

# ENSURING INNOVATIVE, CITIZEN-ORIENTATED PUBLIC BROADCASTING IN SOUTH AFRICA:

Vision of the

“SOS: Support Public  
Broadcasting”  
Coalition





# ENSURING INNOVATIVE, CITIZEN-ORIENTATED PUBLIC BROADCASTING IN SOUTH AFRICA: Vision of the “SOS: Support Public Broadcasting” Coalition

DOCUMENT TO SUPPORT THE  
ICT POLICY REVIEW PROCESS

October 2012



## PURPOSE OF THIS DOCUMENT

The purpose of this document is to articulate the vision of the “SOS: Support Public Broadcasting” Coalition for broadcasting and, in particular, public and community broadcasting, with the specific aim of lobbying government to implement this vision.

The contents of this document have been widely debated by civil society within the structures of the SOS Coalition through a number of roundtable discussions, workshops and public meetings.

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# CONTENTS

|  |    |
|--|----|
| ACRONYMS   | a  |
| 1. INTRODUCTION  | 1  |
| 1.1. What is the SOS Coalition? Its members, history, role & funders   | 1  |
| 1.2. Purpose of this document  | 3  |
| 2. CONTEXT   | 3  |
| 2.1. International principles of public broadcasting                   | 3  |
| 2.2. International principles of community broadcasting                | 4  |
| 2.3. Implications of the digital environment for public broadcasting   | 5  |
| 2.3.1. Digital standards debate  | 7  |
| 2.3.2. Current pre-eminence of the SABC                                | 7  |
| 2.3.3. Policy suggestions on the digital dividend                      | 8  |
| 2.4. Present crises in public & community broadcasting in South Africa | 9  |
| 2.4.1. Public broadcasting   | 9  |
| 2.4.2. Community broadcasting  | 11 |
| 2.5. The need for a comprehensive policy review process                | 12 |
| 3. VISION AND PRINCIPLES FOR PUBLIC BROADCASTING                       | 14 |
| 3.1. Vision  | 14 |
| 3.2. Principles  | 14 |
| 4. PUBLIC BROADCASTING CONTENT AND PROGRAMMING                         | 16 |
| 4.1. Concerns  | 16 |
| 4.2. Good practice   | 16 |
| 4.3. Key mechanisms and other issues                                   | 18 |
| 4.3.1. The SABC Charter  | 18 |
| 4.3.2. Licence conditions  | 19 |
| 4.3.3. Editorial policies  | 20 |
| 4.3.4. Other contributing factors to poor programming quality          | 21 |
| 5. LEGAL STRUCTURE OF THE SABC   | 22 |
| 5.1. Problems with the present structure                               | 22 |
| 5.2. Options for a new structure                                       | 24 |
| 5.2.1. The SABC as Chapter 9 institution                               | 24 |

|  |    |
|--|----|
| 6. OVERSIGHT AND GOVERNANCE OF THE SABC  | 27 |
| 6.1. Oversight structures to ensure accountability of the SABC                                   | 27 |
| 6.1.1. Public  | 27 |
| 6.1.2. Parliament  | 31 |
| 6.1.3. ICASA: the Regulator  | 32 |
| 6.1.4. The Auditor-General   | 33 |
| 6.1.5. Minister of Finance and the Minister and Department<br>of Communications                  | 34 |
| 6.2. Governance structures to ensure accountability within the SABC                              | 35 |
| 6.2.1. The Board   | 36 |
| 6.2.2. Executive management  | 36 |
| 7. FUNDING   | 38 |
| 7.1. Public broadcasting funding   | 38 |
| 7.1.1. International background issues   | 38 |
| 7.1.2. National background issues  | 38 |
| 7.1.3. The SABC's present financial model  | 38 |
| 7.1.4. Considerations for the development of a<br>new funding model                              | 39 |
| 7.2. Community broadcasting funding  | 40 |
| 7.3. The Role And Structure Of The Media Development and<br>Diversity Agency                     | 40 |
| 8. CONCLUSION  | 41 |
| APPENDIX 1: MEMBERSHIP LIST OF THE SOS COALITION   | 42 |
| APPENDIX 2: KEY INTERNATIONAL INSTRUMENTS  | 44 |
| APPENDIX 3: PROPOSED CHARTER FOR THE SABC  | 47 |
| APPENDIX 4: PROPOSED PROCESS TO APPOINT THE SABC BOARD   | 49 |
| APPENDIX 5: SOS COALITION DISCUSSION DOCUMENT – FUNDING FOR<br>PUBLIC AND COMMUNITY BROADCASTING | 54 |

# A NEW CITIZEN VISION FOR PUBLIC BROADCASTING

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

The SOS vision is to create a public broadcasting system dedicated to the broadcasting of quality, diverse, citizen-orientated public programming committed to social justice and the deepening of South Africa's Constitution, particularly the Bill of Rights including socio-economic rights.

The Coalition applauds the commitment made by the Department of Communications on 2 September 2011 to embark on a comprehensive broadcasting policy review process, including the development of a Broadcasting Green Paper, Broadcasting White Paper, and detailed recommendations for new legislation.

The SOS Coalition believes that the following PRINCIPLES should be reflected in new broadcasting laws:

## 1. BROADCASTING LANDSCAPE

SOS believes that there ought to continue to be three tiers of broadcasting: public, commercial and community. SOS is of the view that broadcasting, signal distribution and frequency spectrum must be regulated by an independent body, free of commercial and political interference.

## 2. PUBLIC BROADCASTING

Public broadcasting must strengthen the goals of our Constitution, especially the Bill of Rights, including socio-economic rights. Further, every person in SA should be able to receive both radio and television programming in their home language. The public broadcaster must have institutional autonomy and be independent of commercial, government and party-political interests.

### 3. PUBLIC PROGRAMMING - SABC

SABC programming must be based on the principles of credibility, reliability, variety and balance. It must reflect the full range of South African opinions but in particular focus on views traditionally marginalised by the commercial media. The public broadcasting sector must lead the way in local content production. The majority of the SABC's budget must be allocated to programming. SABC commissioning must be streamlined to develop a set of consistent, fair and just criteria. Further, programming must be made more accountable to audiences through new accountability mechanisms (e.g. programming committees).

### 4. THE SABC CHARTER

A new SABC Charter - that commits the broadcaster to the broadcasting of cutting edge, citizen orientated programming - must be developed through a consultative process between government and stakeholders. It should be reviewed and updated regularly.

### 5. SABC EDITORIAL POLICIES

The SABC's editorial policies must be reviewed, updated and implemented to ensure the SABC plays its watchdog role and caters for all audiences in the forthcoming digital multichannel environment. In particular, it should ensure that those marginalised are catered for.

### 6. PROTECTION OF JOURNALISTS - SABC

Journalists in the SABC must be protected from outside vested interests so that they can play their key information gathering and dissemination roles in the interest of citizens and their audiences.

### 7. OPTIONS FOR A NEW LEGAL STRUCTURE FOR THE SABC

Given the SABC's critical role in ensuring a free flow of information in our society, the SABC must be reconstituted as a Chapter 9 Constitutional body.

## 8. PUBLIC PARTICIPATION MECHANISMS FOR THE SABC

New public participation mechanisms must be investigated including the launching of a Public Editor and National and Regional Public Stakeholder Committees.

## 9. SABC GOVERNANCE AND OVERSIGHT STRUCTURES

The roles and responsibilities of the SABC's oversight and governance structures must be clarified to ensure that:

- the Ministry and Department confine themselves to their policy making role;
- Parliament plays its legislative and oversight roles in terms of the SABC's corporate plans and finances;
- the Independent Communications Authority of South Africa (ICASA) is strengthened and resourced to play its monitoring and regulatory role as regards public programming;
- the SABC Board is strengthened to play its strategic governance role including the employment of professional staff; and
- that SABC management is empowered to manage the institution without influence from vested interests.

## 10. PUBLIC BROADCASTING FUNDING – SABC

Parliament and the Ministry and Department of Communications must ensure that the SABC has sufficient public funding to pursue its public service mandate in respect of programming so that editorial independence is safeguarded. Any policy and legislation developed on a funding model must ensure the long term independence, sustainability and effectiveness of public broadcasting. An economic modelling exercise is required to ascertain the actual funding requirements of the SABC in terms of the fulfilling of its public mandate in the digital multichannel environment.

## 11. COMMUNITY BROADCASTING

A coherent framework for community broadcasting is required that is an alternative to the mainstream media; embraces interactive communication tools; promotes local, bottom-up development; addresses local conditions and ensures institutional autonomy.

Community broadcasting programming must be rooted in and accountable to the needs of geographical communities and communities of interest and must reflect the views of these audiences.

Government must investigate new funding models for the community media sector including ways to mitigate unsustainably high transmission costs.

## 12. PRINCIPLES OF DIGITAL BROADCASTING NEEDED TO REAP THE DIGITAL DIVIDEND

Public broadcasting and public information and communication needs must be prioritised.

Spare frequency capacity must be made available to all three tiers of broadcasting i.e. public, commercial and community broadcasting, and sufficient frequency capacity must be set aside for future use.

New community and commercial operators, both free-to-air and subscription, must be licensed to ensure that a wide range of television services, broadcasting a variety of content, including news, current affairs, education and entertainment, is available to the public.

Standard Definition Television rather than High Definition Television should be adopted as the general standard for digital terrestrial television in order to allow access to a greater number of services, thereby ensuring that the digital dividend does not benefit the wealthy only.

Set Top Boxes must be affordable and interoperable.

