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## **Vision for Broadcasting in South Africa**

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### **Purpose**

The purpose of this document is to articulate the vision of the SOS Support Public Broadcasting Coalition (SOS) for broadcasting and, in particular, public service broadcasting, with the specific aim of lobbying government, regulatory authorities, industry and other stakeholders to promote and 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.

### **For more information**

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# 1. Introduction to the SOS Coalition

The SOS Support Public Broadcasting Coalition (SOS) is a membership-based Coalition. It represents a broad spectrum of civil society stakeholders committed to the broadcasting of quality, diverse, citizen-orientated public-interest programming aligned to the goals of the South African Constitution. The Coalition comprises: a number of independent unions, including the Broadcast, Electronic Media and Allied Workers' Union (BEMAWU) and the Media Workers' Association of South Africa (MWASA); independent film and television production sector organisations, including the South African Screen Federation (SASFED) and its affiliates; a host of non-governmental organisations (NGOs) and community-based organisations (CBOs), including amandla.mobi, the Freedom of Expression Institute (FXI), Media Monitoring Africa (MMA) and the Right2Know Campaign (R2K); along with a number of academics and freedom of expression activists.

From the outset in 2008 SOS 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;
- Commercial.

SOS 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, and adhering to certain language requirements, local programming quotas etc. The SOS Coalition is not specifically focused on commercial broadcasting. However, it does recognise that there is a dearth of commercial broadcasters, particularly those with a national footprint.

SOS 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.

SOS campaigns for the strengthening of public broadcasting and associated public service media through its website, Facebook, Twitter and electronic email-based information services for members, friends and interested stakeholders. Where possible, SOS develops and advocates for consensus 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 the Independent Communications Authority of South Africa (ICASA); statutory bodies such as the Media Development and Diversity Agency (MDDA), the Universal Service and Access Agency of South Africa (USAASA) and Sentech; the public broadcaster, the SABC; industry bodies such as the National Association of Broadcasters (NAB) and the National Community Radio Forum (NCRF), as well as a range of NGOs, CBOs, campaigns and others. While SOS believes in working closely with all possible groupings in support of broadcasting in the public interest, it maintains its ability to critique poor practice and mismanagement at all levels (administrative, governance, regulatory, policy and law-making).

SOS is driven by the commitment and voluntary support of its members, particularly the individuals and organisational representatives serving on its working group. SOS has two funded staff-member positions: National Coordinator and Project Coordinator. Its volunteers contribute through two sub-committees: the legal advocacy subcommittee and the campaigns subcommittee.

The following grant makers currently fund the work of SOS:

- Claude Leon Foundation
- *fesmedia* Africa
- Open Society Foundation – South Africa
- Oxfam South Africa
- The RAITH Foundation

## **2. Fundamental principles for public broadcasting**

SOS holds to the following public service media principles that should be reflected in our broadcasting policies, laws, regulations, organisations and practices:

### **2.1 Broadcasting with a public service mandate**

Public broadcasting must act in the broad public interest to strengthen the goals of our Constitution, especially the Bill of Rights, including socio-economic rights. Every person in South Africa should be able to enjoy both radio and television programming in all official languages.

### **2.2 Programming in the public interest**

SABC programming must adhere to the principles of creativity, quality, credibility, reliability, variety and balance in meeting its obligations to entertain, educate and inform. It must reflect the full range of public opinion, with specific focus on views historically marginalised by the commercial media.

### **2.3 Funding for public broadcasting**

Parliament must ensure that the SABC has sufficient public funding to pursue its public service programming mandate, so that editorial independence is safeguarded, along with the long-term independence, sustainability, viability and effectiveness of public broadcasting.

### **2.4 Independence of the public broadcaster**

The public broadcaster must have institutional autonomy, and be free from commercial, government and party-political interference. Its independent Board must provide strategic direction, protect editorial independence and practise accountable and transparent governance.

### **2.5 Constitutional protection for public broadcasting**

Given the critical role of the public broadcaster in strengthening democracy through ensuring the free flow of information in our society, it must be reconstituted under a new legal structure, under Chapter 9 of the Constitution, as an institution supporting constitutional democracy.

### **2.6 Separation of powers of governance**

The SABC's oversight and governance structures must be clarified. Whilst the Minister remains responsible for policy, Parliament exercises a legislative and oversight role, holding the SABC accountable through its independent Board for corporate plans and finances and performance.

### **2.7 A new SABC Charter**

A new SABC Charter – committing the broadcaster to providing cutting-edge, quality programming in the public interest and reflecting a diversity of views – must be developed through a consultative process between Parliament and the public. It must be reviewed and updated regularly.

