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Philly Moilwa

GM, Policy and Regulatory Affairs

SABC

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30 November 2020

Dear Mr Moilwa

COMPLAINT AGAINST THE SABC IN RESPECT OF CONTENT HOSTED ON THE SABC'S FREE TO AIR DIGITAL CHANNELS, NEWS CHANNEL ON DSTV, AND ON ITS ONLINE PLATFORMS

1. The SOS Support Public Broadcasting Coalition (SOS) is a registered not-for-profit organisation, which itself is a civil society coalition that is committed to, and campaigns for, broadcasting services that advance the public interest. While the SABC is our primary focus – as the key site of and the institution established to drive public interest broadcasting – SOS also engages in the advancement of community broadcast media in South Africa. SOS is made up of a broad range of civil society organisations, trade unions and their federations, and individuals (including academics, freedom of expression activists, policy and legal consultants, actors, script-writers, film makers, producers and directors).
2. The SOS Coalition campaigns tirelessly for an independent and effective public broadcaster. SOS engages with policymakers, regulators, and lawmakers to secure changes that will promote citizen-friendly policy, legislative and regulatory changes to broadcasting and its associated sectors.

3. Media Monitoring Africa (MMA) is a not-for-profit organisation that has been monitoring the media since 1993. MMA's objectives are to promote the development of a free, fair, ethical and critical media culture in South Africa and the rest of the continent. The three key areas that MMA seeks to address through a human rights-based approach are media ethics, media quality and media freedom.
4. MMA aims to contribute to this vision by being the premier media watchdog in Africa to promote a free, fair, ethical and critical media culture. MMA has over 20 years' experience in media monitoring and direct engagement with media, civil society organisations and citizens. MMA is the only independent organisation that analyses and engages with media according to this framework. In all of our projects, we seek to demonstrate leadership, creativity and progressive approaches to meet the changing needs of the media environment.
5. As part of their aims to promote a public broadcaster that is governed and acts in accordance with international best practice standards for public broadcasting, it is incumbent upon SOS and MMA to act when the South African Broadcasting Corporation falls short of its stated commitment to ethical journalism, including in respect of news content that is distributed via its online portals.
6. The SABC recently published its updated Editorial Policies.
7. SOS and MMA hereby lay a formal complaint against the SABC in respect of programming flighted by the SABC on its news channel which is carried on the DStv bouquet, channel 404, and in particular, on the show, Full View, which is broadcast daily between 18h00 and 31h00, which channel is also carried on the SABC's digital terrestrial free to air channels.
8. The complaint concerns an interview with ANC Secretary-General, Mr Ace Magashule, conducted by two SABC journalists on Wednesday 18 November 2020 at approximately 18:34 CAT, during a broadcast of the show, The Full View. A copy of this interview is available online at: <https://www.youtube.com/watch?v=lq6YQRZ9ufc>
9. The SABC is the public broadcaster. And as the public broadcaster, it not only has a significant public service mandate, it also has a unique role in providing access to news and information for the majority of people in South Africa. The High Court has held in *SOS Coalition and Others v the SABC and Others* Case Number 81056/14, that the SABC is required to provide "significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests." [at paragraph 36, Available at: <http://www.saflii.org/za/cases/ZAGPJHC/2017/289.pdf>]

10. SOS and MMA hereby lay a formal complaint in terms of clause 11.3 of the Editorial Policies in respect of the above-mentioned programming that violates the Editorial Policies and in particular the stated obligation (at clause 5.1) of the SABC that “the SABC considers it a duty to provide... bias free, credible and useful top-quality news, information and analysis, which the public can trust in their daily decision making about their lives, in participating in processes geared at enhancing, and advancing the country’s democracy and in building a common future”.

11. The interview conducted by the SABC news staffers violates a number of provisions of the Editorial Policies, relating to News and Editorial Content, namely:
 - a. Clause 5.3.1 which requires the SABC to report, contextualise and present news and current affairs honestly, accurately and transparently and to disclose all essential facts and information and not conceal relevant, available facts or distorting by wrong or improper emphasis.
 - b. Clause 5.3.2 which requires the SABC to not allow... political, state... and personal considerations to influence the SABC’s editorial decisions.
 - c. Clause 5.3.3 which requires the SABC to strive for balance by presenting a plurality of views at all times, and particularly on matters of national importance.
 - d. Clause 5.3.13 which provides that SABC news coverage should be accurate, fair, impartial and balanced. The public justifiably expects SABC news and current affairs content to not reflect personal views of editorial staff.
 - e. Clause 5.3.15 which requires SABC editorial staff to always endeavour to present stories in a fair and balanced manner. Every attempt should be made to include a right of reply when required to ensure such balance and fairness in the same story or in a subsequent program with comparable prominence.
 - f. Clause 5.4 which entitles SABC journalists to comment upon and report on any actions or events of public interest. Comment or criticism is protected even if extreme, unjust, unbalanced, exaggerated and prejudiced, under the following circumstances when it:
 - 5.4.1 expresses an honestly held opinion;
 - 5.4.2 is without malice;
 - 5.4.3 is on a matter of public interest;
 - 5.4.4 has taken fair account of all material facts that are substantially true;
 - 5.4.5 is presented in such manner that it appears clearly to be comment.
 - g. Clause 5.7 which requires commentary to be held to the same standards of factual accuracy as news content.

