJ proceedings against Israel remain ongoing; no binding legal determination of genocide has been made by any competent international tribunal. The term carries a specific and demanding legal definition under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and its application to the current

conflict is actively disputed by legal scholars, governments, and international institutions. These characterisations were not framed as allegations, as the guest's personal opinion, or as South Africa's legal position in the ICJ proceedings. They were presented as factual assertions, and in the host's case, as self-evident background context. Clause 13 required that these contested legal and political characterisations be balanced by countervailing perspectives. They were not.

25. The second category concerns a material misrepresentation of the ICJ's legal findings, presented as established fact. The guest stated:

*"And then the Court finally accepted that, yes, there is prima facie evidence and a case to be pursued in this regard."*

26. This is factually incorrect. The ICJ did not make a finding of *prima facie* evidence of genocide. What the Court ruled in its January 2024 provisional measures order was the far narrower proposition that Palestinians in Gaza had a plausible right to be protected from acts that could fall within the Genocide Convention. This is a preliminary jurisdictional threshold, not a merits finding, and it falls well short of any determination that genocide has occurred or is occurring. The guest presented this ruling to listeners as a substantive judicial endorsement of South Africa's genocide characterisation. It was not. The host did not correct this misrepresentation, nor did he seek clarification. Broadcasting this mischaracterisation without qualification, and permitting the remainder of the discussion to proceed on the basis of it as settled fact, constitutes a failure of the accuracy and balance obligations under Clause 13. It deprived listeners of the ability to assess the legal weight of the ICJ proceedings accurately.

27. The third category concerns the extension of the genocide and mass-killing characterisation to the West Bank and Lebanon, including a suggestion that Israel intends to eliminate a population. The guest stated, without challenge:

*"In the West Bank — which is a story that has not been discussed that much — they have been doing something similar in terms of their mass killing of Palestinians. And now we see what they are doing in Lebanon. I think Lebanon is another case that is worth looking at, in terms of whether Israel is not intent on eliminating a population. Over a million people overnight were forced to move from South Lebanon into the northern areas of Lebanon because Israel decided that it was going to occupy that part of the world. And while doing so, destruction of property took place and the mass killing of people."*

28. The suggestion that Israel is "intent on eliminating a population" is an allegation of the gravest possible character. It was advanced without any legal framework, without evidential basis, and without challenge or contextualisation from the host. No alternative perspective on Israeli military operations in Lebanon or the West Bank, including Israel's own stated security justifications or any independent legal analysis, was presented. Clause 13 required that an allegation of this severity be balanced. It was not.

29. The fourth category concerns an unverified conspiracy theory, that Israel is covertly orchestrating domestic instability in South Africa, broadcast in a manner that lent it credibility and plausibility. The following exchange is of particular concern:

*Fakude: "which makes me believe some of the rumors and the theories that perhaps what we see happening in South Africa at the moment, the country behind it is exactly this country we have taken to the ICJ."*

30. The host's response was not to interrogate or distance himself from this claim. Instead, he actively promoted it:

*"I think you need to state that very blatantly. I do not think you need to be respectful. State it clearly."*

31. Mr Fakude proceeded:

*"Which part — that Israel could be behind it?"*

*"It could just hold water that the country behind all of this is Israel, trying to taint our image, and that they have used these gullible zealots and tribalists who want to take us back by tainting the image of South Africa."*

32. Broadcasting an unverified conspiracy theory in this manner, and actively encouraging its more forceful expression, without adequate disclaimer and without any countervailing evidence or perspective, is precisely the kind of one-sided controversial content that Clause 13 is designed to keep in check. Beyond that, it is irresponsible and in the context of a volatile situation could amount to the incitement of violence against Zionists, supporters of Israel or Israelis in South Africa. This reinforcement of a rumour and presentation that it *"could just hold water"* is not opinion being expressed on the basis of fact. The host had a duty to question the veracity of this comment, not encourage its expansion.

33. The fifth category concerns the characterisation of Prime Minister Netanyahu as personally prolonging the conflict to avoid criminal prosecution, and of Israel's conduct as "evil." The guest stated:

*"We need to understand that Benjamin Netanyahu will continue kicking the can down the road, will continue encouraging war and these atrocities that are currently taking place in the region, because he is saving his own skin. He knows that when it does settle, he is going to jail. So he must keep the State of Israel in a perpetual state of war. As long as Donald Trump is not showing interest in stopping these atrocities, Benjamin Netanyahu is going to continue with the evil that he is currently doing to the Palestinians."*

34. These statements attribute personal criminal motivation to a sitting head of government and characterise his conduct as "evil." They were not distinguished from the factual content of the broadcast, and were not presented with any qualification, caveat, or countervailing perspective. A host who permits such characterisations to pass without challenge does not merely fail the balance requirement, he compounds the breach.

35. Read together, the above illustrates a broadcast in which contested historical claims, legally undefined characterisations, politically loaded assertions, material misrepresentations of judicial findings, and an unverified conspiracy theory were presented to listeners as settled, uncontroversial, and unanswered. Clause 13 required that each of these categories of content be balanced by an opposing or qualifying perspective. None was provided.

