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CONSTITUTION OF THE FREEDOM OF EXPRESSION INSTITUTE

AS AMENDED AT A SPECIAL MEETING OF THE INSTITUTE ON
31 OCTOBER 1996
AS AMENDED BY A SPECIAL MEETING OF THE INSTITUTE ON
26 JUNE 1998
AS AMENDED BY A SPECIAL MEETING OF THE INSTITUTE ON
29 JUNE 2000
AS AMENDED BY A SPECIAL MEETING OF THE INSTITUTE ON
29 JUNE 2002
AS AMENDED AT A SPECIAL MEETING OF THE INSTITUTE ON
7 JUNE 2003
AS AMENDED AT A SPECIAL MEETING OF THE INSTITUTE ON
24 JUNE 2006
AS AMENDED AT A SPECIAL MEETING OF THE INSTITUTE ON
23 JUNE 2007

1. NAME

- 1.1 The organisation hereby constituted will be called the Freedom of Expression Institute.
- 1.2 Its shortened name will be FXI (hereinafter referred to as "the Institute").

2. LEGAL NATURE AND PERSONALITY OF THE INSTITUTE

- 2.1 The Institute shall be a body corporate with perpetual succession, capable of entering into contractual and other relations and of suing and being sued in its own name. It shall hold assets. The Institute shall have an identity and existence distinct from its office bearers.
- 2.2 The Institute shall not be formed for the purpose of carrying on any business or enterprise which has, for its object, the acquisition of gain by the office bearers of the Institute.
- 2.3 The Institute shall alone be liable for its debts and commitments.
- 2.4 Any income or property of the Institute shall be applied solely towards the promotion of its main and subsidiary objects and no proportion of the income or property shall be paid or transferred, directly or indirectly, to any office bearers of the Institute or any other person, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Institute in return for any services actually rendered.




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3. OBJECTS OF THE INSTITUTE

- 3.1 The principal objects of the Institute shall be:
- 3.1.1. To fight for and defend freedom of expression;
 - 3.1.2. To oppose censorship;
 - 3.1.3. To fight for the right of equal access to information and knowledge; and
 - 3.1.4. To promote access to media and a free press.
- 3.2 To this end, its subsidiary objects shall be:
- 3.2.1 Oposing any limitations imposed on the freedoms aforementioned, be they at the instance of the State, the private sector or civil society, that in the opinion of the Institute constitute censorship;
 - 3.2.2 To create a sense of unity and purpose among those subject to censorship;
 - 3.2.3 To educate the public about the dangers of censorship;
 - 3.2.4 To defend, support and extend solidarity to the victims of censorship;
 - 3.2.5 To monitor the effect and implementation of censorship in South Africa;
 - 3.2.6 To engage in solidarity with groups opposing censorship locally and internationally;
 - 3.2.7 To promote access to information and knowledge and information generally; to monitor legislation which makes this possible;
 - 3.2.8 Safeguarding the freedom and independence of all media, including:
 - 3.2.8.1 The right of the media to editorial independence;
 - 3.2.8.2 The strict separation of advertising and editorial functions, with the latter enjoying the freedom from influence by the former;
 - 3.2.8.3 The right not to be forced and coerced to act as witnesses in trials involving their professional duties;
 - 3.2.8.4 The right of journalists not to disclose confidential sources of information;


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- 3.2.9 Helping to ensure a diversity of media;
- 3.2.10 To promote the right of all people to communicate;
- 3.2.11 To engage in campaigns, promotions, projects and other activities in furtherance of the above aims;
- 3.2.12 To raise and disburse funds for legal services as provided for in this constitution in support of victims of censorship;
- 3.2.13 To provide free legal services for poor and needy victims of censorship; and
- 3.2.14 To promote and advocate human rights and democracy within the principal objects contained in section 3.1 above.

4. EXECUTIVE COMMITTEE

- 4.1 The management of the Institute shall be vested in the Executive Committee which shall be composed of between 7 (seven) and 12 (twelve) members. They shall serve in office for 2 (two) consecutive years but shall be eligible for re-election, for a maximum of 2 (two) additional terms.
- 4.2 The Executive Committee shall meet at least every 3rd (third) month.
- 4.3 The quorum for meetings of the Executive Committee shall be 4 (four) members.
- 4.4 Not less than 3 (three) days notice shall be given of the date, time and venue of an Executive Committee meeting.
- 4.5 Meetings of the Executive Committee shall be convened by the Chairperson or at the instance of any 3 (three) Executive Committee members who advise the purpose for which they desire such meeting to be convened, provided that the competency of the Executive to make decisions at such meetings shall not be limited to the matters for which it was convened.
- 4.6 In the absence of the Chairperson, the Deputy Chairperson shall carry out all the duties of the Chairperson. In the absence of both, the members present shall elect an Acting Chairperson.
- 4.7 The Chairperson shall be the only member of the Executive Committee who may issue media statements on behalf of the Institute.

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- 4.8 Any matter before the Executive Committee shall be resolved by a simple majority of the votes. In the event of an equal number of votes the Chairperson shall have the deciding vote.

5. VACANCIES

- 5.1 A member of the Executive Committee shall cease to hold office:
- 5.1.1 If such a member fails to attend 3 (three) consecutive meetings of the Committee without an apology and a valid excuse;
 - 5.1.2 If such member resigns;
 - 5.1.3 If such a member has served the maximum three terms of two years each in office; or
 - 5.1.4 If the majority of the Committee vote to remove such member from office for contravening the Committee's Code of Conduct after he or she has been given an opportunity of making representations to the Committee against such removal. Such a member will have the right to appeal against the decision. The appeal will be heard by an independent arbitrator, and the decision of the arbitrator will be binding on the Institute.
- 5.2 In order to fill any vacancy on the Executive Committee, new Executive Committee members shall be elected by a simple majority of votes of existing members. In the event of an equal number of votes the Chairperson shall have the deciding vote.
- 5.3 Those Executive Committee members present at an Executive Committee meeting shall elect, by a simple majority, a Chairperson or a Deputy Chairperson when either of these posts falls vacant.

6. POWERS AND DUTIES OF THE EXECUTIVE COMMITTEE

- 6.1 The Executive Committee shall manage all the business and affairs of the Institute and shall have the full power and authority to carry out all the objects of the Institute except when such powers are expressly reserved to a meeting of the Executive Committee and, without derogating from the generality of the Executive Committee, shall more particularly be to:
- 6.1.1 interpret, oversee the implementation and promotion of the aims and objectives of the Institute;



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- 6.1.2 obtain support, financial or otherwise, for the Institute, including support for the Institute's sustainability and investment plans;
- 6.1.3 oversee the administration of the financial affairs of the Institute;
- 6.1.4 to determine the conditions upon which other institutes may become affiliated with the Institute or vice versa;
- 6.1.5 to invest the funds and assets of the Institute in securities nominated by it and to vary, realise and deal with such investments in its discretion;
- 6.1.6 to decide what amount of the funds shall be invested and what amount should be retained for administrative and other expenses;
- 6.1.7 to deposit any funds with a bank selected by them in the name of the Institute or any other name suitable to such bank and to nominate the person or persons to sign any cheques;
- 6.1.8 to grant any honorarium to any office bearers of the Institute for services rendered and to remunerate him or her accordingly;
- 6.1.9 to employ any person in the interests of the Institute and remunerate him or her accordingly;
- 6.1.10 to register the name and, if necessary, the constitution and rules of the Institute under any law;
- 6.1.11 to approve annual organisational plans and budgets, as well as a sustainability and investment plan;
- 6.1.12 to appoint an auditor to examine and report upon the accounts of the Institute and remunerate him or her accordingly;
- 6.1.13 to institute or defend any legal proceedings in the name of the Institute;
- 6.1.14 to appoint office bearers from within the organisation to task committees. All decisions of such task committees shall be subject to ratification by the Executive Committee;
- 6.1.15 to appoint an Executive Director; and
- 6.1.16 to appoint patrons of the Institute; and
- 6.1.17 to constitute a Management Committee, which shall consist of the Chairperson, Deputy Chairperson, one other Executive Committee



member and the Executive Director. The Executive Committee may delegate certain management powers and functions in writing to the Management Committee, which shall take operational decisions within the framework of Executive Committee policies and without assuming any powers expressly reserved to the Executive Committee in terms of this section.

- 6.2 Members of the Executive Committee shall not be liable for any of the obligations and liabilities of the Institute solely by virtue of their status as office bearers of the organisation.

7. THE EXECUTIVE DIRECTOR

7.1 The Executive Director shall:

- 7.1.1 be accountable to, and report to, the Executive Committee and Management Committee;
- 7.1.2 be responsible for the day to day running of the Institute;
- 7.1.3 ensure that proper accounts are kept and are submitted to the Executive Committee on a regular basis;
- 7.1.4 supervise the staff of the Institute;
- 7.1.5 submit an annual report to a meeting of the Executive Committee;
- 7.1.6 be responsible for fundraising;
- 7.1.7 act as spokesperson for the Institute;
- 7.1.8 act as spokesperson for the Institute;
- 7.1.9 issue media releases, grant interviews to the media and release comments to the media;
- 7.1.10 delegate any member of staff to carry out the responsibilities in 7.1.9;
- 7.1.11 enter into contracts on behalf of the Institute and authorise the signing of documents in the name of the Institute, but subject to the financial provisions in section 8 below;
- 7.1.12 appoint "Friends" of the Institute;


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7.1.13 be an ex officio non-voting member of the Executive Committee; and

7.1.14 provide overall strategic leadership and management of the Institute.

8. FINANCIAL AND COMPLIANCE-RELATED MATTERS

8.1 Subject to section 2.4 above, all funds received shall be banked in the name of the Institute and cheques, money orders or any withdrawal transaction shall be signed by two signatories from a list nominated for such purpose by the Executive Committee who shall inform the Institute's banking institution accordingly.

8.2 The financial year-end of the Institute shall be December 31.

8.3 The financial affairs are to be administered according to the Institute's Financial Policies and Procedures Manual.

8.4 In compliance with section 30 (3) Income Tax Act 58 of 1962 (as amended, "the Income Tax Act"), the Institute shall effect, or cause to be effected, approval from the Commissioner for the South African Revenue Service ("the Commissioner") of the Institute as a public benefit organisation, in pursuance of which the Institute shall submit to the Commissioner a copy of its constitution and in terms of which it is:

8.4.1 required to have at least 3 (three) persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of such organisation and no single person directly or indirectly controls the decision making powers relating to that organisation;

8.4.2 prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established, or to invest such funds-

8.4.2.1 with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act 97 of 1990);

8.4.2.2 in any listed financial instrument of a company contemplated in paragraph (a) of the definition of 'listed company' in such Act; or

8.4.2.3 in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations;



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Provided that the provisions of this subsection shall not prohibit any such organisation from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance;

8.4.3 required on dissolution to transfer its assets to-

8.4.3.1 any similar public benefit organisation which has been approved in terms of this section;

8.4.3.2 any institution, board or body which is exempt from tax under the provisions of section 10 (1) (cA) (i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity; or

8.4.3.3 any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10 (1) (a) or (b) of the Income Tax Act;

8.4.4 prohibited from carrying on any business undertaking or trading activity, otherwise than to the extent that-

8.4.4.1 the gross income derived from all such business undertakings or trading activities do not in total exceed the greater of-

8.4.4.1.1 5% (five percent) of the gross receipts of such public benefit organisation; or

8.4.4.1.2 R50 000;

8.4.4.2 the undertaking or activity is-

8.4.4.2.1 integral and directly related to the sole object of such public benefit organisation; and

8.4.4.2.2 carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost and which would not result in unfair competition in relation to taxable entities;

8.4.4.3 the undertaking or activity, if not integral and directly related to the sole object of such public benefit organisation as contemplated in subsection 8.4.4.2, is of an occasional nature and undertaken substantially with assistance on a voluntary basis


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without compensation; or

8.4.4.4 the undertaking or activity is approved by the Minister by notice in the Gazette, having regard to-

8.4.4.4.1 the scope and benevolent nature of the undertaking or activity;

8.4.4.4.2 the direct connection and interrelationship of the undertaking or activity with the sole purpose of the public benefit organisation;

8.4.4.4.3 the profitability of the undertaking or activity; and

8.4.4.4.4 the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity;

8.4.5 prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution board or body which is exempt from tax in terms of section 10 (1) (cA) (i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation; and

8.4.6 required to submit to the Commissioner a copy of any amendment to the constitution.

9. PATRONS AND FRIENDS OF THE INSTITUTE

9.1 Patrons of the Institute shall be people who are (a) recognised for their commitment to the cause of freedom of expression and (b) invited by the Executive Committee to serve as patrons.

9.2 Patrons shall be appointed on acceptance of invitation by the Executive Committee, which shall have the sole discretion as to whether to appoint a patron or not.