## **2.8 Editorial policies and guidelines**

The SABC's editorial policies must be reviewed and updated regularly through a public, consultative process, and implemented to ensure the SABC plays its watchdog role and caters for all audiences in the evolving digital, multichannel, public service media environment.

## **2.9 Protection of SABC journalists**

Journalists in the SABC must be protected from political and commercial interests, and from unwarranted editorial interference, so that they can play their key information gathering and dissemination roles in the broad interests of the public and their audiences.

## **2.10 Public participation mechanisms**

SABC programming must be made more accountable to audiences through innovative means such as programming committees. Additional public participation mechanisms must be investigated, including that of a Public Editor, and National and Regional Public Stakeholder Committees.

## **2.11 A three-tier broadcasting landscape**

SOS stands for the continuation of three tiers of broadcast services within the audio and audio-visual content, services and infrastructure ecosystem. These tiers, whether digital or analogue, should continue to be: public, commercial (characterised by robust competition) and community.

## **2.12 Independent, converged regulatory oversight**

SOS holds that all electronic communications services, including audio, and audio-visual content, broadcasting and broadcasting-like services, signal distribution and frequency spectrum, must be regulated by a single, converged, independent body, free of commercial and political interference.

## **2.13 Migration to digital broadcasting**

The digital migration needs to deliver the digital dividend, with benefits for new, broadcasting-like services. But it must take account of technological change and market shifts, with DTT possibly obsolete. Above all it must protect access by the poor to free-to-air, public broadcasting.

## **2.14 The digital public service media ecosystem**

The reality of convergence leads to the provision of digitised content over a range of integrated, interconnected and interoperable ICT platforms. Broadcasting policy, regulation and practice has to be aligned accordingly. An integrated sector requires a single Ministry and a single regulator.

# **3. SABC programming – principles and challenges**

SOS reiterates its vision for SABC programming, namely that it must be based on the principles of creativity, credibility, reliability, variety and balance in meeting its obligations to entertain, educate and inform. It must reflect a broad diversity of South African opinions but, in particular, focus on views historically 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 and fair criteria.

SOS believes that, although much of this vision above is captured broadly in existing South African policy and legislation, much is not implemented.

Also, SOS is concerned by a number of seemingly intractable challenges. These include:

- a. The SABC's lack of vision as regards content and programming on its analogue channels, and its lack of communication regarding its vision for its new digital channels and platforms.
- b. The SABC's historical vulnerability to capture by commercial, political or state interests.
- c. The SABC's difficulties in operating financially sustainable broadcasting services.

SOS believes the SABC's ongoing (often self-imposed) financial crises have exacerbated editorial problems such as:

- a. Pursuing advertiser-funded programming and product placements at the expense of the public interest;
- b. Cutting back on local content and encouraging repeats;
- c. Cutting back on the production of more expensive public programming, including drama, documentaries, educational and children's programming;
- d. Insufficiently prioritising African-language programming, particularly more marginalised languages such as Tshivenda.

SOS notes the importance of dealing with these long-term entrenched challenges.

## **4. SABC commissioning of content**

The SABC's 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. The SABC has also made it increasingly difficult to pursue co-productions. Further, independent producers have strongly complained about the intellectual property rights' regime that vests intellectual property rights automatically with the broadcasters who commission content, rather than allowing for appropriate sharing of intellectual property rights with producers. This prevents the development of a vibrant trade in South African film and video productions.

SOS believes that efficient and transparent commissioning practices should be implemented that embrace the principles of a diversity of voices, ideas, opinions and world views; and that the intellectual property regime needs to be completely overhauled to ensure a sharing of rights.

## **5. Funding and market structure**

### **5.1 Context**

The struggle to create an independent and sustainable public broadcaster has been undermined by systemic corporate governance and financial management failures at the SABC over the last two decades. These grave failures, often involving criminal conduct and requiring serious action, have tended to obscure the pressing and underlying need to finalise a public broadcasting funding model that will properly deal with long term funding of the SABC. In addition, there are fundamental market structure problems that must be addressed by policy-makers and regulators to ensure that public broadcasting is preserved and protected in the public interest.

### **5.2 Strategic vision**

Parliament must ensure that the SABC has sufficient public funding to pursue its public service mandate in respect of public-interest programming so that editorial independence is safeguarded.

Policy and legislation on SABC's funding must ensure the long-term independence, sustainability and effectiveness of public broadcasting.