36. The duty to provide balance is not discharged simply by an editorial choice to focus. It requires that the broadcast present the most accurate and evidence-based account available, and that some meaningful counterweight to the dominant narrative be included. The broadcast under complaint did none of these things. There was no legal expert, no historical context offered from an alternative vantage point, no representative of the groups adversely characterised, and no distinction drawn between competing characterisations of the events described.

37. There are many diverse perspectives on the matters raised in the broadcast. Pro-Israel commentators, legal experts, and credentialed academics are readily available to share alternative views on South African radio. Mr Makhanya could have made the effort to give his audience another perspective or information from a different standpoint. He did not do so.

38. Indeed, in *Lorgat v SABC* (Case No. 16/2025, BCCSA), the BCCSA's own ruling confirmed that Clause 13(1) requires broadcasters to make reasonable efforts to present opposing viewpoints fairly, within a reasonable time and in a comparable programme slot. The BCCSA held:

*"The relevant clause is Clause 13(1), which stipulates that in discussions of controversial public issues, broadcasters must make reasonable efforts to present opposing viewpoints fairly either in the same programme or in a subsequent programme within a reasonable time frame and in a similar time slot. The requirement is not for a right of reply, but for the broadcaster to make reasonable efforts to present opposing views fairly. If balance is not achieved, it should be addressed within a reasonable time and in a similar time slot..."*

*While covering the war in Gaza in this manner may be considered a prudent use of available sources, it does not fully meet the requirements of Clause 13, which calls for addressing opposing views within a reasonable time and in a similar time slot. The three impugned programmes focused on a specific moment in the war, namely the arrival of a Flotilla with activists and Israel's treatment of these activists, which included South African activists. All three interviews were conducted with Israeli spokespersons, and the imbalance could have been rectified by interviewing the Palestinian spokesperson within a reasonable time frame and in the same programme slot. The interview with the Palestinian spokesperson was also not about the Flotilla incident, but the ceasefire. I find that the SABC breached Clause 13.1 by failing to provide balance in the interviews about the Flotilla incident and by not addressing the imbalance as required in accordance with Clause 13.1. The SABC is reprimanded and urged to ensure balance in accordance with the requirements of Clause 13.1."* (emphasis added)

39. The significance of *Lorgat* is profound. The BCCSA could not have been clearer: balance is not assessed across a broadcaster's overall output, nor can a broadcaster excuse one-sided coverage by pointing to interviews conducted on different programmes, at different times, or on different aspects of the conflict. That argument was advanced before the BCCSA. It was considered. It was rejected.
40. The BCCSA held that where a broadcaster presents one side of a controversial issue, it must make reasonable efforts to present the opposing viewpoint within a reasonable time and in a comparable programme slot. Crucially, the BCCSA found that it was insufficient to point to other interviews dealing with the broader Gaza conflict. What mattered was whether opposing viewpoints had been presented in relation to the specific controversy under discussion. Because they had not, the broadcaster was found to be in breach.
41. That principle is directly applicable here. If the absence of a Palestinian perspective rendered coverage of the Flotilla incident unbalanced, then the absence of an Israeli perspective renders coverage of sustained allegations against Israel equally unbalanced. There is no distinction between the two.
42. There cannot be one standard for the exclusion of Palestinian viewpoints and another for the exclusion of Israeli viewpoints. The broadcaster cannot have it both ways. Clause 13(1) is either applied consistently or it is applied selectively.

#### **Failure to Afford a Right of Reply**

43. Clause 13(2) of the Code further requires that where a third party's views or conduct are attacked or ridiculed, that party be invited to participate either in the same programme or in a subsequent programme on the topic.

44. Throughout the broadcast, Israel, its government, and its military were the subject of sustained, serious, and unqualified adverse characterisation. The following statements — drawn from both the host and the guest — are illustrative of the nature and severity of that characterisation:

*"Yes, but in the meantime — the ICJ issued some interim orders a few years ago, which Israel largely ignored, and the genocide continued. And then there was a ceasefire, but it has been basically breached repeatedly by Israel."*

*"Israel has continued to violate and ignore whatever the ICJ has been saying. So we are in a situation where the genocide continues and Israel and its IDF — which is the force perpetuating this genocide — is continuing to kill the Gazans."*

*"They have prevented media and other human rights watchdogs from being present inside Gaza. So they are continuing as they wish. And the people that are under the rubble have not been excavated or discovered, because Israel refuses to allow the machinery that would assist in excavating this rubble and the buildings that have since collapsed."*

*"I think Lebanon is another case that is worth looking at, in terms of whether Israel is not intent on eliminating a population. Over a million people overnight were forced to move from South Lebanon into the northern areas of Lebanon because Israel decided that it was going to occupy that part of the world. And while doing so, destruction of property took place and the mass killing of people."*

*"Benjamin Netanyahu will continue kicking the can down the road, will continue encouraging war and these atrocities that are currently taking place in the region, because he is saving his own skin. He knows that when it does settle, he is going to jail. So he must keep the State of Israel in a perpetual state of war."*

*"South Africa was on the right side of history by taking this case... history, of course, is likely to remember South Africa for its principled position regarding this genocide, whilst the rest of the world was quiet... Israel is the most disliked country on earth. Benjamin Netanyahu similarly."*

*"And I think the world will begin to understand in earnest the evil and the atrocity and the genocide and how bad it was for the Palestinians. And only then will the truth be revealed."*