 
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- 9.3 Patrons shall enjoy such rights as accorded by resolution of the Executive Committee from time to time and within the boundaries of the Constitution.
- 9.4 Friends of the Institute shall be people who are: (a) interested in the cause of freedom of expression; and (b) invited by the Executive Director to serve as Friends.
- 9.5 Friends shall be appointed by making application in writing to the Executive Director, who shall have the sole discretion as to whether to appoint a Friend or not.
- 9.6 Friends shall enjoy such rights as accorded by resolution of the Executive Committee from time to time and within the boundaries of the Constitution.

10. AMENDMENT OF THE CONSTITUTION

- 10.1 This constitution may only be amended by way of a resolution to amend such, taken at an Executive Committee meeting with a quorum of 7 (seven) members at which 75% (seventy-five percent) of the votes cast at such a meeting are in favour of the amendment.
- 10.2 The notice convening a meeting of the Executive Committee at which a motion to amend this Constitution is put forward shall set forth fully the amendments to be proposed at such meeting, provided that the provision of this clause may be waived by a resolution at such meeting with a quorum of 7 (seven) members at which 75% (seventy-five percent) of the votes cast are in support of such a waiver.
- 10.3 Notice of such proposed amendment shall be given at least 2 (two) weeks before the meeting.

11. DISSOLUTION

- 11.1 The Institute may be dissolved by a resolution at an Executive Committee meeting with a quorum of 7 (seven) members at which 75% (seventy-five percent) of the votes cast are in support of such dissolution.
- 11.2 The notice convening such meeting shall state that a motion to dissolve the Institute is to be put at the meeting and notwithstanding any contrary provision of the constitution it shall not be competent for such meeting to waive the requirements of notice in terms of this clause.
- 11.3 The notice aforesaid shall be given not later than 3 (three) weeks before the date

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of the meeting.

11.4 Subject to the provisions of section 8.4 above, upon the winding-up and dissolution of the Institute the assets of the Institute remaining after the satisfaction of its liabilities shall be given or transferred to such other company, association, society or institution or any combination of them which shall:

11.4.1 be committed to freedom of expression;

11.4.2 be of a public character;

11.4.3 be in the Republic of South Africa;

11.4.4 be of such a nature that donations tax is not payable in respect of the value of any property which is disposed of under a donation to it;

11.4.5 have objects similar to the Institute's main objects; and

11.4.6 be determined by the office bearers of the Institute at or before the time of the Institute's dissolution, or failing such dissolution, by the Local Division of the High Court of South Africa having jurisdiction.



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MEDIA MONITORING PROJECT BENEFIT TRUST

AGREEMENT OF TRUST

between

JOHN VAN ZYL

and

PAUL MASEKO

and

LYNDALL SHOPE-MAFOLE

and

TREVOR ABRAHAMS

and

LAURA POLLECUTT

and

JESSICA WENGROWE

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MEDIA MONITORING PROJECT BENEFIT TRUST

AGREEMENT OF TRUST

between

JOHN VAN ZYL
("the founder")

and

PAUL MASEKO
("Maseko")

LYNDALL SHOPE-MAFOLE
("Shope-Mafole")

TREVOR ABRAHAMS
("Abrahams")

LAURA POLLECUTT
("Pollecutt")

JESSICA WENGROWE
("Wengrowe")

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1. INTRODUCTION

- 1.1 The founder, Maseko, Shope-Mafole, Abrahams, Pollecutt and Wengrowe (collectively "the trustees") have been involved in co-ordination between individuals and organisations committed to media education, research, lobbying and analysis for the benefit of the public at large.
- 1.2 The trustees have agreed to establish a trust known as the "Media Monitoring Project Trust" to receive and administer funds for the above purposes.
- 1.3 The parties wish to record in writing the provisions of the oral agreement of trust.

2. NAME

The name of the trust is "Media Monitoring Project Trust".

3. OBJECTS

The trust shall be devoted to purposes of promoting accepted standards of fairness, impartiality and diversity of opinion by publicly funded radio and television in the Republic of South Africa and its objects shall be one or more of the following :

- 3.1 to establish a special fund in the Republic of South Africa for the sole purpose of receiving donations to be used exclusively to defray any expenditure directly incurred in providing research, educational, monitoring or analytical facilities and information for members of the general public (including expenditure on educational and monitoring programmes but excluding expenditure in respect of any such programmes or other benefits granted to any person nominated by a donor to the trust) :

- 3.1.1 to inform and educate the appropriate monitoring bodies, interested parties and the public at large of the results of analysis and research and to draw their attention to the duties and obligations of the media as laid down by various

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international instruments, including the 1978 UNESCO Paris Declaration on the contribution of media to strengthening peace; as per section 10(1)(f) and (A) of the Income Tax Act, 1962 ("the Act"); or

- 3.1.2 to educate mediating authorities, political parties and the public at large in the principles of human rights and communications especially as they affect the freedoms involved in the democratic process, as per section 10(1)(f) and (A) of the Act;
- 3.1.3 to conduct literacy programmes to educate communities on how the media functions, as per section 10(1)(f) and (A) of the Act;
- 3.1.4 to compile regular reports during the course of the year and annual reports for distribution to political organisations, the media, peace observers, embassies and the public at large for educational purposes, as per section 10(1)(f) and (A) of the Act;
- 3.1.5 to conduct regular seminars on results of research projects for the benefit of other research organisations, civic groups, development organisations and the public at large, as per section 10(1)(f) and (A) of the Act

provide that -

the revenue shall contribute towards, encourage, finance, promote, assist and support the work, efforts and understanding of the general public, organisations and associations of a public character as regards the duties and responsibilities of the media in the Republic of South Africa or any independent state the territory of which formerly formed part of the Republic;

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3.2 the Trust shall co-operate with organisations and persons involved in similar work.

4. DONATION

4.1 The founder hereby donates to the Trustees in their capacities as such, the sum of R1, to be held by them, for the beneficiaries, upon the terms and conditions set out in this Trust Deed.

4.2 The trustees hereby accept the donation made by the founder, which shall be paid by the founder to the Trustees within 7 days of the date of this Trust Deed.

4.3 The donation may not be revoked by the founder under any circumstances.

5. VESTING OF TRUST ASSETS AND LIABILITIES

5.1 All assets acquired and all liabilities incurred by the trustees in their capacity as the trustees of the trust shall vest in the trustees that capacity and shall be administered by them in a separate fund ("the trust fund").

5.2 Assets of the trust may be registered in the name of the trust, the trustees for the time being, or a nominee for the trust.

5.3 The trust may sue or be sued in its own name.

6. APPLICATION OF TRUST FUND

6.1 The trustees shall from time to time and as often as they may think desirable, award, lend or otherwise disburse so much of the income of the trust as the trustees may in their discretion decide, in order to achieve all or any of the objects of the trust.

6.2 Unless otherwise approved from time to time by the Commissioner for Inland Revenue, the trustees shall in the exercise of their powers and authorities

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under 6.1 award, for the purpose of achieving the objects of the trust, not less than 75% of the net income within 12 months of the end of the financial year in which it accrued; provided that where funds are intended to be accumulated for a specific capital project the provisions of this clause 6.2 shall not apply where and to the extent that the accumulation of funds is approved by the Receiver of Revenue to whom the trust submits its annual income tax returns. Any unused income shall be accumulated or capitalised as the trustees from time to time deem fit.

6.3 No benefits may be awarded by the trust for any purpose other than charitable contributions to media research, educational undertakings and to the general public, as set out in this agreement. In particular the trustees shall ensure -

6.3.1 that no donor or any person nominated by a donor shall benefit from moneys paid into or out of the trust fund;

6.3.2 that donations to the trust are irrevocable and are subject to the provisions of this trust deed.

6.4 The word "income" shall include all accruals.

7. TERMINATION OF THE TRUST

7.1 The trust shall continue indefinitely, but the trustees shall have a discretion to terminate the trust at any time, if the majority of them are of the opinion that the trust no longer serves a meaningful purpose.

7.2 On termination of the trust the trustees shall award any remaining assets to a charitable fund which has similar objects to those of the trust and which is exempt from liability to pay income tax, donations tax, and estate duty.

8. POWERS OF TRUSTEES

8.1 Subject to any restrictions contained in this trust deed, the trustees shall have

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all the powers of a natural person of full legal capacity dealing with his own affairs, except any powers which it is not competent in law to confer on trustees. Without in any way limiting the scope of the trustees' powers, it is recorded that they shall have power from time to time, and on such terms and conditions as they may decide -

- 8.1.1 to deposit funds which are not otherwise invested in terms of their powers in accounts with recognised financial institutions, as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984, including building societies and registered banks;
- 8.1.2 to purchase or otherwise acquire, hold, sell, lease as an occupier, deal with, dispose of or otherwise alienate immovable property, to erect or construct buildings or installations on that property, and to cultivate, develop, improve or otherwise turn that property to account or use it to the best advantage; but no immovable property may be acquired for the purpose of deriving rental income from that property;
- 8.1.3 to acquire, hire as an occupier, obtain the use of and dispose of movable property of any nature for purposes of the trust fund;
- 8.1.4 to enter into contracts, including loans as borrower or lender, suretyships, contracts of insurance and assurance and contracts for the services of advocates, attorneys, auditors, advisers, agents, secretaries and others, and to employ staff;
- 8.1.5 to grant mortgages, pledges and cessions as security in pursuance of the objects of the trust;


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8.1.6 to accept any assets from any source for administration as part of the trust fund, provided that all donations shall be irrevocable and subject to the terms of the trust deed;

8.1.7 to determine which assets constitute capital and which constitute income, determine the time of capitalization of any income, and treat any amount as income even though received from wasting assets, without making provision for amortisation;

8.1.8 subject to the approval of the Commissioner for Inland Revenue from time to time, to invest all sums of money requiring investment in such securities wheresoever and whatsoever in any part of the world as the trustees may deem advisable, and to vary and transpose investments, and to make reinvestments from time to time, and to register, record or otherwise place and keep any or all of the securities at anytime forming the trust fund or any portion of the trust fund in the name of the trustees or in the name of a nominee or nominees of the trustees and at such place or places within or outside South Africa as the trustees may determine from time to time, so that the trustees shall have the same full and unrestricted powers of investing and reinvesting and transposing investments in all respects as if they were absolutely entitled beneficially;

8.1.9 generally to do all things as they consider necessary or desirable in the interests of the trust.

8.2 Without derogating from the wide powers conferred on the trustees by this agreement, and without interfering with the discretion of the trustees as set out in this agreement, it is recorded that it is intended -

8.2.1 that with a view to building up a substantial capital base for the

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trust the investment policy of the trustees, subject to the approval from time to time of the Commissioner for Inland Revenue, should be to invest a significant portion of the capital of the trust fund in sound equity holdings as a protection against inflation, all realised capital gains from time to time being re-invested;

8.2.2 that the trust will be administered as cost-effectively as possible, using where deemed appropriate, the resources of outside organisations in terms of co-operation agreements.

8.3 Delegation

The trustees may delegate any of their rights, powers and discretions to any one of them or to a committee which shall include at least one trustee.

8.4 Contracting with the trust

A trustee shall not be disqualified from entering into a contract with the trust or from being interested in any such contract, and retaining the profit arising from such contract, provided the trustee has disclosed the interest to the other trustees.

8.5 Restrictions on trustees' power

8.5.1 The trustee shall not have power to carry on any trading or business activities, to enter into any speculative activities, to engage in dividend stripping activities, to engage in the letting of immovable property on a systematic or regular basis, or to allow any person other than a beneficiary to occupy free of charge any building owned by the trust.

8.5.2 No benefits may be awarded for any purpose to any person other than a beneficiary under this trust deed.

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- 8.5.3 Interest-free loans may be made only to a beneficiary, and all other loans shall bear interest at rates not lower than the prevailing commercial interest rates. Loans may not be made to a trustee, a donor and/or any relatives of a trust or a donor, or to any private company, close corporation or trust in which a donor, trustee and/or any of their relatives are shareholders or directors, or members, or beneficiaries or trustees, as the case may be.
- 8.5.4 The trustees may not acquire shares in any private company in which a donor, a trustee and/or any of their relatives is a shareholder.
- 8.5.5 Notwithstanding anything contained in this agreement the trustees may not invest the capital of the trust fund or any surplus income not awarded, lent or disbursed in terms of 6.1 and 6.2, unless such capital or surplus income is invested as follows :
- 8.5.5.1 with a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984; or
- 8.5.5.2 in securities listed on a licensed stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985; or
- 8.5.5.3 in such other financial instruments as the Commissioner for Inland Revenue may approve from time to time.
- 8.5.6 The trustees may not accept any donations which are not

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irrevocable and unconditional.

9. TRUSTEES

9.1 Number of Trustees

9.1.1 There shall always be at least 4 trustees in office, and unless this trust deed is amended the number of trustees in office shall not exceed 10.