While an economic modelling exercise is required to ascertain the actual funding requirements of the SABC in terms of fulfilling its public mandate in the digital multichannel environment, SOS is of the view that part of the SABC's repeated funding crises relates directly to the uncompetitive nature of the television landscape. Consequently, SOS supports the following key funding and market regulation principles:

- A mixed funding model for the SABC including advertising, sponsorships, licence fees (which ought to be renamed Public Broadcasting Fees), access to a Local Content Fund and Parliamentary appropriations.
- A Local Content Fund must be established and financed from a range of sources to ensure the production of good quality local public service content across a range of platforms: commercial, public and community.
- The SABC must be required by Parliament to make transparent its accounting, including reporting on the percentage of spending on administration, as well as on programming in terms of genre, language and regional coverage.
- 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).
- Pro-competition and pro-public broadcasting mechanisms need to be specifically introduced with regard to DStv. This is because DStv has a dominant position, not just in the subscription television market, but in the entire television sector. This negatively affects the viability of all other television operators, whether public or commercial. Therefore, policy, law and regulation must ensure that DStv:
  - Pays commercial rates for the SABC channels it carries as part of its “must carry” obligations;
  - Carries the SABC channels such that they appear as channels 1, 2, 3 on the EPG;
  - Collects the public broadcasting fee from each of its subscribers and pays this over (monthly or annually as the case may be) to the SABC;
  - Has a sliding scale of allowable advertising revenue to protect the viability of FTA television broadcasters without a subscriber revenue stream;
  - Treat its decoder platform as an essential facility, and make it interoperable, and available to other subscription broadcasters at a reasonable, cost-based access fee in order to facilitate competition.
  - Is subject to regularly reviewed policy and regulation on access to sports rights of national interest that takes into account international best practice, and deals with access to events of national significance;
  - Is not able to, without certain limitations, enter into exclusive long-term rights agreements over premium content.

SOS will seek to ensure the development of these policy and legal proposals to ensure a pro-competitive and pro-public broadcasting environment and to protect the long-term financial sustainability of the SABC.

## **6. Legal structure of the SABC**

The roles and responsibilities of the SABC's oversight and governance structures must be clarified to ensure that<sup>1</sup>:

- The responsible Ministry confines itself to its policy-making role;
- Parliament plays its legislative and oversight roles in terms of the SABC's corporate plans, finances and accountability;

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<sup>1</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.

- ICASA is strengthened and resourced to play its monitoring, oversight and regulatory role as regards public interest programming;
- The SABC Board is strengthened to play its strategic governance role, including through the employment of executive staff;
- SABC management is empowered to manage the institution without political and other interference.

## 6.1 Problems with the present structure

The Role of the Minister as Shareholder:

- a. 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.
- b. The Broadcasting Act emphasises that the state is the sole shareholder of the SABC – but unfortunately does not stipulate that this role is exercised on behalf of the public.
- c. The Broadcasting Act provides that the Minister is responsible for determining the SABC’s Memorandum and Articles of Association (now Memorandum of Incorporation). The Broadcasting Act is silent on a Shareholders’ Compact.
  - i. Currently the Minister of Communications determines and amends the Memorandum of Incorporation without public involvement or approval by a body such as Parliament.
  - ii. Further, the Minister signs an annual Shareholder’s Compact with the SABC. This, too, is not subject to a public process and, in any event, is not required by the Broadcasting Act.

These documents (the Memorandum of Incorporation and the Shareholders’ 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 as has been held in the case of *SOS Support Public Broadcasting Coalition and Others v the SABC and Others* (81056/14) [2017] ZAGPJHC 289 (17 October 2017) in which the Judge held that “the executive members of the Board are to be appointed solely by the non-executive members of the Board and without any requirement of approval by the Minister”<sup>2</sup>.

The option to de-corporatise the SABC has been discussed in some detail by SOS. The problems with the SABC’s existing corporate structure, particularly in regard to the role of the Minister, 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 IV Report<sup>3</sup>. This would be a significant benefit.

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 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 Act requires that the SABC must consist of two separate operational divisions, namely, the “public service division” and the “public-commercial service division”<sup>4</sup>. This division is aimed at ensuring financial viability, with the public-commercial wing cross-subsidising the public wing. However, the public service channel (SABC 1) generates more

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<sup>2</sup> At paragraph 3 of the Order.

<sup>3</sup> The King IV Report for Corporate Governance™ for South Africa, 2016 ("King IV") was launched on 1 November 2016.