45. These statements constitute serious adverse comment directed at the State of Israel and, by implication, its government and military. The characterisations range from accusations of ongoing genocide and deliberate concealment of evidence of mass killing, to the suggestion that Israel intends to eliminate a population, to the personal attribution of criminal motivation to a sitting head of government. No Israeli government representative, spokesperson, or representative body was afforded any opportunity to respond to any of these characterisations, either during the broadcast or, to the best of the complainant's knowledge, in any subsequent broadcast.
46. The failure to afford any right of reply to the subject of such sustained and serious adverse comment constitutes a violation of Clause 13(2). Israel's substantive legal and factual responses to the ICJ proceedings, including its filed counter-memorial, constitute material facts directly relevant to the subject matter of this broadcast. Their complete absence from the programme, combined with the one-sided and pejorative framing of Israel's conduct throughout, goes to the heart of the Clause 13(2) obligation.

### **Non-Acceptance of Correctness of the Broadcast**

47. Our choice not to deal with other aspects of the substantive content of the broadcast, including additional inaccuracies and misstatements made during the broadcast, is not a reflection of our acceptance of the correctness of the information broadcast, and we reserve our rights to deal with same at a later stage should the need arise.

### **Cumulative Effect**

48. The complainant respectfully submits that the violations identified above must be considered not only individually but in their cumulative effect. Taken together, they demonstrate a broadcast in which one of the most contested geopolitical and legal questions of our time was presented entirely from a single partisan perspective; in which the term "genocide" was used repeatedly as an established fact by both guest and host without qualification or contextualisation; in which the ICJ's actual legal findings were materially misrepresented; in which allegations of population elimination and perpetual deliberate warfare were broadcast without challenge; in which an unverified conspiracy theory implicating Israel in domestic South African instability was actively encouraged by the presenter; and in which no right of reply was afforded to the subject of sustained and serious adverse comment. The cumulative effect of these failures is a broadcast that falls significantly and demonstrably short of the standards required by Clause 13 of the Code.

### **Remedy Sought**

49. The complainant respectfully requests that the BCCSA:
- i. Investigate this complaint in accordance with its procedures;
  - ii. Make a finding that the broadcast violated Sections 13(1) and 13(2) of the Code;
  - iii. Direct Power FM to afford an appropriate right of reply to Israeli representatives or neutral bodies in a subsequent broadcast within a comparable programme slot and for a comparable duration;
  - iv. Direct Power FM to implement editorial guidelines to ensure compliance with the balance and right of reply obligations of Clause 13 of the Code in future broadcasts dealing with the conflict in Gaza, the ICJ proceedings, and related matters; and
  - v. Consider such further or alternative remedies as the BCCSA deems appropriate in the circumstances."

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

### **"POWER 987 RESPONSE TO THE COMPLAINT LODGED BY THE SOUTH AFRICAN ZIONIST FEDERATION**

#### **1. INTRODUCTION**

- 1.1 POWER 987 (Pty) Ltd ("POWER 987" or "the Broadcaster"), files this response to the complaint lodged by the South African Zionist Federation ("the Complainant" or "SAZF") regarding an interview broadcast on *POWER Talk* on 3 June 2026 between the host of the show, Mr Mondli Makhanya ("Makhanya") and his guest, Senior Researcher and Director at Africa Asia Dialogues Mr Tembisa Fakude ("Fakude").

- 1.2 The complaint alleges that the interview contravened Clause 13 of the BCCSA Free-to-Air Code of Conduct ("the Code") because "the host and his guest made a series of factual claims, characterisations, and editorial judgements regarding Israel, the conflict in Gaza, the ICJ proceedings, and related geopolitical matters" without affording airtime to an Israeli representative, a pro-Israeli commentator, a neutral international law expert or any alternative perspective."
- 1.3 The complaint goes on to state that the host himself made personal political statements of Israel's conduct as genocide, without editorial qualification or distinction.
- 1.4 The complaint also objects to POWER 987's decision to interview Mr Fakude. It refers to a previous complaint lodged in June 2025 concerning another interview with Mr Fakude and criticises the Broadcaster for inviting him to comment on the issues under discussion.

## **2. BACKGROUND AND CONTEXT**

- 2.1 The complaint arises from a live current affairs programme during which Makhanya interviewed Fakude following the announcement by the Presidency of the Republic of South Africa that the International Court of Justice ("ICJ") has given to South Africa and Israel a timetable, between 2027 and 2029, within which to file legal papers. The interview explored the implications of the announcement by the Presidency, including whether the lengthy timeline undermines the effectiveness of international justice in active conflicts, amongst other things. As is inherent in live broadcasting, the discussion evolved dynamically in response to Fakude's answers and the issues that emerged during the interview.
- 2.2 The complaint must therefore be assessed against the programme as a whole and in its proper context, rather than isolated extracts from the broadcast.
- 2.3 The subject matter of the interview involves a geo-political matter, is plainly controversial and of considerable public importance. South Africa is a litigant before the ICJ and developments in those proceedings are matters of legitimate public interest. They are therefore matters on which broadcasters are entitled and expected to inform the public and facilitate discussion.
- 2.4 The Code recognises the editorial judgement of broadcasters in determining the content of their programming, including the selection of topics, presenters, interviewees, the duration of the interview and the manner in which issues of public importance are discussed, provided that such judgement is exercised consistently with the requirements of the Code. Current affairs programmes take many forms including interviews; panel discussions; debates; documentaries; and phone-in programmes. The Code deliberately does **not** prescribe one format because broadcasters must retain editorial judgment over how issues are explored, subject to compliance with the Code.

