

Nicole Fritz
Campaign for Free Expression
o/b/o civil society organisations
signed hereunder
nicole@freeexpression.org.za
+27 82 452 3909

The Honourable Chief Justice Mandisa Maya
Chief Justice of Republic of South Africa
Constitution Hill, Johannesburg
c/o:
Ms S. Nomongo
nomongo@concourt.org.za

and
Mr J. Jacobs
jacobs@concourt.org.za

12 November 2025

Dear Chief Justice,

Re: Concern Over Expanding Use of Gagging Orders Against Civil Society and the Media

We, the undersigned organisations, write to you as representatives of South Africa's civil society, united in our deep concern at the recent court order restraining [Open Secrets](#) from publishing or even disclosing information about the party or subject matter of the proceedings that gave rise to the order.

We must surmise what the contents of that order are. Open Secrets is prohibited even from sharing the court order or discussing any details such as the date it was granted, the judge who granted it, or the court which issued the order. But there can be no mistaking its breadth: Open Secrets is effectively silenced, not only prevented from reporting, but from even explaining why it cannot do so.

This is an extraordinary and enormously troubling development. Open Secrets is a frontline civil society organisation whose work in exposing corruption, financial abuse, and state capture has been indispensable to accountability in South Africa's democracy. An order of this nature does not merely curtail its institutional voice – it also undermines the public's right to know and erodes the principle of open justice which is foundational to our constitutional order.

We recognise, of course, that courts are often called upon to navigate difficult balances: as between freedom of expression and reputational integrity; or between transparency and privacy; or between public interest and procedural fairness. But the order issued against Open Secrets is,

in our view, disproportionate on its face in its scope and opacity. It appears to silence legitimate public-interest activity and immunises those who seek it from any scrutiny. Its breadth also immunises the court granting this order from scrutiny and so strikes at the very transparency on which public confidence in the judiciary depends.

This order appears not to be an isolated incident. Similarly sweeping gagging orders are being more frequently sought, and granted, against journalists and civil society actors of late.¹ If left unchecked, this pattern risks chilling public-interest investigation and undermining the constitutional commitment to accountability.

We therefore respectfully urge the Chief Justice as head of the judiciary, to consider measures that might safeguard against the deleterious effects and secrecy of such orders which, on the face of it, are inconsistent with open justice.

These measures could include:

1. Issuing guidance or advice, in terms of section 8(3)(b) of the Superior Courts Act 10 of 2013, to all judicial officers reinforcing the constitutional principle of open justice², and drawing their attention to the harmful effects of prepublication interdicts (otherwise known as ‘gagging orders’).³
2. Requesting the SA Judicial Education Institute offer an online refresher course to judicial officers on the complex balancing of competing rights such as press freedom, privacy, freedom of expression, and reputation. Several of the undersigned organisations stand ready to assist in this endeavour.

It is important to underscore that the preservation of open justice and the protection of public-interest expression are not concerns of the judiciary alone but of all branches of government, and in due course we will raise these issues with the other branches of government.

South Africa's judicial system has long stood as a beacon of openness and accountability. We appeal for renewed vigilance to ensure that our courts, the guardians of these principles, do not now become instruments for their erosion.

¹ See, for example: *De Waal & Another v Chad Nicolas Thomas & IRS Forensic Investigations (Pty) Ltd* (9 November 2025) Case No: 2025-212089; *Mazetti Management Services (Pty) Ltd v Amabhungane Centre for Investigative Journalism NPC* 2023 (6) SA 578 (GJ) (3 July 2023); and GroundUp News (27 March 2025) ‘Durban judge gags journalist’ <https://groundup.org.za/article/durban-judge-gags-journalist/>; and GroundUp News (9 June 2025) ‘Cardiologist gags Carte Blanche’ <https://groundup.org.za/article/cardiologist-gags-carte-blanche/>.

² As stated in *Van Breda v Media24 Limited*; *National Director of Public Prosecutions v Media 24 Limited* 2017 (2) SACR 491 (SCA) and *City of Cape Town v South African National Roads Authority Limited* 2015 (3) SA 386 (SCA)

³ As stated in *Midi Television (Pty) Ltd v Director of Public Prosecutions Western Cape* 2007 (5) SA 540 (SCA); and reemphasised in *Mazetti Management Services (Pty) Ltd v Amabhungane Centre for Investigative Journalism NPC* 2023 (6) SA 578 (GJ).

Yours respectfully,

1. Neeshan Balton,
Ahmed Kathrada Foundation
2. Nicole Fritz
Campaign for Free Expression
3. Kavisha Pillay
Campaign on Digital Ethics (CODE)
4. Lawson Naidoo
Council for the Advancement of the South African Constitution (CASAC)
5. Naledi Kuali
Defend our Democracy (DoD)
6. Janet Jobson
The Desmond and Leah Tutu Legacy Foundation
7. Lord Ntambw and Moira Campbell
Corruption Watch
8. Anton Harber
Free Expression Legal Network
9. Naseema Fakir,
Helen Suzman Foundation
10. Corlett Letlojane
Human Rights Institute of South Africa (HURISA)
11. Dale McKinley
The International Labour, Research and Information Group (ILRIG)
12. Alison Tilley and Mbekezeli Benjamin,
Judges Matter
13. Mark Heywood,
Justice and Activism Hub
14. Wayne Ncube
Lawyers for Human Rights
15. Nersan Govender
Legal Resources Centre (LRC)
16. William Bird
Moxii Africa (rebranding from Media Monitoring Africa)
17. Jimmy Kande
Platform to Protect Whistleblowers in Africa (PPLAAF)
18. Roshnee Narrandes
Platform to Protect Whistleblowers in Africa (PPLAAF) –Southern Africa
19. Phathiswa Magopeni
Press Council of South Africa

20. Sithembile Mbete
Public Affairs Research Institute (PARI)
21. Tebogo Khaas
Public Interest South Africa
22. Sasha Stevenson,
Section 27
23. Uyanda Siyotula
SOS Support Public Broadcasting Coalition (SOS)
24. Reggy Moalusi
South African National Editors Forum (SANEF)