12. The interview published online transgresses all of the above clauses of the Editorial Policies in that it is conducted in a manner that makes it clear that the journalists are not complying with the requirements of the Editorial Policies set out above. The one-sided, self-interested, interview style and inflammatory language used by the interviewers undermines the above-listed provisions of the Editorial Policies. We think that even if it could be argued that the broadcast constituted “comment” which is, in our view, doubtful, given the fact that it is an in-depth interview with the ruling party’s Secretary-General on what was a breaking news topic, the commentary did not take account of material facts that were substantially true and the commentary did not reach the levels of factual accuracy standards as news content, as required in terms of the Editorial Policies. In this regard:

- a. One of the interviewers begins the interview by stating that directors earn “millions of Rands” without giving any details or differentiation between, for example, executive and non-executive directors’ remuneration.
- b. The interviewer goes on to state that the staff are “earning peanuts”, that the retrenchments are a jobs “bloodbath”. And that “atrocities are being done to peoples’ lives”.
- c. In the introduction, there is no attempt to put forward a disinterested, dispassionate, balanced view of the retrenchments processes at the SABC, which staff were notified about recently, in order to contextualise the interview, whether as a news item or as commentary.
- d. The dangers of the obvious personal conflicts of interest of a member of staff engaging in a topic regarding retrenchments of members of staff were not raised at all, let alone dealt with in a manner that sought to emphasize the need for balance and a careful presentation of fact versus opinion on the issue. The style of the interview clearly demonstrated that the journalists allowed their personal considerations to influence reporting and the interview constituted a conflict of interest in the manner it was carried out, in direct violation of clause 5.3.2 of the Editorial Policies.
- e. The actual salary scale figures, which had been published in the day before in the SABC’s 2019/20 Annual Report (available at: <https://www.sabc.co.za/sabc/wp-content/uploads/2020/11/SABC-AR-2020.pdf>) were not referred to, even although they showed that the average salary of the lowest level of SABC staffer is R464 000.00. p.a. – an amount that is nearly double the average salary of a non-agricultural worker in the formal sector which is R257 460.00 p.a., according to the latest Quarterly Employment Survey for Q2 issued by Stats SA on 15 October 2020 as reported on here: <https://businesstech.co.za/news/finance/440963/this-is-the-average-salary-in-south-africa-right-now-5/>. In the context of available wage data for South Africa, the

characterization of the salaries being earned by staffers (other than top or senior management at the SABC) which range from an average of R1,234 000.00 p.a. for middle management to the above-mentioned average of R464 000.00 p.a. for the lowest level of staff, as “peanuts”, is not an accurate or fair description of such salary scales and even if this was commentary, it did not meet the requirements of clauses 5.4 and 5.7 of the Editorial Policies.

- f. Similarly, it is clear that there has indeed been a “bloodbath” of job losses in the country recently as a result of the Covid-19 Pandemic. The latest unemployment figures reflect this with unemployment at 30.8%. (See EWN reporting on the figures available here: <https://ewn.co.za/2020/11/12/sa-unemployment-rate-increases-to-30-8-in-q3-of-2020-qlfs#:~:text=JOHANNESBURG%20%2D%20South%20Africa's%20unemployment%20rate,data%20from%20Statistics%20South%20Africa>.) And the media sector has been particularly hard hit (See Sanef’s report on job losses in the sector: <https://sanef.org.za/wp-content/uploads/2020/06/SANEF-Covid-Impact-Research-Final-Report8.pdf>). However, the SABC journalists have failed to provide any justification for characterising the retrenchments process at the SABC as a “bloodbath”, particularly when retrenchments have been specifically required to be undertaken by Parliament as a result of the ad hoc Committee Report on the SABC, the National Treasury as a precondition for two separate bailouts, recommendation of the Auditor-General and the Special Investigative Unit, as have been widely reported in recent years in the press. The proper contextualisation of these state-imposed requirements and bail-out pre-conditions, to counter the legacy of state capture at the SABC, is not made, indeed they are not even mentioned.
- g. The statement that “atrocities are being done to people’s lives” is also a violation of the Editorial Policies’ stated commitment not to distort, exaggerate or misrepresent. The Compact Edition of the Oxford English Dictionary, Vol 1 defines “atrocious” as “savage enormity, horrible or heinous wickedness” [at page 136]. The Constitution of the Republic of South Africa, 2006 (the Constitution) does not countenance an organ of state, such as the SABC, engaging in atrocities. Indeed, retrenchments are considered to be, as a matter of law and of fact, part and parcel of normal commercial life as is evidenced by the provisions of section 189 of the Labour Relations Act, 1995 – a post-Apartheid flag-ship statute specifically designed to protect the rights of labour.
- h. Mr Magashule states that some members of the Board “support privatization” and are “arrogant” and “intransigent”. No mention is made of the fact that the decision to initiate the retrenchments process was taken by a majority of a quorate Board in accordance with the requirements of the Broadcasting Act, 1999 and general company law. No basis is provided for the statement on privatisation and none of those Board members

were given an opportunity to respond, either individually or collectively, as required by the Editorial Policies.