9.1.2 Should the number of trustees in office at any time be less than 4 all the rights, powers and discretions of the trustees shall be suspended, except the powers of assumption and appointment of successors dealt with below.

9.2 Appointment of trustees and power of assumption

9.2.1 The trustees who are parties to this agreement will be the first trustees.

9.2.2 The trustees may at any time assume any person, whether resident in South Africa or not, as a trustee, either in addition to the trustees or to replace a trustee who has ceased to hold office.

9.2.3 The trustees may remain in office until they retire.

9.2.4 At the annual general meeting of the trust in each year, each trustee shall have the option of remaining in office or retiring. A trustee choosing to retire shall act as a trustee throughout the meeting at which that trustee retires.

9.3 Security

The trustees, including any trustee assumed or appointed under the preceding sub-clause, shall not be required to furnish security for their administration of

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9.4 Disqualification

9.4.1 A person shall be disqualified from being a trustee if -

9.4.1.1 the estate of that person has been sequestrated, whether provisionally or finally, or he has committed an act of insolvency as defined in the Insolvency Act from time to time;

9.4.1.2 he is insane or incapable of managing his affairs or has been declared a prodigal;

9.4.1.3 he has committed an offence involving dishonesty under the laws of any country;

9.4.1.4 he is over 70 years of age, unless the other trustees annually waive this disqualification in relation to any person; or

9.4.1.5 he has or assumes a high party political profile.

9.5 Vacation of office

A trustee shall cease to hold office if he -

9.5.1 becomes disqualified from being a trustee in accordance with the preceding sub-clause;

9.5.2 resigns on reasonable written notice to the other trustees (there being at least three other trustee in office);

9.5.3 is requested to resign in writing by the other trustees (there

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being at least three other trustees in office), and he fails to do so within four weeks;

9.5.4 has been appointed for a limited period and that period has expired;

9.5.5 has already served as a trustee for a continuous period of nine years, except where he is re-elected by a majority of votes at an annual general meeting.

9.6 Chair

The trustees may appoint a chair and a vice-chair either for such period, not exceeding one year, as they may decide or for a specific meeting.

9.7 Convening of meetings

9.7.1 The trustees shall hold an annual general meeting within six months after the end of each financial year at which the annual financial statements for the previous financial year shall be submitted for approval by the trustees.

9.7.2 The trustees shall hold such other meetings as they deem fit. Any trustee, with the concurrence of at least two others, may convene a meeting of trustees on not less than 21 days notice to the other trustees (or at such shorter period as may be approved by the majority of the trustees in office) and at a reasonable venue.

9.7.3 The notice shall specify the business to be dealt with at the meeting and, if possible, shall be accompanied by the minutes of the previous meeting.

9.7.4 Save as set out in this trust deed the trustees shall conduct their

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business as they think fit.

9.8 Quorum

The quorum for a meeting of trustees shall be as follows -

9.8.1 where the number of trustees in office is five or less, the quorum shall be three;

9.8.2 where the number of trustees in office exceeds five but does not exceed nine, the majority of the trustees in office shall constitute a quorum;

9.8.3 where the number of trustees in office exceeds nine, the quorum shall be five.

9.9 Voting

9.9.1 Decisions shall be taken by majority vote of the trustees present at a meeting.

9.9.2 The chair shall not have a casting vote as well as a deliberative vote.

9.10 Written Resolutions

A written resolution signed by all the trustees who may at the time of the signing of the resolution be within the Republic of South Africa (as constituted on 31 May 1961), and being no less in number than is sufficient to form a quorum, shall have the same effect as if passed at a meeting. Such a written resolution may take the form of several documents, each signed by one trustee or more, setting out the text of the resolution.

9.11 Minutes, reports and records

9.11.1 The trustees shall keep minutes of their meetings and

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resolutions which shall be available for inspection by the trustees at the address of the trust.

- 9.11.2 A minute, or a certified copy of a minute, signed by the chair or by the trustees present at the meeting shall constitute evidence until the contrary is proved of the contents of the minute.
- 9.11.3 The trustees shall keep full and accurate records of the financial affairs of the trust which shall be audited annually within six months of the financial year end, which shall be on the last day of February of each year.
- 9.11.4 The trustees shall, on or before 30 June, in each year submit to every person who has made a donation to the trust within the preceding 12 months, a written report of their activities during the immediately preceding financial year of the trust, and a copy of the audited annual financial statements.

9.12 Remuneration

The trustees shall be entitled to be reimbursed for out of pocket expenses incurred on behalf of the trust but shall otherwise receive no remuneration for acting as trustees.

9.13 Exemption from liability

Except in the case of any loss arising from his own dishonesty

- 9.13.1 a trustee shall not be personally liable for any loss suffered by the trust, whatever the cause;
- 9.13.2 a trustee shall be indemnified out of the trust fund against any claims made against him arising out of or in any way connected

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with any act or omission in the course of the administration of the trust.

9.14 Acts valid despite defect in appointment

All acts performed by the trustees in good faith shall be valid notwithstanding any defect in their appointment.

9.15 Disputes

9.15.1 If any difference or dispute should arise between the trustees they should as far as possible resolve the difference or dispute by discussion, either with or without such professional advice as they may consider appropriate.

9.15.2 If the trustees are not so able to resolve the difference or dispute, then subject to any provisions of this deed which provides otherwise, the decision of a majority of trustees in office shall bind the minority and accordingly the powers, discretions and authorities given to or vested in the trustees may be exercised by a majority of them. Every such decision shall be regarded as a decision of all the trustees and shall be binding upon all persons, including beneficiaries, but not so as to render any trustee liable for anything done or omitted by a majority of the trustees without his knowledge or approval.

10. EXECUTION OF DEEDS

Subject to any express provisions which may be contained in this trust deed all deeds, documents or instruments required to be executed by the trustees shall be deemed to have been validly executed if executed in the name of the trust by any one trustee if duly authorised to do so.

11. AMENDMENT OF TRUST

The trust shall have the power, with the agreement of not less than 75% in number

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of the trustees then in office, to alter, vary or add to the conditions hereof, including the power and authority of the trustees, provided that the amendments to the trust deed are submitted to and approved by the Commissioner for Inland Revenue.

SIGNED at Johannesburg on 15 December 1993.

AS WITNESSES :

[Signature] [Signature]

SIGNED at Johannesburg on 15 December 1993.

AS WITNESSES :

[Signature] [Signature]

SIGNED at Johannesburg on 15 December 1993.

AS WITNESSES :

[Signature] [Signature]

SIGNED at Johannesburg on 17 December 1993.

AS WITNESSES :

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SIGNED at *London* on *17th* December 1993.

AS WITNESSES :

M. J. M.

B. J. J.

SIGNED at *London* on *17th* December 1993.

AS WITNESSES :

W. J. J.

G. J. J.

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SOS: Support Public Broadcasting Coalition

CONSTITUTION

AS ADOPTED ON 9 APRIL 2013

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1. NAME

The organisation shall be known as the **SOS: Support Public Broadcasting Coalition**, alternately known as the **SOS Coalition** or **SOS** or the **Coalition**.

2. STATUS

SOS is a membership-based public broadcasting network representing trade unions, independent film and TV production sector organisations, non-governmental and community-based organisations, academics, freedom of expression activists and concerned individuals.

SOS shall:

- 2.1 Be a voluntary association not for gain.
- 2.2 Exist in its own right, separately from its members and employees.
- 2.3 Continue to exist notwithstanding any changes in its members and employees.
- 2.4 Be able to acquire, hold and alienate property, enter into agreements and do all things necessary to carry out its aims and objects and promote its members' interests, its property and its standing.
- 2.5 Hold assets separate from its members.

3 VISION

The vision of the SOS Coalition is to create a public broadcasting system dedicated to the broadcasting of quality, diverse, citizen-orientated public programming committed to deepening South Africa's constitutional values and principles.

The Coalition campaigns for the above by:

- lobbying for citizen friendly policy, legislative and regulatory changes to public and community broadcasting; and
- lobbying for transparency and accountability by all institutions governing public and community broadcasting including but not limited to Parliament, the Ministry and Department of Communications, the Independent Communications Authority of South Africa (ICASA), the Media Development and Diversity Agency (MDDA), the South African Broadcasting Corporation (SABC) and community broadcasters.

4. OPERATIONAL PRINCIPLES

SOS:

- 4.1 Is resolutely respectful of the independence and autonomy of its member organisations.
- 4.2 Is membership driven and rooted in an appreciation of the specific interests, concerns and programmes of each of its members.
- 4.3 Seeks creative and innovative approaches that promote the distinct role of a comprehensive broadcasting coalition.
- 4.4 Aims to represent the unified interests of the South African civil society broadcasting sector, not by way of replicating or supplanting the roles of individual organisations, but by bringing to the fore the interests of all its members in a mutually reinforcing sector-wide programme that is distinctive.

CONSTITUTION OF THE SOS: SUPPORT PUBLIC BROADCASTING COALITION




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- 4.5 Operates on the principles of transparency and consensus.
- 4.5.1 Full consensus shall be required for all decisions relating to SOS Principles where "full consensus" shall be understood to mean total agreement within the decision making body; and
- 4.5.2 Sufficient consensus shall be required for all decisions relating to strategy and tactics where "sufficient consensus" shall be understood to mean agreement among at least two thirds of the decision making body.
- 4.5.3 Where consensus and / or sufficient consensus cannot be reached, members are encouraged to take up issues within the broadcasting sector independently.
- 4.6 Is opposed to all forms of discrimination and oppression and stands for a united, non-racial, non-sexist and democratic South Africa.

5. ORGANISATIONAL STRUCTURE

- 5.1 SOS shall consist of the following structures:
- 5.1.1 Host organisation
- 5.1.2 Membership
- 5.1.3 The Working Group as the representative leadership structure
- 5.1.4 The Finance and Management Committee as a standing sub-committee of the Working Group
- 5.1.5 Other sub-committees of the Working Group
- 5.1.6 Employees
- 5.1.7 Annual General Meeting (AGM)
- 5.2 Each of these structures is articulated in detail below.

6. HOST ORGANISATION

- 6.1 A well-established civil society organisation shall undertake hosting responsibilities and risks for and on behalf of SOS.
- 6.2 The host organisation shall be responsible and accountable for the financial and employee affairs of SOS.
- 6.3 The precise relationship between SOS and the host organisation shall be regulated by a Memorandum of Understanding (MoU), reviewed annually at the first Working Group following the AGM. The first MoU shall be adopted by the Working Group within two months of the adoption of the SOS Constitution.
- 6.4 This hosting arrangement may be terminated by mutual agreement between the Working Group and the Host Organisation. Alternatively, and should the parties not reach mutual agreement on termination, a dispute shall be declared in terms of Clause 25 below.



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7. MEMBERSHIP

7.1 Membership of SOS shall be open to organisations and individuals that accept the principles, policies and programmes of SOS and abide by its Constitution and all rules of SOS and its Working Group.

7.2 Categories of membership

7.2.1 Ordinary member:

7.2.1.1 All organisations and individuals that agree to adhere to SOS's Vision and Operational Principals, who sign the SOS Membership Document and complete an application form are eligible.

7.2.1.2 Ordinary Members are required to participate in the activities of SOS including but not limited to internal discussions, seminars, round tables and direct action activities.

7.2.1.3 Members are entitled to the benefits arising from the work of SOS. Such benefits will be agreed by the Working Group, in their sole discretion.

7.2.1.4 Members will be invited, with adequate notice, to attend the annual general meetings of SOS.

7.2.2 Working Group member

7.2.2.1 All organisations that are already Ordinary Members (have agreed to adhere to SOS's Vision and Operational Principals, who sign the SOS Membership Document and complete an application form) and who commit to full and regular participation and prescribed by the Working Group, are eligible.

7.2.2.2 How to become a Working Group member

7.2.2.2.1 Once eligible, an organisation or individual must make written application for Working Group membership, which application is to be lodged with the Coordinator for a decision at the next Working Group meeting.

7.2.2.2.2 Approval of membership shall be by full consensus within the Working Group, whose decision shall be guided by the Coalition's founding principles.

7.3 Membership refusal

7.3.1 Membership may be refused where:

7.3.1.1 An organisation or individual does not meet the requirements of clause 7.1 above.

7.3.1.2 The Working Group cannot reach consensus on approval as guided by the Coalition's founding principles.

7.3.2 The reasons for the rejection of an application for membership by the Working Group shall, if requested, be provided to the applicant in writing.

7.4 Members shall not be personally liable for any loss suffered, liability or obligation incurred by the Coalition or any person as a result of an act or omission which occurs in good faith in the performance of functions for and on behalf of SOS in the advancement of its programmes.

8. RIGHTS OF MEMBERS

8.1 All Ordinary members shall have the right:

8.1.1 To take a full and active part in the discussion, formulation and implementation of the principles, policies and programmes of SOS.