**WE NEED A STRONG CIVIL SOCIETY VOICE IN SUPPORT OF PUBLIC BROADCASTING!**



# ACRONYMS

|               |   |
|---------------|---|
| Afrimap       | African Governance Monitoring and Advocacy Project            |
| BCCSA         | Broadcasting Complaints Commission of South Africa            |
| BEMAWU        | The Broadcast, Electronic Media and Allied Workers Union      |
| COSATU        | Congress of South African Trade Unions                        |
| CWU           | Communication Workers Union                                   |
| CWUSA         | Creative Workers Union of South Africa                        |
| DTT           | digital terrestrial television                                |
| DVB-T         | Digital Video Broadcasting for Terrestrial                    |
| DVB-T2        | Digital Video Broadcasting for Terrestrial, second generation |
| FEDUSA        | Federation of South African Unions                            |
| FXI           | Freedom of Expression Institute                               |
| GCEO          | Group Chief Executive Officer [of the SABC]                   |
| HDTV          | High Definition Television                                    |
| ICASA         | Independent Communications Authority of South Africa          |
| ITU           | International Telecommunications Union                        |
| MDDA          | Media Development and Diversity Agency                        |
| MISA-SA       | Media Institute of Southern Africa                            |
| MMA           | Media Monitoring Africa                                       |
| MWASA         | Media Workers Association of South Africa                     |
| NAB           | National Association of Broadcasters                          |
| NCRF          | National Community Radio Forum                                |
| NGO           | non-governmental organisation                                 |
| OSF-SA        | Open Society Foundation for South Africa                      |
| OSMP          | Open Society Media Programme                                  |
| PFMA          | Public Finance Management Act (1999)                          |
| SABC          | South African Broadcasting Corporation                        |
| SADC          | Southern African Development Community                        |
| SADIBA        | Southern African Digital Broadcasting Association             |
| SASFED        | South African Screen Federation                               |
| SDTV          | Standard Definition Television                                |
| SOS Coalition | SOS: Support Public Broadcasting Coalition                    |
| STB           | set top box   |
| USAASA        | Universal Service and Access Agency of South Africa           |



# 1. INTRODUCTION

## 1.1 What is the SOS Coalition? Its members, history, role and funders

The “SOS: Support Public Broadcasting” Coalition (SOS Coalition) is a membership-based coalition. It represents a number of trade unions including the Congress of South African Trade Unions (COSATU); COSATU affiliates including the Communication Workers Union (CWU); the Federation of Unions of South Africa (FEDUSA), the Media Workers Association of South Africa (MWASA), the Broadcast, Electronic Media and Allied Workers Union (BEMAWU); independent film and TV production sector organisations including the South African Screen Federation (SASFED); non-governmental organisations (NGOs) and community-based organisations (CBOs) including the Freedom of Expression Institute (FXI) and Media Monitoring Africa (MMA); academics, freedom of expression activists and concerned individuals. For the full membership list see [Appendix 1: Membership List of the SOS Coalition](#).

The Coalition's aim is to address the ongoing crisis in public and community broadcasting in South Africa to ensure the broadcast of quality, diverse, citizen-orientated programming committed to the deepening of South Africa's Constitution.

At its outset (2008) the SOS Coalition adopted a specific focus on the institution of the South African Broadcasting Corporation (SABC). Later, however, the Coalition adopted a broader systems' level approach, focusing on the role of all three tiers of broadcasting in the country:

- public,
- community, and
- commercial.

The SOS Coalition believes that community broadcasting should play a public-interest, citizenship role at the local level, and that commercial broadcasters should be required, through their licence conditions, to play a public interest role (albeit a much more limited one than that played by the public broadcaster and community broadcasters) in terms of providing news, certain language requirements, local programming quotas etc.

The SOS Coalition is not focused on commercial broadcasting. However we do recognise that there are structural problems with the commercial broadcasting sector which have resulted in a lack of diversity of services available to the public. For example, South Africa has not a single commercial regional television station and has not a single commercial national radio station.

The SOS Coalition believes that, although it is important to look at the promotion of public broadcasting content across all three tiers of broadcasting, there does need to be an institution such as the SABC that specifically promotes and champions public service broadcasting.

The SOS Coalition campaigns for the strengthening of public service broadcasting through the running of an electronic email-based information service for members, friends and interested stakeholders on public service broadcasting and related matters. SOS develops and advocates for positions on important public broadcasting and related matters.

SOS promotes a constructive engaged role with all stakeholders, including: national government; Parliament; political parties; Chapter 9 bodies such as ICASA; statutory bodies such as: the MDDA, the USAASA, Sentech etc; the public broadcaster, the SABC; industry bodies such as the NAB and the NCRF as well as a range of NGOs, CBOs, campaigns and others. While we believe in working closely with all possible groupings in support of broadcasting in the public interest we maintain our ability to critique poor practice and mismanagement, at the administrative and governance level as well as at regulatory, policy and law-making levels.

SOS is driven by the commitment and voluntary support of its members, particularly the individuals and organizations representatives serving on its working group. SOS has only two funded staff-member positions: coordinator and organiser. Further, SOS does, on an ad-hoc basis, fundraise to hold public discussion forums and to commission research and legal advice. Currently both the Open Society Foundation and the Friedrich Ebert Stiftung are its funders.

For more information on the SOS Coalition the website: [www.soscoalition.org.za](http://www.soscoalition.org.za), or follow the SOS Coalition on Twitter at [sos\\_za](https://twitter.com/sos_za) or on facebook at [/soscoalition](https://facebook.com/soscoalition).

## 1.2 Purpose of this document

The purpose of this document is to articulate the vision of the SOS Coalition for public service broadcasting, with the specific aim of lobbying government to implement this vision through the ICT policy review process. SOS thinks it imperative (as is set out below) that this policy review process be transparent and comprehensive resulting in both a Green and White Paper but also in appropriate draft legislation and we are of the view that this Vision Document would make an invaluable contribution to all of these processes.

# 2. CONTEXT

## 2.1 International principles of public broadcasting<sup>1</sup>

The importance of public broadcasting is captured in a number of African and international instruments and documents including, but not limited to, the African Charter on Broadcasting, the African Principles of Freedom of Expression Declaration, the Dakar Declaration, the Access to the Airwaves Principles. See [Appendix 2: Key International Instruments](#) for further detail.

Collectively these international instruments or documents call for state broadcasters to be transformed into public broadcasters.

They call for public broadcasters to have a clearly-defined public service mandate including:

- Quality, independent programming that contributes to a plurality of opinions and an informed public.
- Comprehensive news and current affairs programming which is impartial, accurate and balanced.
- Reporting and programming that is not one-sided, particularly during election periods.
- A range of broadcast material that strikes a balance between programming of wide appeal and specialised programming that serves the needs of different audiences.

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1. Please note this section draws on the forthcoming "Second Edition of SADC Media Law and Practice, 2011" handbook commissioned by the Konrad Adenauer Stiftung, written by Justine Limpitlaw.

- Universal accessibility and serving all the people and regions of the country, including minority groups.
- Educational programmes and programmes directed towards children.
- Local programme production including, through minimum quotas, original productions and material produced by independent producers.
- The instruments call for:
- Editorial independence for public broadcasters.
- Public broadcasters to be run by independent boards that operate in the public interest, and are not subject to political or economic / commercial interference.
- Independence of the boards to be protected by legislation and, if possible, by the Constitution. Further, they state that a public broadcaster must be accountable to the legislature (a multi-party body) and not to government.
- Public broadcasters to be adequately funded in a manner that protects their independence.

The SOS Coalition supports these principles.

## 2.2 International principles of community broadcasting

These principles are endorsed in the African Charter on Broadcasting and the African Principles of Freedom of Expression Declaration:

- Article 1 of Part III of the African Charter on Broadcasting provides, in its relevant part: “[c]ommunity broadcasting is broadcasting which is for, by and about the community, whose ownership and management is representative of the community, which pursues a social development agenda, and which is non-profit”.
- Article V.2 of the African Principles of Freedom of Expression Declaration provides that “community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves”.

The SOS Coalition supports these principles and believes that the community broadcasting sector must be representative of real geographic communities or communities of interest, and ought not to be beholden to commercial, state or government imperatives and interests.

## 2.3 Implications of the digital environment for public broadcasting

The International Telecommunications Union (ITU) has set a 2015 deadline for terrestrial television broadcasters in Africa to migrate from analogue to digital transmission (i.e. digital terrestrial television or DTT). After this date frequencies set aside for analogue television transmission will no longer be protected against interference. South Africa is committed to meeting this deadline by 2013.

The digital environment offers many potential benefits (more channels, special language features, the freeing-up of valuable spectrum space etc.). It also presents challenges around the high costs of the new transmitters, set top boxes (STBs) and programming to fill the new channel space.

However, one of the biggest challenges to successful migration is that citizens may not purchase the new STBs because:

- The boxes may be too expensive for the vast majority of South Africans; and / or
- The programming on the new digital channels may not be attractive enough to warrant buying an STB.

This will mean that the expensive dual illumination process – where broadcasters broadcast in both analogue and digital signals – could be protracted. Further, if the analogue signal is switched off without citizens having purchased STBs, they will be cut off from television broadcasts altogether, with serious consequences for universal access and service.

## 1. RECOMMENDATIONS FOR DIGITAL BROADCASTING AND MIGRATION:

- 1.1. The development of a general digital policy (that is, dealing with non-migration issues), which ideally ought to dovetail with the promised general ICT policy review.
- 1.2. ICASA to finalise regulations taking into account the digital migration policy and which regulations ought to be uptakes once proposed general digital policy has been finalised.
- 1.3. Standard Definition Television to be adopted rather than High Definition Television as the general standard for digital terrestrial television in order to allow access to a greater number of services and thereby ensuring that the digital dividend does not benefit the wealthy only.
- 1.4. Clarity around the subsidy scheme for STBs, government's rollout plans in this regard and the need for STB interoperability – none of which has been addressed in Government's Set Top Box Manufacturing Development Strategy (gg 35667).
- 1.5. A commitment from government and all relevant stakeholders to ensure public awareness campaigns are rolled out as regards the digital migration process.
- 1.6. A commitment from government to ensure that there are sufficient resources to roll out the necessary digital infrastructure and networks.
- 1.7. A commitment from ICASA to ensure that the issuing of digital incentive licences to the incumbent broadcasters is through an open, consultative public process.
- 1.8. A commitment from ICASA and the Ministry that the digital dividend results in the licensing, during the dual illumination period, of new community and commercial operators, both free-to-air and subscription. This will ensure that a wide range of digital television services, broadcasting a variety of content: including: news, current affairs, education and entertainment, is available to the public immediately after the end of the dual illumination period. In this regard, SOS would want ICASA to licence or authorise as many non-profit DTT channels as possible.as possible.

### 2.3.1. Digital standards debate

The SOS Coalition notes that the Minister of Communications announced in January 2011 that South Africa would adopt the European Digital Video Broadcasting for Terrestrial (second generation) (DVB-T2) standard.

The SOS Coalition notes that this second generation of DVB-T, i.e. DVB-T2, with enhanced technical capabilities, is a positive development.

### 2.3.2. Current pre-eminence of the SABC

One of the major questions that arises within the new, digital multi-channel environment is how to protect the space, appropriately, for public and community broadcasting. For example, a key question in a digital environment is whether or not the SABC, should, as the public broadcaster, be enabled to maintain its dominant position through protection from competition with commercial or public-interest broadcasters (whether public or community), or not?

The SOS Coalition has considered a number of positions to ensure a genuine diversity of programming and opinion in the public interest.

Discussions have led to a number of key questions:

- To what extent can and will new services on broadband or DTT provide new public benefits?
- In a landscape of 'convergence' and increasing services (increased television channels and internet content) via DTT and broadband, what should be the long term role and mandate of the public broadcaster?
- How will the public broadcaster afford to provide all the proposed new channels and services?
- How will public broadcasting in this context be funded, governed and regulated?
- How will the public broadcaster ensure that its additional new channels will also result in a greater diversity of content?
- How many additional national commercial radio and television channels would be appropriate?