## **3. CLAUSE 13: CONTROVERSIAL ISSUES OF PUBLIC IMPORTANCE**

### **The Issues and the Applicable Principles**

- 3.1 The Complainant sets out five categories of claims, in respect of which it is making the complaint, which it states as:
  - 3.1.1 the characterisation of the conflict in Gaza as genocide;
  - 3.1.2 a material misrepresentation of the ICJ's legal findings;

- 3.1.3 the extension of the genocide and mass-killing characterisation to the West Bank and Lebanon;
  - 3.1.4 an unverified conspiracy theory that Israel is covertly orchestrating domestic instability in South Africa; and
  - 3.1.5 the characterisation of Prime Minister Netanyahu as personally prolonging the conflict to avoid criminal prosecution.
- 3.2 The issue is whether POWER 987 failed, as alleged by the Complainant, to comply with Clause 13 of the Code and did not make reasonable efforts to fairly present opposing points of view on a controversial issue of public importance. Clause 13 is concerned with whether the Broadcaster acted reasonably in presenting opposing points of view, not whether every opinion expressed during the broadcast was correct.
- 3.3 Clause 13(1) requires a broadcaster to make reasonable efforts to fairly present opposing points of view, either during the same programme or during a subsequent programme forming part of the same series, broadcast within a reasonable period and in substantially the same time slot. The Code recognises that the fairness and balance may be achieved in different ways, depending on the nature of the programme and the editorial choices made by the broadcaster.
- 3.4 This principle was considered by the BCCSA Tribunal in *Lorgat v SABC (SAfm)* (Case 22/2013), which recognised that perfect balance is seldom attainable, particularly where issues are politically sensitive, complex or multi-faceted. Whether substantial fairness has been achieved depends upon the programme as a whole and the broadcaster's reasonable editorial decisions in presenting the issue. That approach has since been consistently applied in the BCCSA's interpretation of Clause 13, recognising that the Code requires reasonable efforts to fairly present opposing points of view, rather than perfect balance or equal airtime.

#### **Reasonable efforts to obtain balance**

- 3.5 The Complainant misconstrues the obligation imposed by Clause 13 and moves from the incorrect premise that every discussion of a controversial issue must include representatives holding opposing viewpoints. That is not what Clause 13 requires. The obligation imposed by the Code is one of reasonable efforts to fairly present opposing points of view. It does not prescribe the format through which that obligation must be discharged, nor does it require opposing guests or that every current affairs interview be conducted as a debate.
- 3.6 One recognised way in which broadcasters achieve fairness is through active questioning by the presenter. On several occasions during the interview, Makhanya questioned Fakude's assertions, required him to explain and justify his views, and challenged aspects of his analysis. In doing so, he exposed listeners to competing considerations and fulfilled the obligation imposed by Clause 13.
- 3.7 The interview was plainly presented as a one-on-one current affairs discussion following developments in pending litigation before the ICJ. There is nothing in the Code that prohibits that format. Had the drafters intended to require every discussion of a controversial issue to take the form of a panel discussion or adversarial debate, Clause 13 would have said so expressly. Instead, it recognises that broadcasters are entitled to exercise editorial judgment in determining how controversial issues are explored, provided that reasonable efforts are made to present opposing points of view fairly. The Complainant therefore seeks to substitute its preferred programme format for the standard prescribed by the Code. The BCCSA's task is not to

determine whether another editorial approach may have been preferable, but whether the Broadcaster complied with Clause 13. On the facts of this case, **it did**.

### **Objection to Fakude as a guest**

- 3.8 The complaint appears to be driven, in part, by dissatisfaction with POWER 987's decision to interview Fakude. This is confirmed by its reliance on an earlier complaint concerning the same commentator. The Code does not prohibit broadcasters from interviewing commentators because they hold strong or controversial views; nor does it require broadcasters to exclude such voices from public debate. Fakude was invited because he has researched, written and commented extensively on the issues under discussion, not because he was presented as a neutral commentator. The issue before the BCCSA is therefore not whether Fakude's views about Israel were correct, but whether POWER 987 complied with Clause 13 of the Code in broadcasting a current affairs interview on a matter of public importance.

### **The characterisation of the conflict in Gaza as genocide and material misrepresentation of the ICJ's legal findings**

- 3.8 The complaint repeatedly suggests that the use of the term "genocide" conveyed that the ICJ had already determined that Israel had committed genocide. That is not a fair reading of the broadcast. The interview concerned pending proceedings before the ICJ arising from South Africa's application against Israel under the Genocide Convention. These are widely referred to by the media, governments and in public discourse as South Africa's genocide case against Israel. The use of that word during the broadcast was descriptive of the subject matter under discussion and not a representation that the ICJ had reached a final determination on the merits. POWER 987 readily accepts that the ICJ has not yet made a final determination on South Africa's claim.
- 3.9 The complaint isolates individual words from a live current affairs discussion and attributes to them a legal meaning divorced from their context. The programme did not purport to report a judgment of the ICJ or to pronounce upon Israel's legal responsibility under international law. Rather, it discussed developments in pending litigation and Fakude's political analysis of those developments. Fakude expressly spoke from a political and geopolitical perspective, not as a legal expert interpreting the Court's decisions. Properly understood in its full context, the broadcast did not present the existence of genocide as an established judicial finding, but discussed South Africa's allegations and the political implications of the ongoing proceedings.