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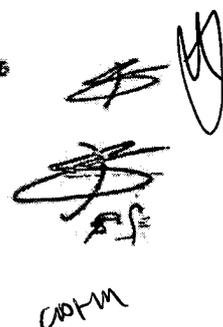
- 8.1.2 To make a request to the Working Group to form a sub-committee to deliberate on and perform a task on any matter that affects that member and / or other members.
- 8.1.3 To regular communication from the Working Group and employees on the activities of SOS and on matters that are important to the broadcasting sector as a whole.
- 8.2 Ordinary Organisational members have the right:
 - 8.2.1 To nominate one or more representatives to be considered by the Working Group for eligibly to be members of the Working Group and through whom all communications shall be directed if accepted.
 - 8.2.2 For their representative(s) to be appointed to any committee, structure, commission or delegation of SOS.
 - 8.2.3 To be assured that any information regarding their organisations shall be used only with the purpose to benefit the work of SOS, and shall be treated as confidential if so requested.

9. MEMBERSHIP CODE OF CONDUCT

- 9.1 Members shall be organisations and persons of good standing within their communities, and shall not be guilty of:
 - 9.1.1 Having been convicted in a court of law and sentenced to a term of imprisonment without the option of a fine for any serious criminal offences in the last 5 (five) years.
 - 9.1.2 Misappropriation of the funds of SOS or any organisation or destruction of its properties.
 - 9.1.3 Behaving corruptly in the conduction of the affairs of SOS or their member organisation or private business.
- 9.2 Members shall perform their functions in good faith, giving full effect to the obligations of SOS and its objects.
- 9.3 Members shall abide by the Constitution of SOS, its rules, standing orders and codes of Conduct as adopted or amended from time to time.
- 9.4 Members are to abstain from any conduct that may be deemed to conflict with the interests of SOS.
- 9.5 Members shall not prejudice the integrity or reputation of SOS, its employees or its operational capacity including by:
 - 9.5.1 Impeding the activities of SOS.
 - 9.5.2 creating division amongst its membership;
 - 9.5.3 sowing racism, sexism, homophobia, tribal chauvinism, religious and political intolerance, regionalism or other forms of discrimination considered unconstitutional;
 - 9.5.4 behaving in a grossly disorderly or unruly way; or
 - 9.5.5 doing any other act which undermines or may be deemed to undermine SOS's effectiveness and/or standing as an organisation.

10. SUSPENSION AND TERMINATION OF MEMBERSHIP

- 10.1 SOS may suspend or terminate a member for any of the following reasons:
 - 10.1.1 On the written request of the member.



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- 10.1.2 If the member has ceased to comply with clause 7.1 above as determined by full consensus at a Working Group meeting
- 10.1.3 For serious misconduct as defined by the Membership Code of Conduct as per clause 9 above, and so determined by full consensus of members at a Working Group meeting.
- 10.1.4 For any other reason determined by full consensus of members at a Working Group meeting.
- 10.2 No member may be suspended or expelled unless they have been afforded an opportunity to state their case at a Working Group meeting, of which it has received not less than 7 (seven) days' notice in writing from the Chairperson. The matter with which the member is charged shall be set out in such notice.

11. THE WORKING GROUP AS THE LEADERSHIP STRUCTURE

- 11.1 The Working Group shall be the leadership structure of SOS.
- 11.2 Collectively, the Working Group provides strategic guidance and direction to the organisation, and guides the implementation of SOS projects and programmes.
- 11.3 It shall be comprised of one or more mandated representatives from organisational members, as well as individual members.
- 11.4 Employees, in particular the Coordinator, of SOS will be eligible for membership of the Working Group subject to Working Group consent. Such Employees shall have full powers to fully participate in and speak in working group meetings and not be part of decision making.
- 11.5 The Working Group shall, by means of full consensus, appoint the Finance and Management Committee at the first Working Group meeting following the AGM.
- 11.6 The Working Group shall be chaired by the Chairperson, Deputy Chairperson or their designated representative who must be a member of the Working Group.
- 11.7 Mandated representatives of organisational members may be changed at any time at the prerogative of the organisational member subject to notice to the Chairperson of the Working Group not less than 1 week prior to the date of the next Working Group meeting.
- 11.8 There are no limits on the term of service for Working Group members, including the Chairperson. However, each position within the Working Group stands open for election or re-election by SOS members on an annual basis at the AGM.

12. POWERS OF THE WORKING GROUP

- 12.1 The Working Group shall have the authority to lead and represent the organisation, subject to the provisions of the Constitution of SOS, its rules, standing orders and codes of conduct as adopted or amended from time to time.
- 12.2 Without prejudice to the generality of its powers, the Working Group shall:
- 12.2.1 Develop and implement the policies and programmes of SOS.
- 12.2.2 Report on any and all matters of interest to SOS.
- 12.2.3 Establish such structures and committees and / or sub-committees as it considers appropriate to further the work of SOS.
- 12.2.4 Receive reports of the activities and decisions of its committees and / or sub-committees and all other structures of SOS.

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- 12.2.5 Guide and advise the committees and / or sub-committees, employees and all structures of SOS in the exercise of their functions.
- 12.2.6 The Working Group has the right to hold all of its sub-committees accountable for the affairs of SOS and has the right to veto, ratify or amend any decision of these sub-committees.
- 12.2.7 Approve and monitor the budget and expenditure of SOS.
- 12.2.8 Ratify the appointment of employees of SOS and the terms and conditions of their employment.
- 12.2.9 Approve or deny applications for membership of SOS.
- 12.2.10 Suspend or terminate the membership of an affiliated member of SOS in terms of clause 9 above.

13. SPECIFIC ROLES WITHIN THE WORKING GROUP

13.1 Chairperson

- 13.1.1 The Chairperson shall support the Coordinator and the Host Organisation as determined by the Working Group to provide direction to and implement the work of SOS.
- 13.1.2 The Chairperson shall preside over meetings of the Working Group, the Finance and Management Committee and AGM in accordance with the constitution of SOS, its rules, standing orders and codes of conduct as adopted or amended from time to time.
- 13.1.3 The Chairperson shall be appointed by the Working Group from within the Working Group.
- 13.1.4 The appointment shall take place at the first Working Group following the AGM.
- 13.1.5 The term of service shall be one year.
- 13.1.6 The Chairperson may not serve more than two consecutive terms.

13.2 Deputy Chairperson

- 13.2.1 The Deputy Chairperson, jointly with the Chairperson, will support the Coordinator and the Host Organisation to implement the work of SOS and provide direction to SOS.
- 13.2.2 In the absence of the Chairperson, the Deputy Chairperson shall preside over meetings of the Working Group, the Finance and Management Committee and AGM in accordance with the constitution of SOS, its rules, standing orders and codes of conduct as adopted or amended from time to time.
- 13.2.3 The Deputy Chairperson shall be appointed by the Working Group from within the Working Group.
- 13.2.4 The appointment shall take place at the first Working Group following the AGM.
- 13.2.5 The term of service shall be one year.
- 13.2.6 The Deputy Chairperson may not serve more than two consecutive terms.

13.3 Secretary

- 13.3.1 An Employee of SOS shall undertake the role of secretary.
- 13.3.2 The Secretary shall:
 - 13.3.2.1 Provide at least 5 (five) working days written notice of planned meetings together with the agenda for such meetings.



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- 13.3.2.2 Take and retain the minutes of the Working Group and meetings and AGMs of SOS, as well as other records of SOS.
- 13.3.2.3 Distribute the minutes of all meeting as and when required to the relevant members.
- 13.3.2.4 Conduct the correspondence of the Working Group and send out notices of all Working Group meetings and AGMs.

13.4 Treasurer

- 13.4.1 Until otherwise determined by SOS, the Host Organisation shall be the custodian of the funds and property of SOS; and shall undertake the role of Treasurer in support of the Coordinator.
- 13.4.2 During this time, the role and functions of the Treasurer as stated in 13.4 below shall be performed in accordance with the Memorandum of Understanding between the Host Organisation and SOS.
- 13.4.3 Should SOS no longer require a Host Organisation a Treasurer shall be appointed as the chief custodian of the funds and property of SOS, or the responsibility shall be handed to the Coordinator.
- 13.5 Duties of the Treasurer shall include but not be limited to:
 - 13.5.1 Procuring the opening of a bank account in the name of SOS, which account shall be opened with an approved bank nominated by the Working Group;
 - 13.5.2 Receiving and banking all monies on behalf of SOS and shall together with any three designated members of the Finance and Management Committee operate a separate and dedicated banking account on behalf of SOS.
 - 13.5.3 Managing the day-to-day finances of SOS and ensure the keeping of such records and books of account as may be necessary to record clearly the financial position of SOS.
 - 13.5.4 Ensuring the records and books of account of SOS, including the Income and Expenditure Account and Balance Sheet, are annually compiled in terms of the financial year end of the organisation which shall be 28 February of each year.
 - 13.5.5 Submitting annually and presenting before the AGM a report showing the Income and Expenditure Account and Balance Sheet of SOS for the period since the previous AGM.
 - 13.5.6 Submitting to auditors, tax and any other relevant authorities the records and books of account of SOS and ensure SOS is legally compliant with regard to its finances; and
 - 13.5.7 Submitting monthly reports on the finances of SOS to the Working Group.

14. MEETINGS OF THE WORKING GROUP

- 14.1 The Working Group shall meet a minimum of once a month.
- 14.2 The Secretary shall schedule, in agreement with the Chairperson, the dates, times and venues of the minimum required meetings of the Working Group within one month of the AGM
- 14.3 Decisions of the Working Group shall be made by consensus.
- 14.4 Quorum for a meeting of the Working Group shall have been reached when the Chairperson or Deputy Chairperson or her/his nominee from within the Working Group and the

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Coordinator or her/his nominee who shall also be a staff member, along with a minimum of three other Working Group members, are present.

14.5 If within 20 (twenty) minutes after the time appointed for the meeting a quorum is not reached, the meeting shall continue.

14.5.1 Any decision taken at such a meeting shall be reported to the Working Group within 1 (one) week for ratification either by "round robin" or at the next Working Group meeting.

15. THE FINANCE AND ADMINISTRATION COMMITTEE AS A SUB-COMMITTEE OF THE WORKING GROUP

15.1 The Finance and Administration Committee shall be a sub-committee of the Working Group and shall be accountable to the Working Group.

15.2 It shall be comprised of Working Group members. It shall consist of the Chairperson or Deputy Chairperson, the Treasurer, the Coordinator and two or more Working Group members, as appointed by the Working Group.

15.3 The Coordinator shall be a full member but shall recuse her/himself for all discussions pertaining to her/his conditions of employment.

15.4 The Host Organisation shall be an automatic member of the Finance and Administration Committee.

15.5 The Finance and Administration Committee shall be appointed by the Working Group at the first Working Group meeting following the AGM.

16. DUTIES AND FUNCTIONS OF THE FINANCE AND ADMINISTRATION COMMITTEE

16.1 Its primary objective shall be to ease the financial and administrative burden placed on Working Group members in order that the Working Group may retain its focus on providing strategic guidance and direction to the Coalition and guiding the implementation of SOS projects and programmes.

16.2 Without prejudice to the generality of its powers, the Finance and Administration Committee shall:

16.2.1 Recommend and draft policies on all matters of procedure relevant to finance and administration on which this Constitution is silent to the Working Group for ratification.

16.2.2 Undertake financial and administrative tasks, as requested by the Working Group.

16.2.3 Have the power to co-opt not more than 2 (two) additional members, who shall be members of good standing of the Working Group, at any time during its term of office, in order to provide for the effective functioning of SOS.

16.2.4 Have the power to fill a vacancy by appointing a replacement, who shall be a member of good standing of the Working Group, should a vacancy occur on the Finance and Administration Committee for any reason.

17. MEETINGS OF THE FINANCE AND ADMINISTRATION COMMITTEE

17.1 The Finance and Administration Committee shall meet prior to Working Group meetings.

17.2 The Coordinator shall provide at least 3 (three) working days written notice of planned meetings together with the agenda for such meetings.




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- 17.3 The Chairperson or Deputy Chairperson shall preside over all meetings.
- 17.4 In the event of the Chairperson or Chairperson being absent, a member of the Finance and Administration Committee shall be appointed to preside.
- 17.5 A quorum shall be comprised of 50% (fifty per cent) of the members of the Finance and Administration Committee.
- 17.6 If the meeting is not quorate, the Committee, through the Chairperson or Deputy Chairperson, may elect to proceed with the meeting. All decisions made shall be recorded and circulated electronically among the committee within five days for confirmation before presentation to the Working Group for ratification.
- 17.7 Decisions of the Finance and Administration Committee shall be made by full consensus. Where this is not possible the matter shall be referred back to the Working Group to determine a way forward.