These questions need to be answered in any new broadcasting policy, and the Coalition will continue to do further research to inform future discussions.

### 2.3.3. Policy suggestions for the digital dividend

The SOS Coalition believes that the public stands to benefit enormously from the opening up of spare frequency capacity once the transition to digital broadcasting has been finalised. However, it is important that the Department of Communications and the Independent Communications Authority of South Africa (ICASA) begin to develop policy on what is to happen to such spare frequency capacity at this stage, i.e. before the dual illumination period has begun and to begin to license new operators for the post dual-illumination period.

The SOS has a number of policy suggestions in this regard:

1. That public broadcasting and public information and communication needs are prioritised.
2. That spectrum is not merely sold off to the highest bidder to the detriment of the needs of all South Africans.
3. That spare frequency capacity is made available to all three tiers of broadcasting i.e. public, commercial and community broadcasting, and that appropriate amounts of frequency capacity is set aside to meet future broadcasting needs.
4. A commitment from ICASA and the Ministry that the digital dividend results in the licensing of new community and commercial operators, both free-to-air and subscription to ensure that a wide range of television services, broadcasting a variety of content: including: news, current affairs, education and entertainment, is available to the public

## 2. RECOMMENDATIONS: DIGITAL DIVIDEND

- 1.1 Public broadcasting and public information and communication needs must be prioritised.
- 1.2 Spectrum must not be sold off to the highest bidder if this will be to the detriment of the needs of all South Africans.
- 1.3 Spare frequency capacity must be made available to all three tiers of broadcasting i.e. public, commercial and community broadcasting, and sufficient frequency capacity must be set aside for future use.
- 1.4 License new community and commercial operators, both free-to-air and subscription to ensure that a wide range of television services, broadcasting a variety of content: including: news, current affairs, education and entertainment, is available to the public.

## 2.4. Present crises in public and community broadcasting in South Africa

### 2.4.1. Public broadcasting

It is generally acknowledged that public broadcasting in South Africa has been in crisis for a number of years. The SOS Coalition is aware of the fact that a number of public institutions have experienced similar problems. The crisis in public broadcasting must be seen within this broader context.

Some of the problem areas include:

- There is a lack of clear identity of the SABC as a public, as opposed to a commercial or state, broadcaster. This results in problem such as not providing public information on the grounds of confidential commercial trade secrets.
- Long-running and seemingly intractable governance crises at the level of the SABC Board and between the SABC Board and management which have encouraged outside intervention.

- Inappropriate and inadequate financial management of the SABC which has threatened both its ability to deliver on its public service mandate and its independence.
- The financial crisis at the SABC which has threatened the viability of the entire independent production industry in South Africa.
- Further, the independent production sector has been weakened by the SABC's failure to engage in rational, practical commissioning practices. The SABC has refused to adopt international good practice with regard to allowing independent producers the right to own their own intellectual property.
- The SABC is plagued by unusually high staff turnover which, coupled with a trend towards using junior, inexperienced and / or short term contract journalists, has negatively affected the quality of programming.
- Court findings of political factionalism and bias affecting decisions in respect of news and information programming that are contrary to the SABC's editorial policies, its Charter as set out in legislation, and the public interest, arising out of the so-called "Blacklisting Saga" and rulings such as the Broadcasting Complaints Commission of South Africa (BCCSA) on news reports and recent allegations concerning the non-coverage of Julius Malema.
- Great uncertainty over the future, including the introduction of DTT, with little sign of a clear vision or road map for how these challenges will be met.
- The oversight structures of the SABC, including the Minister and Department of Communications, ICASA and Parliament, have unclear and sometimes overlapping mandates and roles, leading to decreased public accountability and increased opportunities for political and other vested interests to dominate. This is exacerbated by high staff and leadership turnovers in each of these oversight bodies.
- A plethora of uncoordinated draft policies (e.g. the broadband policy and the digital local content strategy) and legislation and regulations not aligned to one another.
- A Broadcasting Act, 1999 which is out-dated and, in any event, which is insufficiently coherent as a statute governing public broadcasting; and which contains significant gaps despite repeated amendments.

## 2.4.2. Community broadcasting

The Coalition believes that the community broadcasting sector is in crisis and that the issues are wide-ranging. In brief these are:

- There are no sustainable public funding options for community media, particularly in light of high transmission costs.
- Governance structures of many community broadcasters are weak and ineffective.
- Many community broadcasters adopt commercial imperatives to attract advertising in order to survive.

The Coalition believes a coherent framework for community broadcasting in South Africa must be developed. It must include an understanding that community broadcasting is able to offer alternatives to mainstream media (which is generally centrally operated and located in urban areas). It must also include the policy and legislative amendments necessary to enable communities to define and establish broadcasting services that speak to local conditions.

The development of this framework should also investigate interactive communication tools, including emerging digital technologies and the potential of mobile phones (which have a high penetration in underdeveloped and rural communities). Such an approach would ensure that just like the emergence of social media (Facebook, Twitter, blogging) for middle class audiences, community media could be equally innovative and play a potentially developmental role for poorer audiences.

### **3. RECOMMENDATION: COMMUNITY BROADCASTING**

A coherent framework for community broadcasting is required that is an alternative to the mainstream media; embraces interactive communication tools; promotes local, bottom-up development; and addresses local conditions.

## 2.5. The need for a comprehensive policy review process

Since its inception the SOS Coalition has been calling for a comprehensive policy review process to provide the necessary enabling environment to strengthen and appropriately support public broadcasting in South Africa.

Previous Minister of Communications, General (Ret) Siphwe Nyanda, presented a Public Service Broadcasting Discussion Paper in July 2009. However, this was not a comprehensive review of policy to date and, unfortunately, did not result in a binding policy process beginning with a Green Paper. Instead, the Department moved directly to release the Draft Public Service Broadcasting Bill in 2009.

The Draft Bill introduced a number of major policy shifts including, but not limited to, the following:

- Broadcasting was no longer linked to be the goals of the Constitution but to the goals of the “developmental state”. The term “developmental state” was not defined.
- The SABC television licence fee was to be scrapped and a new earmarked broadcasting tax was to be introduced.
- A central public service broadcasting fund was to be introduced to cover a range of needs including, but not limited to, public service broadcasting, community broadcasting and signal distribution.
- New Ministerial powers were to be introduced.

The SOS Coalition argued that it was critical that at the very least the Broadcasting White Paper (1998) should be reviewed, and that detailed research on broadcast funding in the digital age needed to be conducted by the Department.

The next Minister of Communications, Mr Roy Padayachie, withdrew the Draft Public Service Broadcasting Bill in November 2010. He agreed to a review of the Broadcasting White Paper, and to conduct substantive research, including an economic modelling exercise, as regards potential funding models for the SABC and community media. He reconfirmed these commitments in a meeting with the SOS Coalition in September 2011. He promised to launch the broadcasting policy review before the end of 2011.

Then in November 2011 Cabinet was re-shuffled and Minister Padayachie was reassigned to a new portfolio, Minister, Dina Pule was then appointed as Minister of Communications. The broadcasting policy review process was not launched in 2011 but Minister Pule promised in a press briefing in early 2012 to launch the broadcasting policy review. While the ICT Policy Review Process was formally launched in April 2012, disappointingly none of the deadlines official announced has been adhered to. Further and more worryingly, the Minister issued a draft ECA Amendment Bill in mid-2012 that went far beyond technical amendments and encroached upon the very terrain that a comprehensive ICT Policy Review Process ought to cover.

The Coalition reiterates the need for an ICT Policy Review Process to produce a Green and a White Paper and for ICT legislation, including the Broadcasting Act should be updated.

#### **4. RECOMMENDATION: THE ICT POLICY REVIEW PROCESS**

The ICT policy review must be transparent and widely consultative. It should review all relevant policy, legislation (including draft legislation) and regulations to ensure a coherent broadcasting environment in the public interest. It should begin with a Green Paper, the Broadcasting White Paper (1998) must be thoroughly reviewed and updated and new legislation formulated to address current public needs.

# 3. VISION AND PRINCIPLES FOR PUBLIC BROADCASTING

## 3.1. 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 the values of the Constitution of the Republic of South Africa (1996). The SOS believes that this should be done by ensuring three things:

- That the SABC is transformed into a genuine public broadcaster with a Charter setting out its public mandate in relation to its programming.
- That community media plays its public service broadcasting role at the local level.
- That commercial broadcasting contributes to the public good by carrying certain public service obligations set out in regulations and / or licence conditions including: news, local content, and language requirements.

## **5. RECOMMENDATION: VISION FOR PUBLIC BROADCASTING**

The vision for public broadcasting in South Africa must be one which calls for a focus on all three tiers of broadcasting to ensure a broadcasting system dedicated to the broadcasting of quality, diverse, citizen-orientated public programming committed to the values of the Constitution.

## 3.2. Principles

The SOS Coalition has extensively debated the principles that should underpin public broadcasting. These are:

1. The goals reflected in the Constitution of South Africa must be strengthened through public broadcasting, especially the Bill of Rights, including in particular socio-economic rights.

2. All three tiers of broadcasting – public, commercial and community – must be strengthened, and all should have public service obligations (appropriate to their respective tiers) such as language, news and local content requirements.
3. Universal service must be ensured whereby every person in South Africa is entitled to receive both radio and TV programming in one or more of South Africa's official languages in his or her home.
4. Institutional autonomy must be ensured whereby the public broadcaster, community media and the broadcasting regulator are independent of direct commercial, government and party political interests, particularly in respect of programming.
5. SABC programming must be of a high standard and reflect a diversity of political, economic and cultural perspectives, including programming aimed at a range of grouping such as children, the elderly, women, the disabled etc.; and must be undertaken in all official languages.
6. Public accountability must be ensured whereby the public broadcaster, community media and the broadcasting regulator are governed by structures that protect and enhance public accountability and best serve the public interest.
7. ICASA, the Regulator, must actively monitor and enforce the SABC's Charter and license conditions and the license conditions of all community and commercial broadcasters in the public interest.

## **6. RECOMMENDATION: PRINCIPLES FOR PUBLIC BROADCASTING**

The principles for public broadcasting must be based on international good practice and focus on strengthening both the goals of the Constitution and all three tiers of broadcasting, ensuring universal service, ensuring institutional autonomy and public accountability for all public and community broadcasters and the Regulator, ensuring that programming is of a high standard and reflects diversity, and ensuring the Regulator can meet its public mandate.