### **Extension of the characterisation to the West Bank and Lebanon**

- 3.10 The Complainant further objects to Fakude's comments concerning the West Bank and Lebanon, including his characterisation of Israel's conduct in those territories. Those comments formed part of a wider discussion on regional developments and reflected Fakude's political analysis of events in the Middle East. They were not presented as findings of any court or tribunal, nor did the programme purport to determine the legality of Israel's conduct under international law. The Complainant's disagreement with those opinions does not, without more, establish a contravention of the Code.
- 3.11 The BCCSA is not called upon to determine whether Mr Fakude's geopolitical analysis was correct, nor to resolve competing interpretations of events in Gaza, the West Bank or Lebanon. Its enquiry is confined to whether the Broadcaster complied with Clause 13 in presenting a current affairs programme on a matter of public importance

and with reasonable efforts to fairly present opposing points of view. For the reasons already set out, POWER 987 adopted a format recognised by the Code, the presenter questioned and tested the guest's views, and the broadcast did not contravene the obligations imposed by Clause 13.

**An unverified conspiracy theory that Israel is covertly orchestrating domestic instability in South Africa**

3.12 The complaint further alleges that the programme broadcast an "unverified conspiracy theory" that Israel was covertly orchestrating domestic instability in South Africa. That is not a fair characterisation of the interview. The statement arose during Fakude's political analysis of regional and international developments and was not presented by the Broadcaster as an established fact. Importantly, Makhanya did not simply adopt or endorse the proposition. Consistent with his approach throughout the interview, he probed the basis for Fakude's assertion, requiring him to explain his reasoning and the basis upon which he expressed that view. The programme therefore presented the comment as part of an ongoing discussion rather than as a verified factual finding by the Broadcaster.

3.13 Whether Fakude's analysis was ultimately correct is not the enquiry before the BCCSA. Current affairs programmes routinely feature commentators advancing opinions, drawing inferences and expressing views on matters of public controversy. The BCCSA's task is not to determine the correctness of those opinions, but whether the Broadcaster complied with the Code. On a proper reading of the interview as a whole, the Broadcaster did not present the alleged orchestration of domestic instability as an established fact, but facilitated discussion by questioning the basis of the commentator's views before allowing listeners to assess that for themselves.

**The characterisation of Prime Minister Netanyahu as personally prolonging the conflict to avoid criminal prosecution**

3.14 The complaint further objects to Fakude's observation that Prime Minister Benjamin Netanyahu has prolonged the conflict in order to preserve his political position and avoid the legal consequences that may follow should he cease to hold office. That submission was advanced by Fakude as part of his political analysis of the conflict and was not presented by the Broadcaster as an established fact. Importantly, Makhanya did not simply adopt the proposition. Consistent with his approach throughout the interview, he probed the basis for the assertion and afforded Fakude the opportunity to explain the reasoning underlying his opinion.

3.15 This opinion has also formed part of public and political debate. Similar views have been publicly expressed by a number of prominent Israeli political figures and commentators, including former Israeli Prime Minister Ehud Olmert<sup>34</sup>, who has publicly criticised Prime Minister Netanyahu's conduct of the war and asserted that political considerations have influenced the continuation of the conflict. Other observations have also appeared in other respected international media. POWER 987 does not rely on those views to establish their correctness, but merely to demonstrate that the opinion expressed during the interview falls within legitimate public discourse. Whether the opinion is correct is not the enquiry before the BCCSA.

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<sup>3</sup> <sup>1</sup>Isaac Chotiner, "Why Ehud Olmert Thinks His Country Is Committing War Crimes", *The New Yorker*, 6 June 2025, available at [The New Yorker](#);

<sup>4</sup> Lorenzo Tondo, "Former Israeli PM Ehud Olmert says his country is committing war crimes", *The Guardian*, 27 May 2025, available at [The Guardian](#);

#### 4. CLAUSE 13 (2)

- 4.1 The complaint also relies upon Clause 13(2), which creates a right of reply where a person or organisation is criticised during a programme. The interview did not criticise the SAZF, nor did it refer to any identifiable representative of the Complainant. Instead, the complaint seeks to invoke Clause 13(2) on behalf of Israel, the Israeli Government or persons whose political views differ from those expressed by Fakude. That is not what Clause 13(2) provides.
- 4.2 As recognised in *Lorgat*, the right of reply is personal to the individual or organisation that has been criticised. It is not a general mechanism through which third parties may insist upon participation whenever they disagree with opinions expressed during a broadcast. The Complainant has therefore failed to establish that Clause 13(2) was engaged in respect of its complaint, let alone breached.