18. OTHER SUB-COMMITTEES OF THE WORKING GROUP

- 18.1 Such sub-committees as may be deemed necessary by the Working Group and / or Finance and Administration Committee to fulfil the objectives of SOS may be created, according to need.
- 18.2 All sub-committees shall be accountable to the Working Group.
- 18.3 Sub-committees shall principally be constituted from members of the Working Group and the SOS membership base. The involvement of co-opted persons who are not SOS members shall be ratified at the next Working Group meeting and, if necessary, conditions for involvement of co-opted persons determined.
- 18.4 The life span of such sub-committee shall be determined by need, and there shall be no formal disestablishment procedure.

19. EMPLOYEES

- 19.1 While SOS still requires a Host Organisation, employees shall be appointed by the SOS Working Group and employed by the Host Organisation in accordance with its employment policies. Should the need for a host organisation to fall away, employees shall be appointed and employed solely by the Working Group.
- 19.2 The Coordinator shall be the chief member of staff and shall be accountable to the Working Group. Insofar as SOS still requires a Host Organisation, the Coordinator shall be accountable to the Working group in line with the policies of the Host Organisation.
- 19.3 All other employees shall be accountable to the Coordinator.
- 19.4 Employees shall not be legally liable for any of the obligations and liabilities of SOS.
- 19.5 Employees shall not be personally liable for any loss suffered by any person as a result of an act or omission which occurs in good faith in the conduct of functions for and on behalf of SOS.
- 19.6 Further details of employment arrangements with employees will be concluded in the MOU concluded between SOS and its host organisation referred to in Section 6 of this Constitution.

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20. DUTIES AND FUNCTIONS OF THE COORDINATOR

- 20.1 The Coordinator shall undertake the following duties and functions, consistent with the Constitution and as agreed to by the Working Group.
- 20.1.1 Drive the vision and work of SOS.
 - 20.1.2 Supervise and direct the work of SOS and its structures
 - 20.1.3 Carry out the decisions and instructions of the working group
 - 20.1.4 Raise the finances necessary to implement the annual strategy and implementation plan, and be responsible for donor engagement and reporting in consultation with the Finance and Management Committee.
 - 20.1.5 In consultation with the Treasurer keep a record of all assets.
- 20.2 Any other staff shall undertake the duties and functions, consistent with their job descriptions and the support requirements of the Coordinator.

21. ANNUAL GENERAL MEETING (AGM)

- 21.1 The role of the AGM shall be to report to members and the general public on the organisational activities and finances over the last reporting period, to present the strategic plan and budget for the year ahead for adoption, and to confirm members of the Working Group.
- 21.2 It shall also be used to raise the profile and work of SOS.
- 21.3 Every year within 15 (fifteen) months of but not before 10 (ten) months of the last AGM, the Chairperson shall call an AGM of all Ordinary and Working Group members.
- 21.4 Members shall be informed of the AGM and its agenda at least 14 (fourteen) calendar days in advance.
- 21.5 The AGM shall determine its own procedures in accordance with democratic principles.
- 21.6 The Chairperson shall preside over the AGM.
- 21.7 Quorum shall be reached when 25% of all Ordinary Members or 10 Members are present, whichever is the lower.

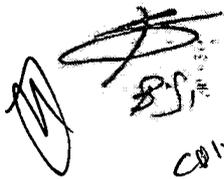
22. FUNDING AND FINANCING

SOS shall be financed from:

- 22.1 Grants.
- 22.2 Donations and bequests.
- 22.3 Monies received from any other legal source.
- 22.4 Income earned from surplus money deposited and invested.
- 22.5 Income earned from services rendered.

23. INCOME AND PROPERTY

- 23.1 The Treasurer in consultation with the Coordinator shall keep a record of all assets and income.
- 23.2 All finances and assets owned by SOS are under the custodianship of the Coordinator and the



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Treasurer, and are owned by SOS and not any of its members or employees.

- 23.3 Members and employees may submit bona fide expense claims to the host organisation on condition the principle of such claim submissions are agreed to by the Coordinator prior to the expense being incurred and are ratified by the Finance and Administration Committee

24. AMENDMENTS TO THE CONSTITUTION

- 24.1 The Constitution may be amended by a resolution passed at a Working Group meeting by at least two-thirds of all Working Group members.
- 24.2 The written approval of the Host Organisation shall be required should the change to the Constitution impact on the Host Organisation.
- 24.3 Amendments shall be proposed in writing. The Secretary shall provide copies of any proposed amendments together with the agenda for the Working Group meeting as per clause 13.2 above.

25. DISPUTE RESOLUTION REGARDING THE CONSTITUTION

- 25.1 Should any dispute arise or a deadlock exist in relation to any matter which requires consensus between the Parties in the widest sense in connection with –

- 25.1.1 the formation or existence of;
- 25.1.2 the carrying into effect of;
- 25.1.3 the interpretation or application of the provisions of;
- 25.1.4 the Parties' respective rights and obligations in terms of or arising out of;
- 25.1.5 the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of; and/or
- 25.1.6 any documents furnished by the Parties pursuant to the provisions of

this Constitution, or which relates in any way to any matter affecting the interests of the Parties in terms of this Constitution, then any Party may declare that a dispute exists by requesting that the Chairperson serve written notice on the other members of the Working Group.

- 25.2 Within 10 (ten) days of receipt of a written notice declaring a dispute, the Parties must try to meet and -

- 25.2.1 resolve the dispute; or
- 25.2.2 agree to a process for resolving the dispute.

- 25.3 If within 10 (ten) days of the dispute being declared, the Parties or their nominees do not meet or do not resolve the dispute or do not agree on a process for resolving the dispute,




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the matter shall be referred to arbitration in terms of this clause 25, provided that a Party to the dispute has demanded arbitration by written notice to the other Parties.

25.4 The arbitration shall be held -

25.4.1 at a location in the relevant magisterial district;

25.4.2 with only the representatives and legal representatives of the Parties to the dispute present thereat; or

25.4.3 otherwise in terms of the Arbitration Act, No. 42 of 1965, it being the intention that the arbitration shall be held and completed within 21 (twenty one) calendar days after it was demanded.

25.5 The arbitrator shall be, if the matter in dispute is principally -

25.5.1 a legal matter, a practising advocate or attorney;

25.5.2 an accounting matter, a practising accountant; or

25.5.3 any other matter, any independent Person, agreed upon between the Parties to the dispute.

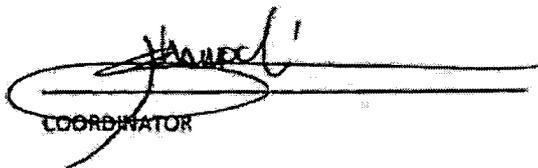
25.6 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of any competent court at the instance of any of the Parties to the dispute.

26. DISSOLUTION

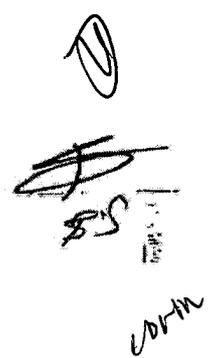
26.1 SOS may only be dissolved with the agreement of two thirds of all Ordinary Members at a Special Meeting of Members convened for this purpose.

26.2 Any assets remaining after all its liabilities have been met shall be transferred to another non-profit organisation with similar objectives.

26.3 The Working Group members shall decide on the exact terms of the dissolution and the precise disposal of any assets.


COORDINATOR

07/04/15
DATE


SOS
CO-OP

"DM2A"



Suite 1 Art Centre, 22 6th Str
cnr 4th Ave, PARKHURST 2193, Johannesburg
TEL +27 11 788 1278, CELL +27 60 911 5889
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13 October 2017

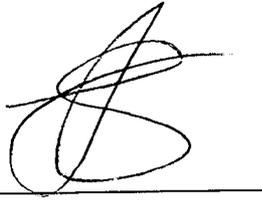
RESOLVED

1. That the S.O.S: Support Public Broadcasting Coalition participate as an applicant in the proceedings against the President of the Republic of South Africa and further respondents, seeking to compel the President to appoint the 12 persons nominated by the National Assembly as non-executive directors of the SABC;
2. William Bird is hereby authorised to depose to affidavits on behalf of the S.O.S: Support Public Broadcasting Coalition in such proceedings and to take steps and do all things necessary to give effect to the above resolution; and
3. Willem De Klerk Attorneys are hereby appointed to represent the S.O.S: Support Public Broadcasting Coalition as attorneys of record in such proceedings.

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Signed at Johannesburg on this the 13 day of October 2017

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Thandi Smith

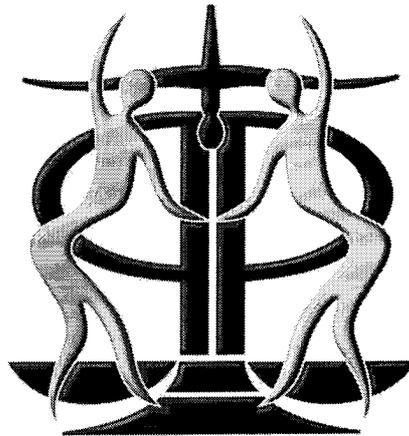
SOS: Coalition Chairperson

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COMM

"DM3"

A REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO 23 OF 2013/2014

"When Governance and Ethics Fail"

A REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, SYSTEMIC CORPORATE GOVERNANCE DEFICIENCIES, ABUSE OF POWER AND THE IRREGULAR APPOINTMENT OF MR. HLAUDI MOTSOENENG BY THE SOUTH AFRICAN BROADCASTING CORPORATION (SABC)

ISBN 978-1-920692-13-1

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'When governance and ethics fail, you get a dysfunctional organization. Sadly those in charge cannot see that their situation is abnormal. That has been the case at the SABC for a long time...'

Former member of the SABC Board

Executive Summary

- (i) *"When Governance and Ethics Fail"* is my report as the Public Protector issued in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 23 of 1994 (the Public Protector Act).
- (ii) The report communicates my findings and what I consider to be appropriate remedial action following an investigation into a complaint lodged on 11 November 2011 by Ms Phumelele Ntombela-Nzimande, who requested an investigation into allegations relating to various corporate governance failures on the part of the South African Broadcasting Corporation (SABC) management and the SABC Board, financial mismanagement at the SABC involving the spiraling of financial expenditure and undue interference by the Minister and Department of Communications.
- (iii) Shortly after the investigation commenced, Ms Charlotte Mampane a former Senior Executive at the SABC and several other former SABC employees, lodged a substantially similar complaint which included further allegations. The further allegations included the irregular appointment of Mr Hlaudi Motsoeneng to the position of the Acting Chief Operations Officer (COO) by the SABC despite not having a matriculation (matric) certificate and the required qualifications; gross fraudulent misrepresentation of facts by allegedly declaring himself to be in possession of a matric certificate obtained at Metsimantsho High; the purging of staff by the latter and the former Acting Group Chief Executive Officer (GCEO), Mr. Robin Nicholson, the subsequent unprecedented escalation of the SABC's salary bill, attributed primarily to Mr Motsoeneng's purging of senior executive staff



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members, irregular employee appointments and irregular salary increases, including Mr Motsoeneng's own 3 salary increases taking his remuneration increments, package from R1.5 million per annum to R2.4 million per annum in a single year.

- (iv) As the investigation drew towards a conclusion, the investigation team was approached by a whistle-blower on 20 May 2013, who alleged that the SABC had irregularly appointed a Chief Financial Officer (CFO) whose recruitment had allegedly been initiated and facilitated by a senior official of the Department of Communications on the then Minister's instructions.

- (v) On analysis of the complaints the following eight (8) issues were considered and investigated:
 - (a) Whether the alleged appointment and salary progression of Mr. Motsoeneng, the Acting Chief Operations Officer, were irregular and accordingly constitute improper conduct and maladministration;
 - (b) Whether Mr. Motsoeneng fraudulently misrepresented his qualifications to the SABC, including stating that he had passed matric when applying for employment;
 - (c) Whether the alleged appointment(s) and salary progression of Ms. Sully Motsweni were irregular and accordingly constitute improper conduct and maladministration;
 - (d) Whether the alleged appointment of Ms. Gugu Duda as CFO was irregular and accordingly constitutes improper conduct and maladministration;
 - (e) Whether Mr Motsoeneng purged senior officials at the SABC resulting in unnecessary financial losses in CCMA, court and other settlements and, accordingly, financial mismanagement and if this constitutes improper conduct and maladministration;



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- (f) Whether Mr Motsoeneng irregularly increased the salaries of various staff members, including a shop steward, resulting in a salary bill increase in excess of R29 million and if this amounted to financial mismanagement and accordingly improper conduct and maladministration;
 - (g) Whether there were systemic corporate governance failures at the SABC and the causes thereof; and
 - (h) Whether the Department and former Minister of Communications unduly interfered in the affairs of the SABC, giving unlawful orders to the SABC Board and staff and if the said acts constitute improper conduct and maladministration.
- (vi) The investigation included research and analysis of relevant laws and other applicable regulatory prescripts, correspondence, sourcing and analysis of corporate documents, telephonic and face to face interviews with current and former officials of the SABC and the Department of Communications (DOC), former Board Members of the SABC and the former Minister of Communications.
- (vii) In arriving at the findings, I have been guided by the standard approach adopted by the Public Protector South Africa as an institution, which simply involves asking: What happened? What should have happened? Is there a discrepancy between what happened and what should have happened? If there is a discrepancy, does the conduct amount to improper conduct or maladministration and, in this case, also abuse of power?
- (viii) As is customary, the "what happened" enquiry is a factual question settled on the assessment of evidence and making a determination on a balance of probabilities. I must indicate though that we rely primarily on official documents such as memoranda and minutes and less on *viva voce*

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evidence. The question regarding what should have happened on the other hand, relates to the standard that the conduct in question should have complied with. In determining such standard I was guided, as is customary, by the Constitution, national legislation and applicable policies and guidelines, including corporate policies and related sector and international benchmarks. Key among corporate policies, were the general SABC Articles of Association and the Broadcasting Act 4 of 1999. The benchmarks considered included guidelines contained in the King III Report on corporate governance.