# 4. PUBLIC BROADCASTING CONTENT & PROGRAMMING

## 4.1. Concerns

The Coalition is concerned by a number of issues:

- The SABC's lack of vision for content and programming on its analogue channels, and its lack of communication as regards its vision for its new digital channels.
- The SABC's vulnerability to capture by commercial, political and / or state interests.
- The Coalition believes the SABC's financial crisis has exacerbated the problems of editorial interference by:
- Encouraging the SABC to pursue advertiser-funded programming and product placements.
- Cutting back on local content and encouraging repeats.
- Cutting back on the production of more expensive public programming including drama, documentaries, educational and children's programming.
- Insufficiently prioritizing of African language programming.

## 4.2. Good practice

The SOS Coalition believes that the attributes of public broadcasting are credibility, reliability, variety and balance.

In line with international good practice as regards content and programming, the SABC needs to ensure it:

- Serves the interests of all people irrespective of religion, political belief, culture, race and gender.
- Reflects, as comprehensively as possible, the range of existing opinions and of social, political, philosophical, religious, scientific and artistic trends.
- Reflects regional diversity.

- Ensures that the voices of the poor and marginalised are clearly reflected.
- Upholds and promotes free speech and expression.
- Enables citizens regardless of their social status to communicate on the airwaves.
- Encourages the production of citizen-generated content.
- Offers a forum for democratic debate.
- Offers news and current affairs that is balanced and explanatory; and that covers as broadly as possible issues and events in South Africa, but also events in Africa and the rest of the world.
- Offers a mix of documentaries, drama, education, youth and children's programmes.
- Includes issues originated outside the country to contribute to citizen's knowledge of and exposure to the world.
- Sets standards and leads the way in the broadcasting sector in terms of citizen-orientated, compelling, creative, cutting-edge offerings.
- Leads the broadcasting sector in promoting local content and independent production of local content.
- The Coalition believes that, although the above is captured broadly in existing South African policy and legislation much is not implemented.

## **7. RECOMMENDATION: PRINCIPLES FOR PUBLIC PROGRAMMING**

Programming must be based on the international good practice public broadcasting principles of credibility, reliability, variety and balance. Programming must reflect as comprehensively as possible the range of opinions in South Africa but in particular focus on those views and opinions traditionally marginalised by the commercial media. The public broadcasting sector must lead the way in local content production.

## 4.3. Key mechanisms and other issues

The Coalition believes that its vision for public programming should be shaped by the following key mechanisms - the SABC's Charter, licence conditions and its editorial policies. There are also other contributing issues, as discussed below.

### 4.3.1. The SABC Charter

The SOS Coalition is of the view that the current mandate of the public broadcaster is scattered throughout the Broadcasting Act (1999), for example sections: 2, 3, 6, 8, 10 and 11. What is needed is a single consolidated Charter that sets out the public mandate of the SABC and which focuses on the following three key issues:

- Promoting the values and goals of the Constitution.
- Providing the public with programming of the highest quality
- Contributing to the development of the country's culture, languages and local cultural industries.

In terms of the above, the SOS Coalition has crafted a proposed new Charter for the SABC.

The SOS Coalition believes this proposed Charter should be extensively publicly debated, and a consensus version included in draft legislation developed by the Ministry and, finally, adopted by Parliament.

The Charter should be reviewed and updated regularly, for example, approximately every seven years, in line with international good practice, and through a public consultation process.

Amendments to the Charter must be presented to Parliament for adoption (for example, through an amendment process which must allow for additional public comment and participation).

ICASA must monitor compliance with the Charter and ensure that licence conditions and Charter obligations are aligned.

For the full text of the SOS Coalition document see [Appendix 3: Proposed Charter for the SABC.](#)

## **8. RECOMMENDATION: THE SABC CHARTER**

The SABC Charter must comprise a single Charter, and should be developed through a consultative process between government and stakeholders. It should be reviewed and updated regularly.

### 4.3.2. Licence conditions

Due to a number of factors, including the absence of an effective monitoring system, ICASA has failed to monitor the SABC's adherence to its license conditions and to its local content regulations (quotas).

This has led to a situation where the SABC has been allowed to air endless repeats and too great a proportion of international programming.

## **9. RECOMMENDATIONS: THE REGULATOR**

ICASA must:

- 9.1 Have its capacity, including financing, boosted to allow it to effectively monitor all SABC channels and community radio stations to ensure adherence to license conditions, regulation and the SABC Charter.
- 9.2 Review its local content regulations to ensure that maximum local content quotas are set in terms of international good practice across present analogue channels and across the new bouquet of digital channels.
- 9.3 Follow a public process as regards the licensing of all new digital incentive channels (to be issued during the digital migration process including the imposition of local content thereon).

### 4.3.3. Editorial policies

The SOS Coalition believes that the present SABC editorial policies capture the key principles around the SABC's independence, its public mandate as set down in the Charter and the importance of its accountability to audiences. However, the latter would need to be debated and updated to take into consideration the new policy environment, any legislative changes, including a new Charter and the new digital environment, when it commences. In principle the SABC's editorial policies ought to be reviewed on an on-going basis immediately following the proposed 7-year review of the Charter.

Further, one of the key controversies in respect of the existing editorial policies is the role of the Group Chief Executive Officer (GCEO) playing the role of Editor-in Chief. The SOS Coalition believes that the respective roles and responsibilities of the GCEO and Editor-in-Chief need to be clearly delineated and differentiated. The GCEO needs to attend to the running of the business of the SABC, thus playing a corporate role akin to that of publisher. In this context it is therefore appropriate for the Head of News to play the role of Editor-in-Chief.

Further the Coalition believes that the editorial policies need to give particular emphasis to the following:

- The SABC's watchdog role in terms of holding those in power in every sector of society accountable.
- The importance of ensuring that all audiences are catered for, but in particular those that are poor and marginalised and therefore neglected by commercial broadcasters.

## **10. RECOMMENDATIONS: EDITORIAL POLICIES**

Editorial policies must be reviewed and updated to:

- 10.1 Take cognizance of the new digital environment
- 10.2 Ensure the SABC plays its watchdog role and caters for all audiences, in particular, those marginalized; and
- 10.2 Ensure that the Editor-in-Chief is Head of News (rather than the CGEO – whose focus must be on the financial viability and efficient management of the SABC).

#### 4.3.4. Other contributing factors to poor programming quality

Commissioning processes are perceived by some as ad hoc and unfair, and are not seen to prioritise the production of cutting edge programming. Budgets have steadily decreased over the years. Further, independent producers have strongly complained about the intellectual property rights regime that vests intellectual property rights automatically with the broadcasters rather than allowing for appropriate sharing of intellectual property rights with producers, thus preventing the developing of a vibrant trade in South African film and video productions.

Also audiences have complained that they don't have enough say in programming produced and programming line-ups. Mechanisms need to be investigated to ensure great audience input into programming.

### **11. RECOMMENDATIONS: IMPROVING PROGRAMMING QUALITY**

Programming quality must be improved by:

- 1.1 Ensuring sufficient funding. In this regard the major portion of the SABC's budget should be spent on programming.
- 1.2 Streamlining the process of commissioning by developing a set of consistent, fair and just criteria for commissioning cutting edge, citizen-orientated local content.
- 1.3 Substantially altering the intellectual property rights regime to allow for the fuller development of the independent production sector.
- 1.4 Ensuring programming is more accountable to the public.
- 1.5 Investigating new mechanisms (e.g. programming committees) to ensure continuous input from audiences concerning their comments and preferences.

# 5. LEGAL STRUCTURE OF THE SABC<sup>2</sup>

## 5.1. Problems with the present structure

### > Role of the Minister as Shareholder:

- The Broadcasting Act provides for the conversion of the SABC into a “public company incorporated in terms of the Companies Act (1973), to be known as the South African Broadcasting Corporation Limited”. The SABC was converted into a public company (i.e. corporatised) in 2004.
- The law emphasises that the state is the sole shareholder of the SABC – but unfortunately does not stipulate that this is on behalf of the public.
- The Broadcasting Act provides that the Minister is responsible for determining the SABC's Memorandum and Articles of Association. The Broadcasting Act is silent on a Shareholders' Compact.
  - » Currently the Minister of Communications determines and amends the SABC's Memorandum and Articles of Association, without public involvement or approval by a body such as Parliament and without making these documents available to the public.
  - » Further, the Minister signs an annual Shareholder's Compact with the SABC. This, too, is not part of a public process and in any event is not required by the Broadcasting Act.
- These documents (Articles and Memorandum of Association and Shareholder's Compact) give the Minister significant powers in terms of appointments of executive directors to the Board, input in terms of corporate plans etc. This ultimately compromises the SABC's independence.

### > The Broadcasting Act contains critical gaps in relation to who appoints the executive Board members, and the practice of

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<sup>2</sup> This section draws heavily on the African Governance Monitoring and Advocacy Project (Afrimap), Open Society Foundation for South Africa (OSF-SA) and Open Society Media Programme (OSMP) research report on public broadcasting in Africa Series, 2010, South Africa Report.

Ministerial involvement compromises the SABC's independence.

- The option to de-corporatise the SABC has been discussed in some detail by the Coalition. The problems with the SABC's existing corporate structure, particularly in regard to the role of the Minister as representative of government have been clearly identified. However, the corporate structure does allow for stakeholders to insist that the SABC complies with the corporate governance requirements as set out in the King III Report <sup>3</sup> and this is a significant benefit.
- The SOS is of the view that if the corporate structure is to remain, i.e. if the SABC is to remain a public company, it will be critical to change the role and position of the Minister from that of representative of the government to that of representative of the public with a clear understanding that there are numerous stakeholders whose interests must be taken into account by the SABC
- A further problem is that the Broadcasting White Paper calls for the creation of "public" and "public-commercial" divisions within the SABC. This division is aimed at ensuring financial viability, with the commercial wing cross-subsidising the public wing. However, the public channel SABC 1 generates more money than the public-commercial channel SABC 3, and the influence of advertising on all SABC channels therefore remains significant.
- Overall it appears there is insufficient protection of the SABC's independence both from commercial and government pressure. SOS has thus given consideration to a number of options that may better protect the SABC's independence.

There is consensus within the Coalition that:

- Whatever the overall structure of the SABC is to be, the "public" and "public-commercial" divisions should be terminated through policy and legislative changes so that all channels are "public", and are obliged to comply with the Charter and carry public service mandates.
- The SABC is not a corporate entity like any other commercial or even state-owned company. It plays a critical role in the life of the nation.

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<sup>3</sup> The revised King Code and Report on Governance for South Africa ("King III") was launched on 1 September 2009.