#### 5. CONCLUSION

- 5.1 The principles emerging from the BCCSA's jurisprudence are clear. The BCCSA is not called upon to determine whether Fakude's political opinions were correct, nor to substitute its own editorial preferences for those of the Broadcaster. As held in *Jacobs v M-Net*, *Carte Blanche*<sup>5</sup>, the BCCSA's enquiry is confined to whether the Broadcaster made a reasonable effort to present opposing points of view, while respecting the broadcaster's editorial judgment. Likewise, in *Strydom v SABC RSG*<sup>6</sup> the BCCSA reaffirmed that comment on matters of public importance enjoys broad protection under Clause 12, provided it is clearly presented as comment and based on facts fairly indicated. Finally, *Butterfly Haven v e.tv & eNCA*<sup>7</sup> confirms that editorial choices remain the prerogative of the broadcaster and that the BCCSA's role is not to regulate programme format or editorial discretion, but to determine compliance with the Code. Properly applied, these principles demonstrate that POWER 987 complied with Clause 13 of the Code and that the complaint must be dismissed.
- 5.2 Properly analysed, the Complaint establishes nothing more than disagreement with the views expressed by the interviewee and dissatisfaction with the Broadcaster's editorial choice of programme format and guest. Neither constitutes a contravention of Clauses (12 and) 13 of the Code."

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

##### **"South African Zionist Federation // Power FM & Mondli Makhanya**

1. This reply is submitted on behalf of the South African Zionist Federation ("SAZF") in answer to the response of Power FM ("Power FM" or "the Broadcaster") dated 27 July 2026 ("the Response") to the SAZF's complaint dated 1 July 2026 ("the Complaint") concerning the broadcast of 3 June 2026 on *Power Talk* between Mr Mondli Makhanya and Mr Tembisa Fakude ("the Broadcast").
2. We submit that nothing in the Response answers the Complaint. On the contrary, the Response concedes material facts, advances defences that the BCCSA has already considered and rejected in *Lorgat v SABC News/SAfm* (Case No. 16/2025, BCCSA, judgment released 12 February 2026) ("*Lorgat*"), and identifies no remedial step of any

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<sup>5</sup> BCCSA Tribunal Case No. 11/2018

<sup>6</sup> BCCSA Adjudication No. 08/A/2025

<sup>7</sup> BCCSA Adjudication No. 32/A/2024

kind, whether an offer of an interview, a commitment to editorial guidelines, or otherwise. For the reasons set out below, the SAZF requests that the Complaint be referred for formal adjudication by the Tribunal.

### **Common Cause Material Facts**

3. The following facts are either expressly conceded in the Response or are not disputed:
  - 3.1. The Broadcast consisted of a one-on-one interview conducted entirely from one perspective. Power FM does not identify a single opposing or qualifying voice within the Broadcast itself, relying instead solely on the manner in which Mr Makhanya questioned Mr Fakude.
  - 3.2. Power FM concedes that Mr Fakude "was invited because he has researched, written and commented extensively on the issues under discussion, not because he was presented as a neutral commentator" (Response, paragraph 3.8). In other words, Power FM concedes that its sole guest was not, and was never intended to be, a balancing voice.
  - 3.3. No subsequent programme presenting an opposing perspective on the specific controversy canvassed in the Broadcast is identified anywhere in the Response.
  - 3.4. Power FM does not dispute that it was on notice, from the SAZF's prior complaint in June 2025, of Mr Fakude's public tribute to the slain Hamas leader Ismail Haniyeh and his consequent partisan alignment with a belligerent to the conflict.
  - 3.5. On these conceded facts alone, the breach of Clause 13(1) is established on the very standard laid down by the BCCSA Tribunal in *Lorgat*.

### **Power FM Mischaracterises the Complaint and *Lorgat***

4. We refrain from re-stating the content and application of the *Lorgat* decision and refer to where we have already done so in our Complaint.
5. Power FM's Response states that the Complainant "*moves from the incorrect premise that every discussion of a controversial issue must include representatives holding opposing viewpoints.*" That is not the SAZF's case. The Complaint expressly recorded that Clause 13(1) is satisfied where the opposing viewpoint is presented either in the same programme or in a subsequent programme, provided this occurs within a reasonable time and in substantially the same time slot as per the *Lorgat* ruling. The SAZF has not contended that the sole method to satisfy *Lorgat*'s requirements is that the interview itself had to be converted into a debate or a panel discussion with an opposing guest present. That would be one method to achieve said requirements.
6. Rather, we submit that no opposing perspective was presented anywhere, whether in the Broadcast itself, in a subsequent programme in the same series, or at any point since within a reasonable timeframe. Power FM's Response does not identify such a broadcast because none exists. Recasting the Complaint as solely a demand for an opposing guest in the same interview is the attack of an argument the SAZF has not made, while leaving the argument it did make, that no balancing broadcast was produced at all, in any format, within any timeframe, entirely unanswered.

### **The "Active Questioning" Defence Fails**

7. Power FM's remaining defence (Response, paragraph 3.6) is that "*on several occasions during the interview, Makhanya questioned Fakude's assertions, required him to explain*

*and justify his views, and challenged aspects of his analysis*" and that this discharged the balance obligation.