- (ix) Principles developed in relevant previous Public Protector Reports, referred to as *touchstones*, were also taken into account as customary and in pursuit of consistency. A key report relied on in regard to corporate governance is the report titled "*Not Above Board*", report no 2 of 2013/14 dealing with findings and remedial action relating to allegations of maladministration by the Eastern Cape Gambling Board relating to the irregular appointment of the Chief Executive Officer.
- (x) I also took into account submissions made by relevant parties, including former employees, the current SABC Board and the complainants, following the Provisional Report being made available to them.
- (xi) In compiling their responses to the Provisional Report, all implicated recipients were assisted by their attorneys. Ms Pule, MP and DOC Acting Deputy Director General (DDG) Mr. Themba Phiri, were assisted by Malan and Mohale Attorneys. Mr. Mngqibisa was assisted by F R Pandelani Incorporated Attorneys. Mr. Motsoeneng was assisted by Majavu Incorporated Attorneys. Ms. Duda was assisted by Ndlovu and Sedumedi Attorneys Incorporated while the SABC was assisted by Mchunu Attorneys.
- (xii) It must be noted upfront that the arguments presented by some of the respondents, including Mr Motsoeneng, the current chairperson of the



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SABC Board and Mr Mngqibisa, in response to my Provisional Report, are, with respect, premised on a misunderstanding of the issues investigated and the laws regulating the operations of my office.

- (xiii) If we take the issue regarding the matric certificate, for instance, the issue was not whether or not the SABC Board and management knew that Mr Motsoeneng did not have a matric certificate on appointment to various posts at the SABC. The issue was simply whether or not Mr Motsoeneng had fraudulently misrepresented his qualifications to get a job he was not entitled to as the job required a matric certificate. An ancillary issue was whether it could be reasonably concluded that he had something to do with the disappearance of his human resources file and the changed qualification requirements for the COO post when it was advertised while he held the post on an acting capacity.
- (xiv) The other issue misunderstood by the current SABC Board, whose submission I have since been advised, was prepared by a lawyer on the instructions of the current Chairperson and to the exclusion of the rest of the Board, involves failure to appreciate the distinction between jurisdiction and discretion. In the body of the report, I explain that there is no bar on my handling a matter that is older than 2 years and that the requirement is that if I am requested to investigate a matter that is older than 2 years, the Complainant must furnish me with compelling reasons why I should consider the request favourably. It is not for me to convince the respondent that I have compelling reasons to accept an investigation as argued. If that were the case the discretionary power would shift to the respondent. In any event the main complaint related to alleged ongoing systemic governance problems and harassment of senior staff by Mr Motsoeneng allegedly because some of them question his qualifications or alleged fraudulent misrepresentation about same. For example, the first complainant, Ms Ntombela-Nzimande alleged that her contract was terminated prematurely



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because she had raised several corporate governance issues with the then Acting GCEO, Mr Nicholson. She alleged that many of the issues she had raised related to the alleged irregular employment and subsequent conduct of Mr Motsoeneng.

- (xv) The current Board Chairperson, Ms Zandile Tshabalala and Mr Motsoeneng also argued that the provisions of section 9 of the Public Protector Act preclude me from "investigating matters that have become litigious".
- (xvi) In the body of the report I point out that the objections are primarily due to a failure to understand the relevant provisions of the Constitution and the Public Protector Act. Suffice to say that section 182(3) of the Constitution and section 6(6) of the Public Protector Act, prohibit the review of court decisions. There is no bar on investigating matters that were not canvassed in or decided by a court of law. I have clarified that the investigation did not investigate alleged unfair labour practices. It was simply confined to testing the allegation that Mr Motsoeneng systematically purged senior staff in a manner that flaunted legal and corporate procedures resulting in the loss of millions of Rand.
- (xvii) I am accordingly satisfied that the complaints lodged regarding the propriety of various actors at the SABC were correctly lodged in accordance with section 182 of the Constitution and sections 6 and 7 of the Public Protector Act, and accordingly fall within my remit.
- (xviii) Other odd arguments made by Mr Motsoeneng and the submission ostensibly made on behalf of the current SABC Board, are fully addressed in the body of the report. I must indicate that in this regard I found it rather discouraging that the current SABC Board appears to have blindly sprung to Mr Motsoeneng's defense on matters that precede it and which, in my considered view, require a Board that is serious about ethical governance to

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raise questions with him. In fact at times the Board submission appeared more defensive on his behalf than himself. This is the case on the alleged fraudulent misrepresentation of his qualifications. The submission appeared to be unconcerned over the allegation that:

"Mr Motsoeneng committed an act of gross fraudulent misrepresentation of facts by declaring himself to be in possession of a matriculation certificate obtained at Metsimantsho High School in Qwaqwa"

- (xix) In contrast, **Mr Motsoeneng admitted**, during his recorded interview, **that he had falsified his matric qualifications and blamed a Mrs Swanepoel, whom he said** gave him the application form **to fill in anything** to get the job. On the completed application form availed by one of the Complainants, Mr Motsoeneng indicated that he passed Standard 10 ('matric') in 1991 at the age of 23 years and indicated five(5) symbols he had purported to have obtained in this regard.
- (xx) Mr Motsoeneng further conceded during his interview, as did other Members of the erstwhile board during their recorded interview, that there were systemic corporate governance lapses in the SABC, although Mr Motsoeneng took no responsibility for any of such lapses, blaming everything on the Board, fellow executives and the Department of communications.
- (xxi) During my informal meeting with the SABC Board Chairperson, Mrs Tshabalala, on Friday 14 February 2014, she graciously acknowledged that the submission she forwarded in response to the provisional report was prepared by her lawyer who had been assisting the SABC prior to her appointment as she was not familiar with the issues then and that she had considered it unnecessary to involve the current Board Members, as members would not have been privy to the issues.

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(xxii) I must indicate that, I would not recommend a similar approach in the future. As the Chairperson of the SABC Board is not an executive chairperson, Board decisions should be made by the Board. Furthermore, the issues raised in my provisional report needed to be brought to the attention of the current Board for it to apply its mind to the corporate governance and ethical challenges it was stepping into. During our meeting I shared my views on the role of a non-executive chairperson with Ms Tshabalala, who did not object to such views.

(xxiii) The essence of the allegations investigated was that there was systemic corporate governance failure at the SABC at the core of which was a expediency, acutely poor human resources management and a dysfunctional Board, all of which was said to be primarily due to manipulative scheming by the SABC's Acting COO, who allegedly lacked the requisite competencies for the post and manipulated, primarily new Boards and GCEOs to have his way and to purge colleagues that stood in his way.

(xxiv) My findings are the following:

(a) Regarding the alleged irregular appointment and salary progression of Mr. Hlaudi Motsoeneng, I find that:

- 1) The allegation that the appointment of Mr Motsoeneng as the Acting COO was irregular is substantiated. By doing allowing Mr Motsoeneng to act for a period in excess of three (3) months without the requisite Board resolution and exceeding the capped salary allowance, the SABC Board acted in violation of the SABC's 19.2 Articles of Association which deals with appointments, SABC Policy No HR002/98/A-Acting in Higher Scale and Chapter 5 of the

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Broadcasting Act, which regulates acting appointments and this constitute improper conduct and maladministration.

- 2) The former SABC Board's Chairperson, Dr Ben Ngubane further acted irregularly when he ordered that the qualification requirements for the appointment to the position of COO be altered to remove academic qualifications as previously advertised, which was clearly aimed at tailor making the advert to suit Mr Motsoeneng's circumstances and this constitutes improper conduct maladministration and abuse or unjustifiable exercise of power.
- 3) The allegation that Mr. Motsoeneng's salary progression was irregular is also substantiated in that Mr Motsoeneng received salary appraisals three times in one year as alleged hiking his salary as Executive Manager Stakeholder Relations from R 1.5 million to R2.4 million. His salary progression as the Acting Chief Operations Officer concomitantly rose irregularly from R122 961 to R211 172 (63% increase) in 12 months and was in violation of Part IV of SABC's Personnel Regulations and SABC Policy No HR002/98/A-Acting in Higher Scale and this constitute improper conduct and maladministration.
- 4) While I have accepted the argument presented by Mr Motsoeneng, the current GCEO and the chairperson of the current Board that salary increases at the SABC are negotiated without any performance contracts or notch increase parameters, I am unable to rule out bad faith in Mr Motsoeneng in the circumstances that allowed 3 salary increases in one fiscal year resulting in Mr Motsoeneng's salary being almost doubled. My discomfort with the whole situation is accentuated by the fact that all were triggered

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him presenting his salary increase requests to new incumbents who would have legitimately relied on him for guidance on compliance with corporate prescripts and ethics. It cannot be said that he did not abuse power and/or his position to unduly benefit himself although on paper the decisions were made by other people. The approval of Mr Motsoeneng's salary increments by the GCEO's and the Chairperson of the Board at the time, Dr Ben Ngubane was, accordingly, irregular as it was in violation of Part IV of SABC's Personnel Regulations and SABC Policy No HR002/98/A-Acting in Higher Scale and constitutes improper conduct, abuse of power and maladministration.

- 5) The SABC Human Resources Department failed to keep proper records regarding Mr Motsoeneng's documentation and other Human resources matters dealt with in this report and this constitutes improper conduct and maladministration.
- 6) The SABC Board's failure to exercise its fiduciary obligations in the appointment and appropriate remuneration for the Acting Chief Operations Officer for the SABC was improper and constitutes maladministration.

(b) Regarding Mr Motsoeneng's alleged fraudulent misrepresentation of his qualifications to the SABC when applying for employment including stating that he had passed matric, I find that:

- 1) The allegation that Mr Motsoeneng committed fraud by stating in his application form that he had completed matric from Metsimantsho High School, is substantiated. By his own admission, Mr Motsoeneng provided stated in his application form

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that he had passed standard 10 (matric), filled in made-up symbols in the same application form and promised to supply a matric certificate to confirm his qualifications when he knew he had not completed matric and did not have the promised certificate, was admitted by him during his interview. His blaming of Mrs Swanepoel and the SABC management that stating that they knew he had not passed matric is disconcerting. If anything, this defence exacerbates his situation as it shows lack of remorse and ethical conduct. The conduct is improper and constitutes a dishonest act as envisaged in 6(4)(a)(ii) and (iii) of the Public Protector Act.

- 2) The allegation that Mr Motsoeneng was appointed to several posts at the SABC despite having no qualifications as required for such posts, including a matric certificate, is substantiated and this constitutes improper conduct and maladministration.
- 3) Mr Motsoeneng would have never been appointed in 1995 had he not lied about his qualifications and that he repeated that lie in 2003 when he applied for the post of Executive Producer: Current Affairs to which he accordingly should never have been appointed.
- 4) The SABC management and Human Resources unit failed to exercise the necessary prudence to avoid the misrepresentation and/or to act decisively when the misrepresentation was discovered. This constitutes improper conduct and maladministration.
- 5) I am also concerned that Mr Motsoeneng's file disappeared amid denying ever falsifying his qualifications and that at one point he used the absence of evidence to support his contention that there was no evidence of his alleged fraudulent misrepresentation. The



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circumstantial evidence points to a motive on his part although incontrovertible evidence to allow a definite conclusion that he did in fact cause the disappearance of his employment records, particularly his application forms and CV, could not be found.

(c) Regarding the alleged irregular appointment(s) and salary progression of Ms Sully Motsweni, I find that:

- 1) The allegation of irregularities in the appointment of Ms Sully Motweni to the position of General Manager: Compliance and Operation and Stakeholder Relations and Provinces on 30 June 2011 to 31 January 2012; Head: Compliance and Operation on 01 February 2012 to date; Acting Group Executive: Risk and Governance on June 2012 to date and subsequent salary increments taking her from R960 500.00 per annum to R1.5 million per annum are substantiated. The HR records show that Ms Sully Motsweni's appointments and salary progressions were done without following proper procedures and was in violation of sub-section G3 of DAF and Part IV of the Personnel Regulations was irregular and therefore this constitutes abuse of power and maladministration.