- The SABC should continue to exist as a public company provided the other changes suggested here are implemented.
- The Broadcasting Act should state while the state is the sole shareholder, it represents the public in that role.
- There should, in principle, be appropriate separations between the policy-developer and broadcasting operators, consequently we suggest that the Minister representing the public ought not to be the Minister of Communications and ought, instead, to be the Minister of Finance.
- The Shareholder's Compact should be done away with as a company's Memorandum and Articles of Association are sufficient to provide for its governance rules and procedures.
- Even if the Memorandum and Articles of Association are signed by the Minister of Finance, representing the public (ie the state as sole shareholder), these should be developed (and amended as necessary from time to time) through a transparent, public process with Parliament's full involvement and agreement. Essentially the Minister of Finance's role is reduced to a pro-forma one, with Parliament playing a more significant role.
- The Memorandum and Articles of Association of the SABC must be freely available to the public, including electronically on the SABC's website.

## 5.2. Options for a new structure

### 5.2.1. The SABC as Chapter 9 institution

South Africa is a developing country with developing country challenges. These include high levels of poverty and illiteracy. Consequently, the SABC is, for many of South Africa's people, the only source of news and information. It therefore plays a critical public information role. A democracy cannot function effectively without an informed citizenry. The SABC is therefore crucial to the proper functioning of our democracy and, when it fails to function effectively, our democracy can be said to be under threat. As a young democracy South Africa has yet to develop a national culture which respects the genuine independence of bodies such as the SABC. Legal changes alone will not change this but can play an important role in helping to developing such a culture.

It is clear the current statutory regime is insufficient to protect the interests of the South African public. Consequently the SOS Coalition calls for the transformation of the SABC into a Chapter 9 institution as a way of protecting the SABC's independence. Chapter 9 of the Constitution provides for a number of state institutions that support Constitutional democracy, including an independent authority to regulate broadcasting (that is, ICASA), the Public Protector and the South African Human Rights Commission. These institutions are directly answerable to Parliament, and the Constitution specifically protects the appointments and removals of Chapter 9 institutions' governing bodies from political and other interference.

The SOS Coalition is acutely aware that being a Chapter 9 body does not insulate an institution from:

- Suffering from ineffectual leadership and from institutional ineffectiveness; and
- Institutional weaknesses arising out of, for example, a flawed corporate structure.

However, the Coalition believes that the more active Parliamentary oversight role that is thrust upon Chapter 9 bodies would improve the SABC's responsiveness and accountability to the public, and that the institutional problems arising out of its public and public-commercial "split" could be addressed through amendments to its governing legislation, the Broadcasting Act.

The SOS Coalition is aware that making the SABC into a Chapter 9 institution would entail a Constitutional Amendment process requiring sufficient political support. Nevertheless, the SOS Coalition believes such an amendment process is critical if South Africa is serious about:

- Transforming the public broadcaster into a genuine means of empowering citizens; and
- Wanting a public broadcaster that is committed to broad political and wide public interests.

## **13. RECOMMENDATIONS: A NEW LEGAL STRUCTURE FOR THE SABC**

- 1.1 The SABC must be reconstituted as a Chapter 9 institution through a Constitutional Amendment.
- 1.2 New policy and legislation must provide that:
  - 1.2.1 The SABC is a public company with a Memorandum and Articles of Association.
  - 1.2.2 The SABC's sole shareholder is the state representing the public.
  - 1.2.3 The Minister of Finance represents the state (representing the public) as the shareholder.
  - 1.2.4 While the Minister of Finance signs the Memorandum and Articles of Association, he or she does so only after their approval by Parliament.
  - 1.2.5 Parliament is responsible for ensuring that the development of and any amendments to the Memorandum and Articles of Association is achieved through an open and transparent participatory public process.
  - 1.2.6 The Shareholder's Compact is to be done away with.
  - 1.2.7 The Memorandum and Articles of Association are to be publicly available, including on the SABC's website, at all times.
  - 1.2.8 The public-commercial division of the SABC is done away with, with all SABC channels becoming public channels subject to the SABC's Charter and carrying public service mandates.

# 6. OVERSIGHT AND GOVERNANCE OF THE SABC

Members of the SOS Coalition have concluded that the current range of governance and oversight structures have unclear and sometimes overlapping mandates, roles and functions. SOS believes that clarity around the roles and functions for each including specifying clear lines of accountability would ensure significantly improved corporate governance at the SABC.

What follows is a suggested clarification of the role and function of each of the structures. It is important to note that many of the suggestions made by the SOS are in fact currently provided for in various laws. However, the implementation thereof is not sufficiently robust and, consequently, the SOS suggests that these issues be further clarified in policy and legislation.

## 14. RECOMMENDATION: ROLE AND RESPONSIBILITY CLARIFICATION

The roles and responsibilities of all oversight and governance structures and stakeholders must be clarified in relation to one another to ensure clear lines of accountability.

### 6.1. Oversight structures to ensure accountability of the SABC

#### 6.1.1. Public

The SABC as the public's broadcaster needs to be accountable to the public.

The SOS Coalition notes that there are a number of existing opportunities for consultation with the public. These include opportunities for the public to debate broadcasting legislation, select the SABC Board, and opportunities to debate the SABC's editorial policies.

The SOS Coalition believes the ability of the public to hold the SABC accountable must be significantly strengthened to ensure active public engagement and an ability to significantly influence all aspects of public broadcasting.

The SOS Coalition therefore proposes a further range of public participation mechanisms including:

> Public Editor / Office of the Public Editor:

- Is an experienced journalist who has held a senior editorial position for at least five years in the print or broadcast media.
- Is appointed by the Board and is accountable to the Board.
- Is to be consulted on all editorial-related complaints involving the SABC that are laid with the BCCSA.
- Is to adjudicate complaints regarding editorial content or conduct of the SABC that are laid with the SABC directly.
- The Editor in Chief of the SABC (i.e. the Head of News) is required to consult the public editor on a regular basis regarding the SABC's overall editorial policy and direction.
- Must ensure that the SABC's editorial policies and practices uphold the BCCSA's Broadcasting Code of Conduct and SABC Charter and promote the values of high quality programming and ethical standards of journalism.
- Is required to promote dialogue between the public broadcaster and its audience(s), including through
  - » addressing SABC audiences directly on radio and television current affairs programmes; and
  - » through the publication of on-line opinions.
- Is to submit annual reports to the Board, as well as to the National and Regional Stakeholder Committees, which reports are to be included in the Annual Report of the SABC.

## ➤ National Public Stakeholder Committee:

- The National Public Stakeholder Committee is coordinated by the Board, and is made up of the SABC's key national stakeholders, including representatives from:
  - » SABC staff unions
  - » Cultural industry representatives including in respect of:
    - \* independent producers,
    - \* script writers,
    - \* actors,
    - \* technical services providers.
  - » educational, labour, business, sport and faith-based national bodies.
  - » National NGOs and CBOs that deal specifically with:
    - \* Youth
    - \* Women
    - \* Disabled persons
    - \* Public broadcasting or freedom of expression
    - \* general human rights issues
    - \* refugee matters
    - \* social welfare matters
    - \* socio-economic issues
- The role of the National Public Stakeholder Committee is to ensure that the SABC is performing its public broadcasting role with specific reference to its programming, and to review the SABC's Charter periodically with a view to advising the Board and the Minister of Communications on changes required over time to ensure that it continues to provide an up-to-date public broadcasting mandate.
- The National Public Stakeholder Committee should submit a written report annually to the SABC Board, which report is to be included in the SABC's Annual Report.
- In performing its tasks, the National Stakeholder Committee is required to promote dialogue between the public broadcaster and its various audiences and stakeholders including electronically.

## > Provincial / Regional Public Stakeholder Committees

- The Board is to coordinate the establishment and running of nine Provincial / Regional Public Stakeholder Committees, each of which is made up of key provincial / regional stakeholders, including:
  - » Community-based regional or provincial groupings.
  - » Audience feedback panels.
- The Provincial / Regional Public Stakeholder Committees should each submit a written report annually to the SABC Board and to the National Public Stakeholder Committee, which report is to be included in the SABC's Annual Report.
- In performing its tasks, the Provincial / Regional Public Stakeholder Committees are required to promote dialogue between the public broadcaster and the various regions and provinces in South Africa on programming issues, including electronically. In this regard, using direct contact methods such as: sms, email, twitter, facebook, you tube etc, to engage with audiences directly.

As with the proposed Charter (see section 3.3 above), the SOS Coalition believes these mechanisms must be extensively debated, and consensus versions included in new policy and legislation. Along with the Charter, mechanisms must be reviewed and updated regularly.

### **15. RECOMMENDATION: PUBLIC PARTICIPATION MECHANISMS**

New public participation and accountability mechanisms should be investigated including

- a Public Editor
- a National Public Stakeholder Committees
- 9 Regional Public Stakeholder Committees, to include direct engagement with audiences

These mechanisms should be included in new legislation.

## 6.1.2. Parliament

Parliament must be enabled to hold the SABC accountable to the public through the regular monitoring of corporate plans and financials.

It should, through a process of maximum public consultation, transparency and political consensus, appoint skilled Board members and / or other appropriate governance structures that are broadly representative of constituencies. A process to ensure this is articulated in the SOS Coalition document entitled Proposed Process to Appoint the SABC Board (Appendix 4).

It should pass comprehensive broadcasting legislation in the public interest and based on international good practice.

### **16. RECOMMENDATIONS: ISSUES FOR PARLIAMENT**

- 16.1 The capacity of Parliamentarians must be strengthened in order to hold the SABC to account in terms of its corporate plans and finances, through specific, targeted training of Parliamentarians.
- 16.2 The SOS Coalition discussion document entitled Proposed Process to Appoint the SABC Board (Appendix 4) to be incorporated into SABC-specific legislation to improve current appointment processes and to ensure that the role of Parliament in the appointment of the Board is consultative, transparent and based on political consensus.
- 16.3 Parliament must focus on passing comprehensive, good practice broadcasting legislation in the public interest.

### 6.1.3. ICASA: the Regulator

All broadcasting regulatory matters fall within the jurisdiction of the Regulator – the Independent Communications Authority of South Africa (ICASA). ICASA has an ambiguous constitutional position. An independent regulator is provided for in Chapter 9 of the Constitution that deals with state institutions supporting constitutional democracy. However, general provisions relating to Chapter 9 bodies (sections 181, 193 and 194) do not refer to ICASA creating uncertainty as to its status.

The primary role of ICASA with respect to the SABC is to regulate and pro-actively monitor the public broadcaster and, at least annually, to ensure compliance with its Charter, its licence conditions and all relevant legislation and regulations.

The primary role of ICASA with respect to the community media sector is to regulate and pro-actively monitor the sector, ensure it has access to reasonably-priced transmission facilities, ensure that community broadcasters comply with licence conditions and relevant policy, legislation and regulations.

The SOS Coalition believes there are a number of problems that require attention in order for the Regulator to fulfill its obligations. SOS believes that one of the primary problems is lack of capacity due to systematic under-funding of ICASA.