8. Mr Makhanya did not actively question the presenter. The argument in the Response that Mr Makhanya tested rather than endorsed Mr Fakude's assertions is contradicted by the Broadcast itself.
  - 8.1. At no point in the Broadcast does Mr Makhanya disagree with Mr Fakude, question what he has said in a truth seeking manner or put a different version to him.
  - 8.2. When Mr Fakude floated the theory that Israel was behind domestic instability in South Africa, Mr Makhanya's response was not scepticism but active encouragement: *"I think you need to state that very blatantly. I do not think you need to be respectful. State it clearly."* The Response is disingenuous in the interpretation of how Mr Makhanya responded to this claim. The Response describes *"Importantly, Makhanya did not simply adopt or endorse the proposition. Consistent with his approach throughout the interview, he probed the basis for Fakude's assertion, requiring him to explain his reasoning and the basis upon which he expressed that view."* (para 3.12) That is not the language of a host probing a claim, it is the language of a host inviting its escalation with enthusiastic endorsement.
  - 8.3. Moreover, independently of Mr Fakude's statements, the host's own words presented Israel's conduct as an established fact of genocide without qualification: *"the ICJ issued some interim orders a few years ago, which Israel largely ignored, and the genocide continued... it has been basically breached repeatedly by Israel."* This was the host speaking in his own voice, not merely permitting a guest's opinion to stand. The Response does not engage with this statement at all.
  - 8.4. The manner in which questions are posed by Mr Makhanya is not neutral or indicative of any consideration of balance, such as where he asks *"Now we have seen that Israel has continued with its ways, even though there were those injunctions, and it has expanded its war to — as you said — the West Bank and to Lebanon. Are there, and should there be, any actions between now and 2029 that can and should be taken to prevent more large-scale killing and destruction?"*
9. We outright reject the assertions in the Response that Mr Makhanta *"exposed listeners to competing considerations and fulfilled the obligation imposed by Clause 13."* (para 3.6) or that *"POWER 987 adopted a format recognised by the Code, the presenter questioned and tested the guest's views, and the broadcast did not contravene the obligations imposed by Clause 13."* (para 3.11, our emphasis).

#### **The Objection to Fakude as a Guest Is Answered by Concession**

10. Power FM's answer to the SAZF's concerns about Mr Fakude (Response, paragraph 3.8) confirms rather than rebuts the Complaint. Power FM does not dispute Mr Fakude's authorship of a tribute describing the slain Hamas leader Ismail Haniyeh in personal and admiring terms, nor his overt and public alignment with a party to the conflict under discussion.
11. It does not dispute that this material was known to Power FM over a year before the Broadcast, having been the subject of the SAZF's prior complaint.
12. Instead, Power FM's position is that Mr Fakude's evident partisanship was precisely why he was booked, because of his extensive commentary on *"the issues under discussion."*
13. That is not an answer to the balance obligation, it is the reason the obligation was engaged. The more entrenched and publicly documented a guest's alignment with one

side of a controversial issue, the more acute, not the more excusable, the need for a countervailing voice.

### **The Genocide Characterisation and the ICJ's Actual Findings**

13. Power FM contends (Response, paragraphs 3.8 to 3.9) that the use of the word "genocide" was merely descriptive of "South Africa's genocide case against Israel" and not a representation that the ICJ had made a final determination.
14. That characterisation does not survive contact with the transcript. The host's own statement, "*the genocide continued*", was not framed as shorthand for the name of a pending case. It was delivered as background fact, without any qualifying reference to South Africa's allegations or the case's pending status.
15. Nor does the Response engage at all with the Complaint's separate and more specific point: that Mr Fakude told listeners the ICJ had "*finally accepted that, yes, there is prima facie evidence*", a material misstatement of a preliminary jurisdictional finding as a substantive merits ruling. Power FM's silence on this specific misrepresentation, despite addressing the broader "genocide" terminology, is telling.

### **Clause 13(2): Adverse Comment on Israel Engages SAZF's Obligations**

19. Power FM's answer to the Clause 13(2) complaint (Response, paragraphs 4.1 to 4.2) is that the right of reply is personal to the individual or organisation criticised, and that neither the SAZF nor any identifiable representative was criticised during the Broadcast.
20. This narrows Clause 13(2) too far. Over the course of the Broadcast, the State of Israel, its government and its military were the subject of sustained and serious adverse comment, accused of ongoing genocide, of deliberately concealing evidence of mass killing, of intending to eliminate a population, and of covertly destabilising South Africa. Clause 13(2) is not confined to defamation-style standing for the party named, it is an editorial obligation triggered by sustained adverse comment on identifiable conduct, here that of a state.
21. The SAZF, whose mandate includes promoting, developing and strengthening the relationship between Israel and South Africa, as well as fostering greater understanding and engagement between the South African public and Israel, has a direct and legitimate interest in the enforcement of that obligation. The requirement that broadcasters make reasonable efforts to present opposing viewpoints fairly in discussions of controversial public issues is directly relevant to the SAZF's ability to advance that mandate.
22. Moreover, there are multiple instances of reported judgments where associations have acted in their members' interests. This has long been recognised as a legitimate and settled basis for standing. An association need not point to harm suffered by itself; it is enough that the matter falls within its constitutional purpose and that it represents the interests of those it exists to serve.
23. The SAZF is the representative body whose constitutional purpose is to advance understanding and engagement between South Africa and Israel, and whose members and constituency are directly affected by a one-sided treatment of that relationship on air. Where a broadcaster presents matters concerning Israel, the Israeli-Palestinian conflict and the conduct of the Israeli Government and military exclusively or predominantly from one perspective, without making reasonable efforts to present an opposing perspective, the resulting imbalance directly affects the public discourse within which the SAZF seeks to promote informed engagement between South Africa and Israel.