- i. When Mr Magasule says that the ANC and its Alliance partners and their deployees, including Minister of Communications and Digital Technologies, Ms Stella Ndabeni-Abrahams, are to “put a stop to arrogance”, presumably of the above-mentioned board members, the interviewers make no attempt to contextualise his remarks for the public. This is a crucial failure on the part of the interviewees and is a violation of clauses 5.3.1, 5.3.2, 5.3.3, 5.3.13, 5.3.15, 5.4 and 5.7 of the Editorial Policies, including, *inter alia*, because such statements are in clear contradiction of the provisions of the SABC’s governing statute, the Broadcasting Act and this important factual background and legal context was required to have been provided by the interviewers. In this regard:
 - (a) the SABC Board is to “control the affairs of the Corporation” - at s13(11) of the Broadcasting Act;
 - (b) the High Court has held in *SOS Coalition and Others v the SABC and Others* and with regards to the SABC: “The ultimate decision-making power is that of the Board and not the Minister...” [at paragraph 125] and, at paragraph 127 “The effect of section 13(11) therefore is to confer on the Board the exclusive powers to control the affairs of the SABC. The Minister is accordingly precluded from exercising any powers by which she may control the Directors in how they control the affairs of the SABC”;
 - (c) Mr Magashule is proposing to ensure unlawful conduct on the part of the Minister and others by interfering in Board matters. This, in our view, is a required the interviewers to point out the implications of such a course of action for the viewers of the interview; and
 - (d) further, not only are Mr Magashule’s statements not properly contextualised by the interviewers, they are actively encouraged. The interviewers pose a series of questions to Mr Magashule including: “The Governing Party has yet to call the SABC Board and address them, what is the ANC doing to save jobs at the public broadcaster?”; “What have you (the ruling party) done in halting the process of s189?” “Mr Magashule, let me put it bluntly, the SABC is forging ahead with retrenchments, whether we like it or not. You are sitting there as Secretary General of the governing party. What is stopping you from extending a call right now, to president Ramaphosa, ... to say President, please make sure that those poor workers of the SABC do not lose their jobs.” And they called on Ace Magashule to remove the executives and board members “because they were appointed by Parliament and not by SABC workers”. These questions do not, in our view, fall within the

parameters of fair comment or news presentation because, again, the underlying facts (particularly in respect of the SABC's legal position) are not indicated or referred to at all, let alone in a fair and truthful manner. Indeed in their forceful demanding of action on the part of Mr Magashule to secure unlawful political intervention in their own labour dispute with the SABC, the journalists are violating clauses 5.3.2, 5.3.13 and 5.7 of the Editorial Policies.

13. Unfortunately, the interview referred to above, and which is the basis of this complaint, has not been an isolated example of the kinds of broadcasts that the public has been subjected to by the SABC news team in the past week or so. This has been evidenced by the number of media outlets that have published opinion pieces and editorials decrying the abuse of its media platforms by the news team in broadcasting or publishing material that undermines the basic tenets of ethical journalism. In this regard please see:

<https://www.businesslive.co.za/bd/opinion/columnists/2020-11-23-carol-paton-sabc-a-dangerous-proxy-war-that-can-harm-ramaphosa/>

<https://www.timeslive.co.za/sunday-times/opinion-and-analysis/2020-11-22-the-sabc-nettle-will-have-to-be-grasped-eventually/>

<https://www.news24.com/news24/columnists/guestcolumn/opinion-sabc-crisis-this-is-a-watershed-moment-for-independent-public-broadcasting-20201119>

14. We look forward to this matter being dealt with by the SABC as expeditiously as possible.
15. As a matter of courtesy, we advise that similar complaints in respect of the interview that was broadcast on DStv and on the SABC's digital free to air channels and is available online, have been simultaneously lodged with the Broadcasting Complaints Commission of South Africa and with the Press Council.

Thank you,

Sincerely

The image shows two handwritten signatures in black ink. The signature on the left is 'Duduetsang Makuse' and the signature on the right is 'William Bird'. Both signatures are written in a cursive, flowing style.

Duduetsang Makuse and William Bird

cc Ms Phathiswa Magopeni, Editor in Chief, SABC MagopeniPP@sabc.co.za

cc Mr Bongamusa Makhathini, Chair of the SABC Board MakhathiniBE@sabc.co.za

cc Ms Mary Papaya, Chair of the SABC Board's Editorial Committee marybpapaya@gmail.com

cc Mr Madoda Maxakwe, CEO, SABC MxakweM@sabc.co.za

cc Adv. Ntuthuzelo Vanara, Head, SABC Legal Services VanaraNJ@sabc.co.za