To deal with this lack of capacity and inefficiencies the Ministry and Department of Communications have introduced the Draft ICASA Amendment Bill (2010). Unfortunately the Bill does not deal with funding. Instead the latter significantly increases the powers of the Minister, with an understanding that this will improve the Regulator's efficient functioning.

SOS however believes that the Bill will not solve ICASA's inefficiencies, in fact, the Coalition fears that the Bill will instead create a new set of problems by undermining the Regulator's independence from government. (The Regulator is already unduly beholden to commercial operators.)

## **17. RECOMMENDATIONS: ISSUES FOR THE REGULATOR**

- 1.1 Funding to the Regulator must be increased in order for it to monitor and regulate effectively, and to safeguard its independence.
- 1.2 The Regulator should retain its licence and administrative fees.
- 1.3 The independent research capacity of the Regulator must be significantly strengthened so as to allow it to engage meaningfully in micro-policy development.
- 1.4 The Regulator should be re-constituted as a fully-fledged Chapter 9 institution. Its ambiguous position as a Chapter 9 institution must be rectified (through its specific inclusions in sections 181, 193 and 194), thereby better safeguarding its independence.
- 1.5 Appointment procedures to the ICASA Council should be similar to those proposed by the SOS Coalition to be used in the appointment of non-executive members of the SABC Board i.e. as set out in Appendix 4.

### 6.1.4. The Auditor-General

The SOS Coalition is of the view that the current practice of the SABC appointing commercial auditors ought to be reconsidered in light of the failure to predict or foresee the financial crisis that struck the SABC in the 2008/9 financial year and in light of the danger of the SABC being audited by a firm dependent on annual reappointments.

The SOS Coalition recommends that the Auditor-General be responsible for auditing the SABC's financial statements.

## **18. RECOMMENDATION: APPOINTMENT OF THE AUDITOR GENERAL TO AUDIT THE SABC**

The SOS Coalition recommends that the Auditor-General be responsible for auditing the SABC's financial statements.

### 6.1.5. Minister of Finance and the Minister and Department of Communications

After extensive debate on this issue the SOS Coalition believes that the appropriate role of the Minister and Department of Communications should be to draft all high level (national) policy and legislation to ensure the integrity and sustainability of the broadcasting sector, including all three tiers of broadcasters, in the public interest.

The Minister of Finance as shareholder representative should not be involved in the appointment of the Board and / or executive management of the public broadcaster or in any editorial decisions concerning the SABC's programming.

Neither the Minister of Finance nor the Minister of Communications should be involved in the operations and running of the public broadcaster. Further, neither the Minister of Communications nor any regional or local government political appointment (MEC or councilor) or official should be involved in the operations and running of any community broadcaster.

The Department, along with Parliament, should facilitate public participation processes such as the review of the SABC Charter, given their resources and governmental mandates.

## **19. RECOMMENDATIONS: ISSUES FOR THE MINISTER AND DEPARTMENT OF COMMUNICATIONS**

1. The role of Minister and Department of Communications should be to draft all high level (national) policy and legislation to ensure the integrity and sustainability of the broadcasting sector, including all three tiers of broadcasters, in the public interest.
2. Current involvement in the broadcasting sector at management and / or operational levels must be changed to enable ICASA and the SABC to operate with the requisite independence.
3. Owing to existing capacity the Department, along with Parliament, should facilitate public participation processes in policy development, the reviews of the SABC Charter and the like.

4. Neither the Minister of Communications nor any regional or local government political appointment (MEC or councilor) or official should be involved in the operations and running of any community broadcaster.
5. The Minister of Finance and not the Minister of Communications should be the shareholder representative in respect of the SABC.
6. The Minister of Finance should not be involved in the appointment of the Board and / or executive management of the public broadcaster or in any editorial decisions concerning the SABC's programming.

## 6.2. Governance structures to ensure accountability within the SABC

The SOS Coalition believes that the crises that have beset the SABC since 2007 are a direct result of the lack of assertiveness and strength of the various Boards that have been appointed since that time. Consequently the SOS Coalition is of the view that all stakeholders must commit to ensuring that the SABC is headed by a Board that is: skilled, representative, independent and which has sufficient access to administrative, advisory and other skills to represent the public interest appropriately. In this regard, Parliament must consider providing for the following in SABC-specific legislation:

- Appropriate remuneration for SABC-related Board work and duties above mere attendance at Board meetings; and
- Appropriate Board staff assistance including: secretarial, research and advisory capacity.

Further, the structure of the SABC must contain clear lines of accountability and reporting as between management and the Board, and between the SABC as an institution and the public, via ICASA and Parliament and other public accountability mechanisms.

The following is proposed in terms of delineating responsibilities between the Board and management:

### 6.2.1. The Board

The Board must:

- Be independently minded, uphold the public interest (i.e. should exclude those with commercial or party-political or other vested interests), and view as its main task the protection of the independence and the deepening of the public mandate of the public broadcaster.
- Be responsible for the strategic direction of the public broadcaster and hold executive management to account in this regard.
- Report annually to Parliament on its corporate strategies and plans and financial situation.
- Report annually to both ICASA and Parliament on how it is meeting its mandate (i.e. complying with its Charter) and complying with its various licence conditions.
- Appoint executive management without external influence or input.
- Ensure that its operations are open and transparent to the public by making copies of Board minutes (excluding only those matters that are commercially sensitive to the SABC) available to the public, including on the SABC's website.

### 6.2.2. Executive management

Executive management must

- Report to the Board.
- Take responsibility for editorial and day-to-day management issues.

## 20. RECOMMENDATION: ISSUES FOR THE SABC BOARD AND MANAGEMENT

### **The Board must:**

- Be appropriately remunerated for SABC-related Board work and duties above mere attendance at Board meetings;
- Have appropriate Board staff assistance including: secretarial, research and advisory capacity.
- Be independently minded, uphold the public interest (i.e. should exclude those with commercial or party-political or other vested interests), and view as its main task the protection of the independence and the deepening of the public mandate of the public broadcaster.
- Be responsible for the strategic direction of the public broadcaster and hold executive management to account in this regard.
- Report annually to Parliament on its corporate strategies and plans and financial situation.
- Report annually to both ICASA and Parliament on how it is meeting its mandate (i.e. complying with its Charter) and complying with its various licence conditions.
- Appoint executive management without external influence or input.
- Ensure that its operations are open and transparent to the public by making copies of Board minutes (excluding only those matters that are commercially sensitive to the SABC) available to the public, including on the SABC's website.

### **Executive management must:**

- Report to the Board
- Take responsibility for editorial and day-to-day management issues.

# 7. FUNDING

## 7.1. Public broadcasting funding

### 7.1.1. International background issues

Internationally, public broadcasting's traditional funding sources – including government grants, licence fees and advertising – are under threat. Funding for public service broadcasting is thus a challenge internationally.

### 7.1.2. National background issues

In the last few years the SABC's financial situation has steadily deteriorated. In 2005/06 the Corporation posted an after-tax profit of R383 million. By 2007/08 the SABC's profit had dropped to R111.3 million. By 2008/09 the SABC posted pre-tax losses of R784m.<sup>4</sup>

There are a number of reasons for this downward spiral but SOS believes mis-management and poor governance have been key. The SABC has allowed its expenditure costs to spiral and its revenue generation has not kept abreast.

### 7.1.3. The SABC's present financial model<sup>5</sup>

Despite the fact that the SABC is a public broadcaster it relies heavily on advertising. SABC funding is derived from the following main sources – approximately 80% from advertising, 18% from licence fees, 2% from government<sup>6</sup>. Further, cross-subsidisation from the Corporation's public-commercial channels to the public channels is supposed to be an important additional funding source for the public channels. However, as discussed above, this is not happening.

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4 African Governance Monitoring and Advocacy Project (Afrimap), Open Society Foundation for South Africa (OSF-SA) and Open Society Media Programme (OSMP) research report on public broadcasting in Africa Series, 2010, South Africa Report.

5 Information sourced from Kupe, T. (2009), A funding model for public broadcasting presented to a Save our SABC extended working group meeting focusing on SABC finance issues on 2 July 2009 at the University of the Witwatersrand; Limpitlaw, J (2009) Presentation on funding models, "Save our SABC" Position Paper Workshop, January 2009; Lloyd, L. (2009), Public broadcasting: models and mechanisms, presented to a Save our SABC extended working group meeting focusing on SABC finance issues on 2 July 2009 at the University of the Witwatersrand.

6 African Governance Monitoring and Advocacy Project (Afrimap), Open Society Foundation for South Africa (OSF-SA) and Open Society Media Programme (OSMP) research report on public broadcasting in Africa Series, 2010, South Africa Report.

#### 7.1.4. Considerations for the development of a new funding model

The SOS Coalition has debated a number of different funding models, all of which need to be thoroughly investigated by the Department of Communications. The Department must take account of specific financial modelling before any one, or a combination thereof, is adopted.

Appendix 5 contains the SOS Coalition Discussion Document – Funding for Public and Community Broadcasting. This document provides background to SOS's current and ongoing debates on potential funding models and areas of agreement in respect of funding for the public broadcaster.

### **20. RECOMMENDATIONS: SABC FUNDING ISSUES**

- 1.1 Parliament and the Ministry and Department of Finance must ensure that the SABC has sufficient public funding to pursue its public service mandate in respect of programming so that the SABC's editorial independence is not compromised through advertising-funded programming or product placement.
- 1.2 Any policy and legislation developed on a funding model must ensure the long term sustainability and effectiveness of public broadcasting.
- 1.3 An economic modelling exercise is required to ascertain the actual funding requirements of the SABC. In this respect the Ministry and Department of Communications needs to look at the costs of both the SABC fulfilling its public mandate in the present analogue and future digital multi-channel environment.
- 1.4 An economic modelling exercise is required to be undertaken in respect of the two alternative methods of funding the SABC proposed in Appendix 5.
- 1.5 New legislation must emphasise transparent SABC accounting (for example, reporting on percentage spending on programming in terms of genre, language, regional coverage etc.).
- 1.6 The cross-subsidisation model should be done away with.
- 1.7 The SABC must spend the majority of its funds on programming (as opposed to the present practice where the major portion of the SABC budget is spent on management and overheads).

## 7.2. Community broadcasting funding

The SOS Coalition recognises that the geographically-based community broadcasters are largely financially unsustainable. This particular sector is plagued by high transmissions costs and few sources of funding, particularly those in rural or impoverished areas.

The Coalition supports the Minister's undertaking to review funding for community media and supports the idea of public funding for geographically-based community media in particular while protecting their editorial independence.

## 7.3. The Role And Structure Of The Media Development and Diversity Agency

The MDDA is currently a small and under-resourced statutory body which is funded through voluntary contributions from broadcasters and the print media and also from Parliament and other sources.