(d) Regarding the alleged irregular appointment of Ms Gugu Duda as the Chief Financial Officer (CFO), I find that:

- 1) The allegation regarding Ms Gugu being irregularly appointed to the position of CFO, through the interference of the Department of Communications, is substantiated.

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- 2) Ms Duda, who was appointed to the position of CFO during February 2012, was not an applicant for the position, which was advertised. Interviews were conducted and a recommendation was made by the SABC board to the Minister of Communications, Ms Pule as the shareholder, to appoint Mr Msulwa Daca. Mr Phiri, from the Department of Communications, and Mr Motsoeneng, from the SABC orchestrated the appointment of Ms Duda long after the recruitment and selection process had been closed. Ms Duda was interviewed on 07 February 2012, without having applied for said position and was after the submission of the Board's recommendation, of the appointment of a legitimately selected candidate, Mr Daca, submitted to Ms Pule on 31 January 2012, which, recommendation was rejected by her.

- 3) The conduct of the SABC management, particularly Mr Motsoeneng and the Board in the appointment of Ms Duda as the CFO of the SABC, was in violation of the provisions of section 19.1.1 of the Articles of Association and Broadcasting Act and accordingly unlawful. The appointment was grossly irregular and actions involved constitute improper conduct, maladministration and abuse of power.

- 4) Although I could not find conclusive evidence that Ms Pule personally ordered that Ms Duda's CV be handed over to the SABC and that the Board interview her against the law as alleged, there is sufficient evidence that suggests an invisible hand from her direction and that of Mr Mngqibisa, to which we can legitimately attribute this gross irregularity. In any event, if we accept that Ms Pule was not involved as per her denial, it is unclear why she would have speedily approved the appointment

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as she did on, when the irregularities were obvious. The conduct of Ms Pule as Minister of communications was accordingly improper and constitutes maladministration.

(e) Regarding Mr Motsoeneng's alleged purging of senior staff members of the SABC resulting in unnecessary financial losses in CCMA, court and other settlements, which amounts to financial mismanagement, I find that:

- 1) The allegation that Mr Motsoeneng purged senior staff members leading to the avoidable loss of millions of Rand towards salaries in respect of unnecessary and settlements for irregular terminations of contracts is justified in the circumstances SABC human resources records of the circumstances of termination and Mr Motsoeneng's own account show that he was involved in most of these terminations of abuse of power and systemic governance failure involving irregular termination of employment of several senior employees of the SABC and that the SABC lost millions of Rand due to procedural and substantive injustices confirmed in findings of the CCMA and the courts. Some of these matters were settled out of court with the SABC still paying enormous amounts in settlements.
- 2) SABC records show that Mr Motsoeneng played the following role in the dismissals:

Direct involvement

- (aa) Mr Motsoeneng directly initiated the termination of the employment of Messrs Bernard Koma, Hosia Jiyane, Sello

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Thulo, Montlennyane Diphoko and Mesd Mapule Mbalathi and Ntswoki Ramaphosa who participated in Mr Motsoeneng's disciplinary hearing held in Bloemfontein.

Advise to the board

- (aa) Mr Motsoeneng advised the Board not to renew the employment contracts of Mesd Ntombela-Nzimande and Mampane.

History of conflict

- (aa) Mr Motsoeneng had a dispute with Ms Duda before her suspension as well as an altercation with Ntombela-Nzimande, who later alleged with the corroboration of others that Mr Motsoeneng influenced the premature termination of her employment contract.
- (bb) Although one or more witnesses pointed a finger at Mr Motsoeneng regarding the termination of the employment of Dr Saul Pelle, Ms Ntsiepe Mosoetsa, Ms Cecilia Phillips, Ms Sundi Sishuba, Ms Lorraine Francois, Ms Nompilo Dlamini, no credible evidence was found to back the allegation.
- (cc) Mr Motsoeneng's actions in respect of the abovementioned suspensions and terminations, where evidence clearly shows his irregular involvement, constitutes improper conduct, abuse of power and maladministration.



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The results of certain individual labour disputes with the SABC are canvased below:

- (aa) Mr Bernard Koma – Mr Motsoeneng directly initiated the termination of employment of Mr Koma who was the lead witness in his disciplinary hearing. Mr Koma received 12 months' settlement award at the CCMA with his attorneys on condition that he withdrew his civil case against the SABC after spurious charges had been levelled against him;
- (bb) Mr Montlanyane Diphoko – Mr Motsoeneng directly initiated the termination of the employment of Mr Diphoko who had testified against him in his disciplinary hearing. Mr Diphoko was reinstated after CCMA ruling, almost three years after SABC had terminated his contract;
- (cc) Mr Hosia Jiyane – Mr Motsoeneng directly initiated the termination of the employment of Mr Diphoko who had testified against him in his disciplinary hearing. Disciplinary proceedings against him dragged for two years before he won the case against the SABC. However, Mr Motsoeneng opposed the finding of not guilty;
- (dd) Dr Saul Pelle won his case at the Labour court for reinstatement but SABC refused to reinstate him and offered him 12 months' settlement payout;





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- (ee) Ms Ntsiepe Masoetsa – Reinstated after her labour dispute case against the SABC dragged for three years in the Labour court ;
- (ff) Ms Cecilia Phillips – Suspended for four months without charges being brought against her by the SABC;
- (gg) Mr Sello Thulo – Mr Motsoeneng directly initiated the termination of the employment of Mr Thulo who had testified against him in his disciplinary hearing. Instructed the disciplinary committee to 'get that man out of the system';
- (hh) Mr Thabiso Lesala – Substantial settlement award offered to him through his attorney at the CCMA and he was asked to withdraw his case as a condition of the settlement;
- (ii) Ms Charlotte Mampane – Employment contract was terminated prematurely in March 2012 instead of October 2013 for being redundant. A settlement award was given to her for the remainder of her contract;
- (jj) Ms Phumelele Ntombela-Nzimande – Her employment contract was terminated prematurely, and she was awarded settlement payment for the remainder of 13 months of her contract;
- (kk) Ms Gugu Duda – Suspended indefinitely since September 2012 to date without expeditious finalisation of the disciplinary proceedings against her;

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- (ll) Ms Sundi Sishuba – Suspended for two and half years, so far no charges have been brought against her;
 - (mm) Ms Loraine Francois - Suspended for months but won her case at the CCMA and was reinstated to her post; and
 - (nn) Ms Nompilo Dlamini – Won her case in the Labour court, the SABC appealed the ruling to the High court, matter due to be heard in April 2014.
- 3) The allegations of maladministration, including financial mismanagement, at the level of the SABC management are also substantiated. The records show that the majority of these cases were handled without following proper procedure as all 14 suspensions and terminations were successfully challenged in court. Numerous disputes were settled out of court at enormous unnecessary cost to the Corporation.
- 4) The substantial amounts of money paid to SABC's employees as settlements during protracted suspensions, terminations and/or long drawn-out labour dispute proceedings and protracted litigations caused unnecessary and avoidable costs to the National Broadcaster, thus resulting in fruitless and wasteful expenditure. The allegation that the avoidable legal fees, settlement awards and acting allowances for persons in suspension, contributed to the National Broadcaster's unprecedented salary bill escalation by R29 million.
- 5) The acts and omissions of the SABC management Board in regard to the unnecessary and/ or procedurally irregular suspensions, dismissals and forced resignations amount to fruitless and wasteful

February 2014

expenditure and the conduct accordingly constitutes improper conduct and maladministration.

(f) Whether Mr Motsoeneng irregularly increased the salaries of various staff members, including a shop steward, resulting in a salary bill increase in excess of R29 million and if this amounted to financial mismanagement and accordingly improper conduct and maladministration

- 1) The allegation that Mr Motsoeneng irregularly increased the salaries of various staff members is substantiated.
- 2) Mr Motsoeneng unilaterally increased salaries of, Ms Sully Motsweni, Ms Thobekile Khumalo, Mr Hannes Du Buisson and certain freelancers without following Part IV of the SABC Personnel Regulations.
- 3) These irregular and rapid salary progressions contributed to the National Broadcaster's unprecedented salary bill escalation by R29 million.
- 4) Mr Motsoeneng's conduct in this regard was irregular and amounts to improper conduct and maladministration.

(g) Regarding the alleged systemic corporate governance failures at the SABC and the causes thereof, I find that:

- 1) All the above findings are symptomatic of pathological corporate governance deficiencies at the SABC, including failure by the

February 2014

SABC Board to provide strategic oversight to the National Broadcaster as provided for in the SABC Board Charter and King III Report.

- 2) The Executive Directors (principally the GCEO, COO and CFO) failed to provide the necessary support, information and guidance to help the Board discharge its fiduciary responsibilities effectively and that, by his own admission Mr Motsoeneng caused the Board to make irregular and unlawful decisions.
- 3) The Board was dysfunctional and on its watch, allowed Dr Ngubane to effectively perform the function of an Executive Chairperson by authorizing numerous salary increments for Mr Motsoeneng.
- 4) Mr Motsoeneng has been allowed by successive Boards to operate above the law, undermining the GCEO among others, and causing the staff, particularly in the human resources and financial departments to engage in unlawful conduct.

(h) Regarding the allegation that the Department and Minister of Communications unduly interfered in the affairs of the SABC, giving unlawful orders to the SABC Board and staff, I find that:

- 1) Former Minister Pule acted improperly in the manner in which she rejected the recommendation made by the Board for the appointment of the CFO and orchestrated the inclusion of Ms Duda's CV. Her conduct accordingly constitutes a violation of the Executive Ethics Code and amounts to abuse of power.

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- 2) Mr Phiri the Acting DDG of Department of Communication, acted unlawfully in submitting Ms Duda's CV to Mr Motsoeneng for her inclusion in the subsequent interview by the Board after the selection process had been concluded and recommendations already submitted to the Minister for approval of the CFO's appointment and his conduct in this regard was improper and constitutes maladministration.
 - 3) Mr. Motsoeneng acted unlawfully in accepting the CV from Mr Phiri and ordering that Ms Duda's CV be included and she be interviewed after the selection process had been concluded with recommendations for appointment already submitted to the former Minister and his conduct in this regard was improper and constitutes maladministration.
- (xxv) Appropriate remedial action to be taken on my findings of maladministration as envisaged by section 182(1) (c) of the Constitution and section 6(4)(c)(ii) is the following:

(a) Parliament Joint Committee on Ethics and Members' interests

- 1) To take note of the findings against the former Minister of Communications, Ms Pule in respect of her conduct with regard to the irregular appointment of Ms Duda as the SABC's CFO and her improper conduct relating to the issuing of unlawful orders to the SABC Board and staff.

February 2014

(b) The current Minister of the Department of Communications: Hon. Yunus Carrim

- 1) To institute disciplinary proceedings against Mr Themba Phiri in respect of his conduct with regard to his role in the irregular appointment of Ms Duda as the SABC CFO.
- 2) To take urgent steps to fill the long outstanding vacant position of the Chief Operations Officer with a suitably qualified permanent incumbent within 90 days of this report and to establish why GCEO's cannot function at the SABC and leave prematurely, causing operational and financial strains.
- 3) To define the role and authority of the COO in relation to the GCEO and ensure that overlaps in authority are identified and eliminated.
- 4) To expedite finalization of all pending disciplinary proceedings against the suspended CFO, Ms Duda within 60 days of this report.

(c) The SABC Board to ensure that:

- 1) All monies are recovered which were irregularly spent through unlawful and improper actions from the appropriate persons.
- 2) Takes appropriate disciplinary action against the following:
 - (aa) Mr Motsoeneng for his dishonesty relating to the misrepresentation of his qualifications, abuse of power and improper conduct in the appointments and salary increments



February 2014

of Ms Sully Motsweni, and for his role in the purging of senior staff members resulting in numerous labour disputes and settlement awards against the SABC;

- (bb) Ms Lulama Mokhobo, the outgoing GCEO for her improper conduct in the approval of the salary increment of Mr Motsoeneng;
- (cc) To ensure that any fruitless and wasteful expenditure that had been incurred as a result of irregular salary increments to Mr Motsoeneng, Ms Motsweni, Ms Khumalo and the freelancers, is recovered from the appropriate persons;
- (dd) To ensure that in future there is strict and collective responsibility by the SABC Board members through working as a collective and not against each other, in compliance with the relevant legislation, policies and prescripts that govern the National Broadcaster; and
- (ee) To issue a public apology to Ms P Ntombela-Nzimande, Ms C Mampane and all its former employees who had suffered prejudice due to the SABC management and Board's maladministration involving failure to handle the administration of its affairs in accordance with the laws, corporate policies and principles of corporate governance.
- (ff) To review all their HR processes pertaining to creation of new posts, appointments and salary scales and progressions.