24. If this kind of sustained, unqualified accusation directed at the conduct of a state does not engage Clause 13(2), it is difficult to conceive what would.

**Request for Adjudication by the Tribunal**

25. The Response does not resolve the Complaint. It mischaracterises the standard the SAZF invokes, concedes the one-sided character of the Broadcast and the non-neutral basis on which its sole guest was selected, mischaracterises the host's own on-air conduct, fails to engage with the specific factual misrepresentation of the ICJ's findings, and advances a false "active questioning" defence that *Lorgat* forecloses. It identifies no effort, contemporaneous or otherwise, to present any opposing perspective, and offers no remedial step of any kind.
26. The SAZF therefore respectfully requests that the Registrar:
1. record that the Complaint has not been resolved by the Broadcaster's response;
  2. refer the Complaint for formal adjudication by a Tribunal of the BCCSA in accordance with its Procedural Rules; and
  3. place this reply before the Tribunal together with the Complaint, Annexure "A" thereto, and the Response.
27. At the adjudication, the SAZF will seek the findings and relief set out in paragraph 49 of the Complaint, mainly a finding that the Broadcast violated clauses 13(1) and 13(2) of the Code and such further remedies as the Tribunal deems appropriate.
28. The SAZF reserves its rights in respect of all other aspects of the substantive content of the Broadcast, including additional inaccuracies and misstatements, as recorded in paragraph 47 of the Complaint.

**EVALUATION**

- [5] Having read the complaint, the broadcaster's response and the context of the broadcast, I listened to the interview with Thembisa Fakude, Senior Researcher and Director at Afri-Asia Dialogues, which dealt with South Africa's proceedings against Israel before the International Court of Justice and the wider conflict in the Middle East. The issue for determination is whether the discussion of this controversial matter of public importance was presented in accordance with Clause 13(1) of the Broadcasting Code and whether the comments made during the programme engaged Clause 13(2). The complainant submits that the programme provided a largely one-sided perspective on the issues discussed and did not fairly present opposing points of view, while the broadcaster maintains that the presenter engaged with the interviewee's views and raised matters that provided alternate perspectives.

- [6] The interviewee expressed strong views concerning Israel and its conduct in the conflict; he described Israel's actions as "genocide", "evil" and an "atrocious", and expressed the view that the State of Israel would face serious consequences for its conduct. Of particular relevance, the interviewee also suggested that Israel could be behind developments in South Africa intended to taint the international reputation of the country. He acknowledged that this was a rumour and was not scientifically proven. These statements must be considered in the context of the interview as a whole and the manner in which the presenter engaged with the views expressed.
- [7] The fact that the interviewee expressed particular and strongly held views does not on its own amount to a contravention of the Code. The provision is concerned with whether reasonable efforts were made to fairly present opposing points of view when a controversial issue of public importance is discussed. The programme was structured as an interview, and the guest was invited to give his assessment on the ICJ proceedings and the wider political circumstances surrounding the matter. The presenter nevertheless raised matters which questioned or tested aspects of the interviewee's position. Among other things, he referred to the continued support of the United States for Israel, questioned the practical effect of the ICJ proceedings in light of the ongoing conflict, raised Germany's position and its explanation for its conduct.
- [8] In considering whether the requirement of fairness has been met, regard must be had to the approach in *Lorgat v SABC (SAfm)*, Case 22/2013. The requirement in Clause 13(1) is not of absolute balance. What constitutes reasonable efforts to fairly present opposing views will depend on circumstances, including the nature of the programme, the format in which the matter is discussed and the manner in which the broadcaster engages with the subject. A programme dealing with a controversial issue is not required to provide mathematically equal presentation of competing positions in order to comply with the Code.

[9] I have considered in particular the portion of the interview in which the interviewee suggested that Israel may be responsible for activities in South Africa aimed at damaging the reputation of the country. This was a serious allegation, and the interviewee expressly acknowledged that it was a rumour that was not scientifically proven. The presenter did not pursue the evidentiary basis for this statement before the discussion moved on. While this could have reasonably been dealt with more critically, the question remains whether the broadcast viewed as a whole, reflects a failure by the broadcaster to make reasonable efforts to present an opposing point of view. The presenter's questions introduced issues that did not simply reinforce the interviewee's position, and the discussion included consideration of Israel's international backing, positions of other states and the limitations of the ICJ process. The absence of a representative directly advancing Israel's position is therefore not, in this case, sufficient to establish the contravention of the Clause 13(1) of the Code. Similarly, strongly critical comments made by the interviewee concerning Israel's conduct, I do not find these amounting to an attack or ridicule within the meaning of Clause 13(2) so as to require the right of reply.

[10] Having considered the broadcast as a whole, it is found that the Broadcaster made reasonable efforts to fairly present opposing views as required by Clause 13(1). While the interviewee was permitted to express a strong and critical position, the programme, when considered as a whole, does not demonstrate a failure to meet the requirement of fairness under the Code. **The complaint is therefore not upheld.**



**MS S MBOKWE**  
**COMMISSIONER: BROADCASTING COMPLAINTS COMMISSION**