It is clear from recent draft Bills (even although most of these have been withdrawn) that Government intends the MDDA to play a much larger role in respect of community media and public broadcasting. The SOS supports the objectives of the MDDA set out in section 3 of the MDDA Act and think that it has a valuable role to play in assisting small media to develop.

However, currently, the level of independence provided in the MDDA Act for the MDDA's Board does not meet international good practise standards. The SOS is concerned that the appointments provisions in the MDDA Act do not sufficiently protect the MDDA from Government interference because one third of the members of the Board are not appointed on the recommendation of Parliament. The SOS echoes public concern voiced recently (2011) over appointments to the MDDA of serving government officials.

Further while the funding by the broadcasting sector to the MDDA is virtually assured through the required Universal Service and Access Fund Contributions mandated through the ECA (which allows MDDA contributions to be set off against the statutorily-required fee), the same cannot be said for the voluntary contributions by the Print Media. Consequently the SOS would support a legislative amendment to the MDDA Act which would require such a contribution by members of the Print Media. This would enable the MDDA to act without fear of its funding drying up.

## 8. CONCLUSION

The SOS Coalition would like to highlight the need for evidence-based research and economic modeling to underpin a comprehensive policy and legislative review process in relation to all three tiers of broadcasting, culminating in new public service broadcasting policy and legislation, and ensuring necessary Constitutional amendments. The Coalition would like to see the Minister and the Department of Communications act on its Constitutional mandate to undertake comprehensive public consultation in the review process.

# APPENDIX 1:

## MEMBERSHIP LIST OF THE SOS COALITION

### Organisations

- Alternative Information Development Centre (AIDC)
- Broadcast, Electronic Media and Allied Workers Union (BEMAWU)
- Communication Workers Union (CWU)
- Congress of South African Trade Unions (COSATU)
- Federation of South African Unions (FEDUSA)
- Freedom of Expression Institute (FXI)
- Freedom of Expression Network (FXN)
- Gender and Media Southern Africa (Gemsa)
- Genderlinks
- Institute for the Advancement of Journalism (IAJ)
- Link Centre
- Media Institute of Southern Africa (MISA)
- Media Monitoring Africa (MMA)
- Media Workers Association of South Africa (MWASA)
- National Community Radio Forum (NCRF)
- South African History Archives (SAHA)
- South African Non-Governmental Organisation Network (SANGONET)
- South African Screen Federation (SASFED):
  - Documentary Filmmakers Association (DFA)
  - Independent Producers Association (IPO)
  - Official South African Casting Association (OSCA SA)
  - Personal Managers Association (PMA)
  - South African Guild of Actors (SAGA)
  - South African Guild of Editors (SAGE)
  - Women in Film and Television, SA (WIFTSA)
  - Women of the Sun (WOS)
  - Writers Guild of South Africa (WGSA)
  - Workers World Media Productions

## Individuals

Ms Ingrid Bruynse – Bright Media, independent producers

Mr Martin Dolny – Director Joe Slovo Foundation

Prof Jane Duncan – Chair of the Information Society, Rhodes University

Prof William Gumede – writer, journalist, academic and freedom of expression activist, Development Bank of Southern Africa

Prof Anton Harber – Caxton Professor of Journalism, University of the Witwatersrand

Prof Tawana Kupe – Associate Professor of Media Studies and Dean of the Faculty of Humanities, University of the Witwatersrand

Ms Justine Limpitlaw – broadcasting lawyer

Mr Raymond Louw – South African National Editors Forum

Ms Jeanette Minnie of Zambezi FoX – international freedom of expression and media consultant

Mr Jay Naidoo – ex-General Secretary of COSATU and ex-Minister of Communications, international activist

Ms Jayshree Pather – media consultant

Prof Devan Pillay – Head of Sociology Department, University of the Witwatersrand

Ms Kerry Harris - Independent Development Consultant

Ms Libby Lloyd - Independent Broadcasting Policy Consultant

# APPENDIX 2:

## KEY INTERNATIONAL INSTRUMENTS

### **KEY INTERNATIONAL INSTRUMENTS, CHARTERS, PROTOCOLS AND DECLARATIONS THAT ESTABLISH GENERAL DEMOCRATIC MEDIA REGULATORY PRINCIPLES AND DEMOCRATIC BROADCASTING REGULATORY PRINCIPLES**

#### **1. The Windhoek Declaration**

The Windhoek Declaration on Promoting an Independent and Pluralistic Press was adopted by the participants of a United Nations / UNESCO Seminar on Promoting an Independent and Pluralistic African Press in 1991 and was thereafter endorsed by UNESCO's General Conference ("the Windhoek Declaration"). The Windhoek Declaration is an important international statement of the principle on press freedom and the date of its adoption, 3 May, is now World Press Freedom Day annually.

#### **2. The Johannesburg Principles**

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information ("the Johannesburg Principles") were adopted by a panel of experts in international law, national security and human rights in October 1995 convened by Article 19, the International Centre Against Censorship and the Centre for Applied Legal Studies of the University of the Witwatersrand. The Johannesburg Principles have been endorsed by the United Nations Committee on Human Rights and by the United Nations Special Rapporteur on Freedom of Opinion and Expression.

#### **3. The SADC Protocol**

The Southern African Development Community Protocol on Culture, Information and Sport was adopted in 2000 ("the SADC Protocol").

#### **4. The African Charter on Broadcasting**

The African Charter on Broadcasting was adopted by the participants of a UNESCO conference in 2001 to mark the 10<sup>th</sup> Anniversary of the Windhoek Declaration ("the African Charter on Broadcasting"). While the Windhoek Declaration focused mainly on the print media, the African Charter on Broadcasting focuses on the broadcast media.

## **5. The African Principles of Freedom of Expression Declaration**

The Declaration of Principles on Freedom of Expression in Africa adopted in 2002 by the African Commission on Human and Peoples' Rights, a body established under the auspices of the African Union ("the African Principles of Freedom of Expression Declaration").

## **6. The Access to the Airwaves Principles**

Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation is a set of standards on how to promote and protect independent broadcasting while ensuring that broadcasting serves the interests of the public. The principles were developed by Article 19, an international NGO working on freedom of expression issues, as part of its International Standards Series in 2002 ("the Access to the Airwaves Principles").

## **7. The WSIS Geneva Principles**

The Declaration of Principles adopted at the World Summit on the Information Society held by the United Nations in conjunction with the International Telecommunications Union in Geneva 2003 ("the WSIS Geneva Principles"). While the WSIS Geneva Principles are particularly concerned with issues concerning universal access to Information Communications Technologies, they do contain some important statements on the media more generally.

## **8. The Dakar Declaration**

The Dakar Declaration adopted by a UNESCO-sponsored World Press Freedom Day conference in Senegal 2005.

## **9. The African Democracy Charter**

The African Charter on Democracy, Elections and Governance which was adopted by the African Union in 2007 ("the African Democracy Charter"). To date it is not yet in force as an insufficient number of countries have yet to ratify it. Nevertheless, the African Democracy Charter contains a number of important statements on the media even if these are, as yet, only aspirational.

## **10. The Declaration of Table Mountain**

The Declaration of Table Mountain which was adopted by the World Association of Newspapers and the World Editors Forum in 2007 (“the Table Mountain Declaration”) contains a number of important statements by this civil society forum of newspapers and editors on African media issues.

## **11. UNESCO’s Media Development Indicators**

UNESCO’s International Programme for the Development of Communications has published a document entitled “Media Development Indicators: A Framework for Assessing Media Development” in 2008 (“UNESCO’s Media Development Indicators”).

# APPENDIX 3:

## PROPOSED CHARTER FOR THE SABC

The SOS Coalition proposes that a Charter such as the following be adopted consequent to extensive debate and discussion with citizens, audiences, interested stakeholders, etc.

**The Charter of the Corporation sets out the public mandate of the SABC, which public mandate is to:**

**Promote the values of the Constitution** and for this purpose to:

- contribute to democracy
- promote respect for freedom of expression
- offer a forum for democratic debate
- reflects a range of opinions and of social, political, philosophical, religious, scientific and artistic trends
- reflects regional diversity
- give a voice to the poor and marginalised
- to contribute to the development of an equal society, where all reach their full potential regardless of: race, social status, gender, ethnicity, age, culture, political belief, religion or sexual orientation
- safeguard, enrich and strengthen the cultural, political, social and economic fabric of the Country
- reflect both the unity and diverse cultural, political, social and economic fabric of the Country
- develop a strong and committed public broadcasting service which will service the needs of society
- ensure that public broadcasting services that meet the highest international technical standards are available to all

**Provide the public with programming of the highest quality** and for this purpose to:

- set industry standards for innovation, excellence, and creativity
- provide, in its public broadcasting services, radio and television programming that informs, educates and entertains
- provide a plurality of news and public affairs programming which

- meets the highest standards of journalism
- provides fair, unbiased and explanatory analysis which is independent of those wielding public power
- covers events in the country, Africa and the world
- ensure that public broadcasting services provide a reasonable, balanced opportunity for the public to receive a variety of points of view on matters of public concern, including through citizen-generated content
- cater for a broad range of programming, including drama and documentaries that cater specifically for the programming needs of children, women, the youth and the disabled
- include significant amounts of educational programming, both curriculum based and informal educative topics from a wide range of social, political and economic issues, including, but not limited to, human rights, health, early childhood development, agriculture, culture, justice and commerce contributing to a shared consciousness and identity
- include national sports' programming
- ensure programming is drawn from local, regional, national, continental and international sources
- ensure that public broadcasting services comply with the code of conduct for broadcasting
- be responsive to audience needs and account to the public on how to meet these needs

**Contribute to the development of the Country's culture, languages and local cultural industries** and for that purpose to:

- encourage the development of original local programming content;
- enrich the cultural heritage of the Country by providing support for traditional and contemporary artistic expression
- ensure, as far as reasonably possible, that public broadcasting services provide a range of high-quality programming in all of the Country's official languages to all citizens
- encourage the development of local content production throughout the country, particularly in marginalised regions
- to nurture the Country's talent and carry out research and development for the benefit of audiences

# APPENDIX 4: PROPOSED PROCESS TO APPOINT THE SABC BOARD

The SOS Coalition proposes an appointment process such as the following be adopted consequent to extensive debate and discussion with citizens, audiences, interested stakeholders, etc. The SOS Coalition further supports this appointments process generally applying to the appointment of ICASA Councilors too.

## Public Participation, Transparency and Political Consensus

The appointments process in respect of the SABC Board currently has insufficiently protected the public broadcaster from interference. To strengthen this process the SOS Coalition submits that Parliament needs to embrace the principles of maximum public participation, transparency and political consensus.