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To: The President Mr J.G Zuma
c/o Head of the Private Office of the President and Spokesperson: Dr Bongani Ngqulunga
cc Private Secretary to the President: Mr Ntoeng Simphiwe Sekhoto
Union Buildings
Government Avenue
Pretoria
0001
Email: bongani@presidency.gov.za
cc email: presidentrsa@presidency.gov.za

cc: The Minister of Communications

Attention: Hon. Ayanda Dlodlo
c/o Ms Nene Shibavmbu
Department of Communications
Tshedimosetso House
1035 Cnr Frances Baard and Festival Streets
Hatfield
Pretoria
0083
Email: nene@doc.gov.za

5 October 2017

Dear Mr President

RE: Appointment of the SABC Board

As you are aware the crises at SABC have deepened over the last year, resulting in the Ad Hoc Inquiry into the fitness of the SABC board, their removal and then the implementation of an interim board. Most recently the latest financials for the SABC offer yet another insight into a critical public institution that is in dire need of stable, competent professional and independent leadership.

As you are also aware, the term of the interim SABC Board came to an end last week Tuesday on the 26th of September 2017. Since then, the SABC has been operating without a Board. You will also be aware that there was a thorough and open process for nominations, interviews and selection of the candidates for the new permanent SABC Board. We understand that at least 28 days ago, the National Assembly submitted to your office the 12 names of persons to be appointed to the Board. Despite this, there has not been any formal appointment of these persons yet.


COMM



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While we can understand how busy you are, we are deeply concerned by the failure to formally appoint the candidates sent to you. Section 13(1) of the Broadcasting Act 4 of 1999 is quite clear: the President is to appoint the twelve non-executive members "on the advice of the National Assembly". This means that as a matter of law, the President has no discretion regarding whether to appoint the board members identified by the National Assembly. The only role for the President is to determine the Chair and Deputy Chair from the board members identified by the National Assembly. This makes the delay in appointment, with respect, simply inexplicable.

Moreover, with no board at all in place and with only acting senior executives left to ensure the institution can function the SABC is once again exposed to further crises that it, the employees and South Africans simply cannot afford.

We therefore call upon you, by 17h00 tomorrow, Friday 6 October 2017, to:

- Formally appoint the 12 Board members identified by the National Assembly;
- Publicly announce that you have done so; and
- If possible, designate one of the Board members as Chair and another as Deputy Chair.

If the appointment and public announcement have not been made by 17h00 tomorrow, we will regretfully have no option but to launch an urgent application against your office in this regard. We sincerely hope that this will not be necessary.

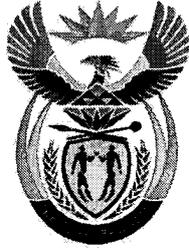
Yours sincerely

A handwritten signature in black ink, appearing to be "William Bird & Duduetsang Makuse".

William Bird & Duduetsang Makuse
Director Programme Coordinator
For MMA and SOS respectively.

Handwritten initials in black ink, possibly "WB" or "DM".

CA-114



"DM 5"

THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

Attention: Mr William Bird
Media Monitoring Africa
P O Box 1560
Parklands
2121

Per fax: 011 788 1289
Also per email: info@mma.org.za

Dear Mr Bird,

RE: APPOINTMENT OF THE SABC BOARD

1. Reference is made to your letter dated 5 October 2017 addressed to the President of the Republic of South Africa. Your letter was referred to the Legal and Executive Services Unit for further attention.
2. We would like to bring it to your attention that the Presidency also received a letter from one of the political parties raising the same issue that the President should appoint members of the Board of the SABC from the National Assembly's recommended names, after a due process, no later than close of business on Monday 09 October 2017.
3. Our Unit will take instructions on the issues raised and revert to you on Monday 9 October 2017.

Yours faithfully

Mr Geoffrey Mphaphuli
Acting Head: Legal and Executive Services Unit

Date: 06/10/2017

Mr Geoffrey Mphaphuli
Legal and Executive Services
Tel: 012 300 5403
Geoffrey@presidency.gov.za

COHM



"DM6"

THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

Attention: Mr William Bird
Media Monitoring Africa
P O Box 1560
Parklands
2121

Per fax: 011 788 1289
Also per email: info@mma.org.za

Dear Mr Bird,

RE: APPOINTMENT OF THE SABC BOARD

1. Our letter dated 6 October 2017 refers.
2. We advise that the line function department of communications has collated all the necessary information to enable the President to finalize the appointments of the board members. The information was submitted to the Presidency on 6 October 2017.
3. The Presidency is in the process of considering the information and will finalize the appointments as soon as possible.

Yours faithfully

Mr Geoffrey Mphaphuli
Acting Head: Legal and Executive Services Unit
Date: 09/10/2017

Mr Geoffrey Mphaphuli
Legal and Executive Services
Tel: 012 300 5403
Geoffrey@presidency.gov.za

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To: The President Mr J.G Zuma
c/o Head of the Private Office of the President and Spokesperson: Dr Bongani Ngqulunga
cc Private Secretary to the President: Ntoeng Simphiwe Sekhoto
Union Buildings
Government Avenue
Pretoria
0001
Email: bongani@presidency.gov.za
cc email: presidentrsa@presidency.gov.za

cc: The Minister of Communications

Attention: Hon. Ayanda Dlodlo
c/o Ms Nene Shibavmbu
Department of Communications
Tshedimosetso House
1035 Cnr Frances Baard and Festival Streets
Hatfield
Pretoria
0083
Email: nene@doc.gov.za

10 October 2017

Dear Mr President

RE: Appointment of the SABC Board

1. We refer to your letter of yesterday in which you indicated that the Presidency "will finalize the appointments as soon as possible". We regret that your letter compounds the unlawful delay that has already occurred and fails to provide any meaningful indication as to when such appointments will be made.
2. We also, however, note reports of a statement today by Minister Dlodlo that the appointments are likely to be made "today or tomorrow".
3. While we had initially planned to launch urgent legal proceedings in relation to this matter tomorrow, in view of Minister Dlodlo's statement we intend to delay this by one day.
4. We emphasise for the avoidance of all doubt that if the appointment to the Board of the 12 persons selected by the National Assembly has not occurred and been publicly



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announced by 17h00 tomorrow, Wednesday 11 October 2017, we will proceed to launch the urgent legal proceedings on the morning of Thursday 12 October 2017.

5. We sincerely hope that this will not be necessary.

Yours sincerely

William Bird & Duduetsang Makuse
Director Programme Coordinator
For MMA and SOS respectively.

A handwritten signature in black ink, appearing to be "W. Bird".

W. Bird

"DM 8"

09 October 2017

To all News Editors

**OPEN LETTER RE: SABC8 IMPLORES PARLIAMENT TO ACT ON BROADCASTERS
GOVERNANCE CRISIS**

At the start, we the SABC8, want to affirm the good work done in 2016 by parliament's portfolio committee on communications, the ad hoc committee on the SABC and the interim board of the SABC. However, it is with deep regret we write to you to register our alarm and deepest disappointment at the reckless abandon to which the public broadcaster has descended. We are extremely concerned at the governance crisis at the SABC. We believe that a recapture project of the public broadcaster is afoot and would like to endorse the open letter written to you by our fellow colleagues under the banner of BEMAWU (Broadcasting, Electronic, Media & Allied Workers Union). We wish to reiterate their statement that we are prepared to strike over the issues underlined. We will not allow our short-lived, recently gained freedom of expression to be rolled back.

It has been nine days since the term of the Interim Board has expired. However, there has been no political will to remedy the governance crisis at the broadcaster. The President has delayed the ratification of the permanent board members duly advised by Parliament. In terms of the Broadcasting Act, Section 14 (1), concerning the executive committee, "the affairs of the corporation are administered by an executive committee consisting of the group chief executive and six other members appointed by the board." In other words the act makes absolutely no provision for the ministerial appointment of executive members; in fact the act frowns on such. We have been told today, by acting GCEO Nomsa Philiso that the Minister is currently preparing herself to extend the contracts of the current acting executives. If the Minister proceeds with such plans she would be usurping the powers of parliament or a board that should have been appointed by parliament. We wish to inform the executive arm of the state that we do not belong to them but to the people of South Africa via their public representatives – the Parliament of the Republic of South Africa.

In terms of the Companies Act, the current state of affairs amounts to reckless trading as no one is accountable for the major decisions and transactions of the insolvent entity that we work for. It is clear that the SABC is unable to pay its debts as they become due in the normal course of business. The attendant risks and implications are dire and grave. It would be reckless of us not to responsibly raise these concerns with Parliament as we do now by this correspondence.

Regarding the reversed merger between the News Resources Department and Henley; while on the surface it may seem resolved, we still call for a forensic investigation into how this merger came about in the first place and a full account of the moneys transferred and spent, particularly the millions transferred from the news division to the bankrupt Henley technical department. The Combating and Prevention of Corrupt Activities Act stipulates that we have an obligation to report such matters. Further, we have seen how when corruption is allowed to run rampant, the quality of news and governance decline.



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We note, with concern, a reported meeting held at Luthuli House, wherein we believe it was said that the SABC news division is “the only propaganda tool left to the African National Congress”; and that the loss of this “tool” would be resisted by the governing party. In addition, we find that the meeting held by our Acting-GE of news with the head of the president’s private office and spokesperson, Dr. Bongani Ngqulunga, to be injudicious and we call on our head to exercise more circumspection in the future and to protect the newsroom from perceptions of bias. We also call on him to make the minutes of that meeting public. Editorial independence must not only be practiced, like justice, it must be seen to be done.

We also raise concern that the editorial review process has been halted by the absence of the appropriate governance structures. ICASA has ruled that the SABC revert to the editorial policy of 2004. In this editorial policy the official mandated person to preside over the editorial process is the Group Chief Executive. We note with concern that the acting Chief Operating Officer has installed herself at the apex of this process, thus continuing with the practices of Hlaudi Motsoeneng under whom she gladly served. This is why we call on the presidency to ratify the board members so that we can institute the measures to ensure editorial independence, such as the Editorial Forum, as envisaged in the Broadcasting Act, clause 13 (b) which calls on board members to be committed to fairness and freedom of expression and the right of the public to be informed.

It has been eight months since the release of the final report of the SABC inquiry’s ad hoc committee which recommended, among others, that the enforcers of unlawful instructions by Hlaudi Motsoeneng and his regime be held accountable. Instead, there appears to be efforts to launder their conduct and reinstate them as credible journalists. This is just a cosmetic exercise designed to ensure that they remain long enough to cover up the corrupt excesses and decisions of the past. Given the acting head of news’ reluctance to correct the wrongs of the past, our faith in his leadership is gravely shaken.

We call upon parliament to hold the executive to account and bring the corporation in line with the governance principles outlined in the Broadcasting Act. We cannot proceed in this fashion for much longer.

Yours sincerely

Thandeka Gqubule-Mbeki
Busisiwe Ntuli
Krivani Pillay
Foeta Krige
Lukhanyo Calata
Vuyo Mvoko
Jacques Steenkamp
Nonkululeko Zonke Smith (convenor of SABC 101- News Technical Staff)

Media Queries;

Thandeka Gqubule-Mbeki – 076 581 4287

Lukhanyo Calata – 082 394 6481


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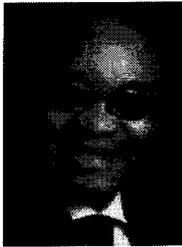
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Due diligence process required in the appointment of the SABC Board Members

8 October 2017



The Presidency is concerned about the rumours and gossip that continue to flourish with regards to the SABC Board appointments.

The rumours reported by the media that the appointments have not been made yet because President Jacob Zuma has certain preferences or "does not like" certain candidates or that he has an interest in the appointment of SABC executives are mischievous and are without foundation. The President respects the parliamentary process that was undertaken and has no personal preferences.

The Broadcasting Act (Act no. 4 of 1999) enjoins the President as the Appointing Authority to ensure that persons recommended for appointment as members of the SABC Board, should meet certain requirements including citizenship and to have no criminal records. In addition, The Presidency wants to ensure that the candidates indeed possess the qualifications stated in their CVs among other routine pre-appointment checks.

The Presidency requested the line function department to ensure that all requirements are met, taking the process forward from the work done by the National Assembly. Past experience taught us that The Presidency should undertake due diligence despite the process followed in the National Assembly.

The same due diligence process is being applied with regards to the appointment of commissioners of the Commission for Gender Equality and board members of the Media Development and Diversity Agency, which are also still being processed.

The Presidency requests space to finalise the process to ensure a sustainable final outcome.

The Presidency and affected departments and institutions understand the urgency of the matter.

Enquiries: Dr Bongani Ngqulunga on 082 308 9373 or bongani@presidency.gov.za

Issued by: The Presidency
Pretoria

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10/13/2017

Due diligence process required in the appointment of the SABC Board Members | The Presidency

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