### **As regards maximum public participation Parliament needs to:**

- publish prominent advertisements in a number of high circulation national and regional newspapers and run a series of public service announcements across all SABC channels calling for nominations for potential board members;
- give sufficient time for the nomination process;
- appoint an appointment panel of civil society leaders to assist it in the process of short-listing, interviewing and recommending members of the SABC Board. The panel is to be made up of seven representatives of civil society, including:
  - » a representative of a freedom of expression or other human rights organization
  - » a media-related trade union representative
  - » a representative from the independent film and television production sector organization
  - » a broadcasting or media studies academic
  - » a freedom of expression, media or broadcasting lawyer
  - » an appropriately skilled economist with expertise in the media sector
  - » a representative of the Pan South African Languages Board.

### **As regards maximum transparency, Parliament needs to:**

- publish the names of all nominees and those nominating them; including electronically on the Internet
- publish the long-list of candidates to be interviewed (as determined by it on the advice of the civil society panel) together with their CVs, including electronically on the Internet
- ensure interviews of long-listed candidates (which are to take place before the Parliamentary Portfolio Committee on Communications and the civil society advisory panel) are open to the public and to publicise these widely, including on SABC radio and television stations;
- publish written reasons as to why the final shortlist of candidates was selected by the Parliamentary Portfolio Committee on Communications (as determined by it on the advice of the civil society panel), including electronically on the Internet
- publish the short-list of candidates for public comment before the Parliamentary Portfolio Committee on Communications makes recommendations to the National Assembly.<sup>1</sup>

### **As regards Political Consensus, Parliament needs to:**

ensure that no person can be appointed to the SABC Board without the agreement of:

- at least five members of the civil society advisory panel; and
- at least one of the two largest minority parties represented in Parliament.

### Criteria for appointment

Besides improving the actual appointments process (set out above), the criteria for appointment to the Board must be strengthened. In our view the criteria ought to be the following, namely that the Public Interest Representatives on the SABC Board must when viewed collectively:

- a) enjoy the confidence and trust of the broad spectrum of South African society;
- b) be broadly representative of South African society in terms of: race, gender, regional, economic and social interests;
- c) act as trustees of the public interest in that they are committed

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<sup>1</sup> This is a recommendation made in – Parliament of the Republic of South Africa (2007) Report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions.

to fairness, freedom of expression, the right of the public to be informed, and openness and accountability;

- d) have, collectively, qualifications and / or experience in at least the following areas: corporate governance, finance, broadcasting policy and regulation, journalism, the business of production and the application of new technologies; and
- e) broadly represent the following key constituencies and stakeholders in society including, but not limited to, business, labour, and NGOs active in the human rights field.

We further think it is important to protect institutional memory and to ensure the well-functioning of the Board by ensuring that Board appointments are staggered to ensure an overlap of terms of office of at least one third of Board members at any one time.

Another important issue regarding appointments is the issue of disqualification criteria. We think that the currently provisions in the Broadcast Act do not sufficiently protect the public from conflicts of interest which have arisen in relation to the previous two boards. Consequently we think that these should be bolstered to protect against political and / or commercial conflicts of interest too.

### Disqualification criteria

A person may not be appointed as a Board member if he or she—

- (a) is not a citizen of the Republic;
- (b) is not permanently resident in the Republic;
- (c) is a senior public servant above the level of national director;
- (d) is employed as a member of a public body which funds or regulates the broadcasting industry;
- (e) is a member of Parliament, any provincial legislature or any municipal council;
- (f) is a national office-bearer or senior employee of any party, movement or organisation of a party-political nature;
- (g) has a direct or indirect financial interest in the broadcasting industry, other than a passive investment stake;
- (h) is an un-rehabilitated insolvent;
- (i) has been declared by a court to be mentally ill or disordered;
- (j) has at any time been convicted, whether in the Republic or elsewhere, of—

- (i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any other offence involving dishonesty; or
- (ii) an offence under this Act;
- (k) has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), to a period of imprisonment of not less than one year without the option of a fine; or
- (l) has at any time been removed from an office of trust on account of misconduct.

A person who is subject to a disqualification contemplated in subsection 3.5.1 (a) to (h) may be nominated for appointment as a Board member, but may only be appointed if at the time of such appointment he or she is no longer subject to that disqualification. If at any stage during the course of any proceedings before the Board it appears that any Board member has or may have an interest which may cause such conflict of interest to arise on his or her part—

- such Board member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Board members to discuss the matter and determine whether such Board member is precluded from participating in such meeting by reason of a conflict of interest; and
- such disclosure and the decision taken by the remaining Board members regarding such determination, must be recorded in the minutes of the meeting in question.

If any Board member fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Board is held or in any manner whatsoever participates in the proceedings of the Board, the relevant proceedings of the Board will be null and void.

### Removal of Members of the Board

This is a vexed issue within the Coalition. Certain members do not support the principle of the removal of the entire Board at once and its replacement with an Interim Board.

They claim that this was an anomaly that became necessary only due to political interference in the appointment of the 2007 Board, which meant that the latter lacked public legitimacy. The argument is that this situation should not be allowed to be repeated. Consequently only the normal provisions of the Broadcasting Act (as amended) dealing with removal of individual members of the Board should be included. However other members of the Coalition have stated that an emergency situation may arise again and that clauses should be included that allow for the removal of the Board as a whole in exceptional circumstances. They argue that the present criteria (including the Board not fulfilling its fiduciary duties, adhering to its Charter and controlling the affairs of the Corporation) should be grounds for the removal of the Board as a whole. These members thus argue that the removal clauses included in the Broadcasting Act as amended should remain. This needs to be debated further.

In line with good corporate governance principles internationally we think the Broadcasting Act must make it clear that the Board alone is responsible for the removal of the Group executive management, without any outside involvement.

# APPENDIX 5: SOS COALITION DISCUSSION DOCUMENT – FUNDING FOR PUBLIC AND COMMUNITY BROADCASTING

## 1. Public broadcasting

### 1.1 Introduction: Funding to Follow Mandate

The SOS Coalition has debated a number of different funding models, all of which need to be investigated by the Department of Communication and, critically, the Department (and of course Parliament) must take account of specific financial modelling before any one, or a combination thereof, is adopted and provided for in legislation.

However, the SOS Coalition is of the view that before the Department of Communications, together with the National Treasury can develop a comprehensive and appropriate funding mechanism for the SABC, the size and purpose of the SABC has to be decided and defined.

The SOS Coalition believes that the SABC should be focus on high-quality programming in accordance with its public mandate being delivered in all official languages. These stations should be dedicated to excellent public interest content i.e. South African-related news, information, current affairs, quality entertainment such as drama, children's programming and educational content aimed at South African citizen empowerment. In order to do this, the SOS Coalition believes that the SABC's analogue radio and digital television offerings must provide the following minimum services:

- Radio:
  - » 11 full-service national radio stations must broadcast in the official languages of the country, such that every person is able to access a full-service SABC station in his or her preferred official language; and
  - » Community-specific public broadcasting channels such as Lotus FM (national) and XK-fm (regional only to cover Khoi-San populations).

- Television:
  - » All three existing SABC stations to be public channels.
  - » Additional digital channels to be licensed to provide quality programming aimed at regions, marginalised groupings (such as the elderly) under-served languages (official or otherwise) and niche programming genres.

Consequently, the SOS Coalition is of the view that certain existing public commercial music stations, for example 5fm and/or Metro, Good Hope etc, are either sold off to commercial operators or else transformed into radio stations with a public mandate as suggested above.

Whether or not the SOS Coalition's suggestions are adopted by the Department of Communications, the Department of Communications must set out its vision for the SABC's services (existing and digital) in its policy process.

## 1.2 Model one – SABC is a public broadcaster funding from sources excluding advertising

This model argues that the SABC's present hybrid commercial / public funding model is unworkable. Commercial radio stations should be sold off and operated as commercial broadcasting services by the private sector or else transformed into national public stations as suggested above.

There should be no adverts on any SABC station, whether radio or TV. The funding generated from the sales of the public commercial radio stations, if any, should be retained by the SABC.

A key source of funding in this model would be a specific tax on all commercial broadcasters in recognition of the vastly-increased advertising spend available to them as a result of the SABC no-longer carrying advertising.

Additional funding required for the SABC would come from government, by way of licence fee and/or specific parliamentary appropriations.

### 1.3 Model two – the SABC is a public broadcaster with a mix of public (licence fee and / or subsidy) and commercial funds

This model argues that the problem is not commercial funding per se. but the potential influence of commercial funding on certain types of editorial content including focusing on more aspirational content to the exclusion of gritty day-to-day working class content etc. and marginalisation of poorer audiences. The model suggests that there are particular ways to manage this influence.

The model calls for – as part of a mix of funding including advertising and licence fees – long-term, assured national appropriations by Parliament. These grants need to be targeted at very specific budget line items including the following: certain operational costs (salaries), infrastructure (particularly new digital infrastructure and transmission costs) and particular kinds of programming promoting the values of the Constitution i.e. programming promoting civil rights (news and current affairs), programming promoting socio-economic rights (development focused programming) and programming promoting cultural rights (particularly African language programming but also arts and culture programming).

The SABC should account for this money through Parliament's communications and / or public accounts committee.

It suggests that the SABC retain all of its current radio and proposed new digital television channels. Channels however should no longer be divided into commercial and public-commercial wings – all stations should be public. Stations should focus on a mix of information, education and entertainment (Kupe, 2009).

### 1.4 Areas of Agreement

SOS Coalition members have agreed to the following:

- That for public broadcasting to thrive long-term, assured public funding is required.
- That all channels need to be public channels, and the cross-subsidisation model should be done away with.
- That public funding must ensure concrete, discernable public benefits.

- That all proposed funding models must be costed, and a decision must be taken on sustainability of funding and cost-effectiveness.
- To ascertain the actual funding requirements of the SABC, government needs to do an economic modelling exercise to look at:
  - » The concrete costs of the SABC fulfilling its public mandate.
  - » The costs of digital migration and the new multi-channel environment.
- That new legislation must emphasise transparent accounting. For instance, the SABC must report on the percentages it spends of its budget on different genres of programming, language programming, regional programming etc.
- Parliament and the Department of Finance need to ensure that the SABC has sufficient funding to pursue its public service mandate in respect of programming so that editorial independence is not compromised through advertising, funded programming or product placement.

## **2. Community broadcasting**

The SOS Coalition recognises that the geographically-based community broadcasters are largely financially unsustainable. This particular sector is plagued by high transmissions costs and few sources of funding, particularly those in rural or impoverished areas.

The Coalition supports the Minister's undertaking to review funding community media and supports the idea of public funding for geographically-based community media while protecting their editorial independence.



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