<sup>4</sup> Section 9(1).

money than the public-commercial channel (SABC 3). The influence of advertising on all SABC channels, therefore, remains significant. Moreover, the divisional separation has never been implemented.

Overall, it appears there is insufficient protection of the SABC's independence from either commercial or 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:

- a. Whatever the overall structure of the SABC is to be, the segmentation into "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. Yes
- b. The SABC is not a corporate entity like any other commercial or state-owned company. It plays a critical role in the life of the nation.
- c. The SABC should continue to exist as a public company - provided the other changes suggested here are implemented.
- d. The Broadcasting Act should stipulate that while the state is the sole Shareholder, it represents the interest of the entire public in that role.
- e. The Memorandum of Incorporation of the SABC must be freely available to the public, including electronically on the SABC's website.
- f. The SABC Annual Report ought to contain a specific breakdown of the amount of money spent on its public mandate, particularly on local content and independently-commissioned programming.

## **6.2 Option for a new structure: the SABC as Chapter 9 institution**

South Africa is a country with development 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 that 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 develop such a culture.

It is clear that 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 as an institution that strengthens constitutional democracy. Chapter 9 of the Constitution provides for a number of state institutions to support constitutional democracy, including the Public Protector and the South African Human Rights Commission (SAHRC). These institutions are directly answerable to Parliament, and the Constitution specifically protects the appointment and removal 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 institutional ineffectiveness. 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 from its public and public-commercial "split" could be addressed through amendments to its governing legislation, the Broadcasting Act.

The SOS Coalition is aware that turning 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:

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

SOS's proposed amendments to Chapter 9 (which include proposed amendments to strengthen ICASA's independence) are set out in Appendix A.

## **7. Oversight and governance of the SABC**

### **7.1 Oversight structures to ensure accountability of the SABC**

#### **7.1.1 Public**

While the public is not a "structure" per se, the SABC, as the public's broadcaster, needs to be accountable to the public in the first instance.

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, make nominations to the SABC Board, and 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, in addition to existing opportunities, the appointment of a Public Editor/, which incumbent would be:

- a. An experienced journalist who has held a senior editorial position for at least five years in the print or broadcast media;
- b. Appointed by the Board;
- c. Accountable to the Board;
- d. Consulted on all editorial-related complaints involving the SABC that are laid with the Broadcasting Complaints Commission of South Africa (BCCSA).

Further, the Office of the Public Editor would be required to:

- a. Adjudicate complaints regarding editorial content or conduct of the SABC that are laid with the SABC directly;
- b. Be consulted by the Editor-in-Chief of the SABC on a regular basis regarding the SABC's editorial policy and direction;
- c. 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;
- d. Promote dialogue between the public broadcaster and its audience(s), including through:
  - i. Consulting SABC audiences through the SABC's various channels and platforms (including digital);
  - ii. Publication of on-line opinions;
  - iii. Focus groups.
- e. Submit an annual report to the Board, as well as to the audience participation forums, which report is to be included in the Annual Report of the SABC.

#### **7.1.2 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', attached as Appendix B.

Parliament must focus on passing comprehensive, good practice broadcasting legislation in the public interest.

The capacity of members of Parliament 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.

SOS's 'Proposed process to appoint the SABC Board' should be incorporated into SABC-specific legislation to improve current appointment processes and ensure that the role of Parliament in the appointment of the Board is consultative, transparent, and based on political consensus.

### ***7.1.3 ICASA: the Regulator***

All broadcasting regulatory matters fall within the jurisdiction of ICASA, an organisation with an ambiguous constitutional position. An independent regulator is provided for in Chapter 9 of the Constitution, which 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. This creates uncertainty as to its status.

The primary role of ICASA with respect to the SABC is proactively to regulate and to monitor the public broadcaster, and, at least annually, to ensure compliance with its Charter, its licence conditions, and all relevant legislation and regulations. Beyond this, ICASA must continue to regulate the converged electronic communications sector, and the constitutional mandate set in section 192 ought to be broadened beyond broadcasting.

SOS believes there are a number of problems that require attention in order for the regulator to fulfil its obligations. SOS believes that one of the primary problems is lack of appropriate human capacity and shortage of sufficiently skilled resources, particularly around policy development, monitoring and enforcement at ICASA.

Funding to the Regulator must be increased in order for it to monitor and regulate effectively, and to safeguard its independence.

The Regulator should retain its licence and administrative fees.

The independent research capacity of the Regulator must be significantly strengthened so as to allow it to engage meaningfully in micro-policy development.

The Regulator should be re-constituted as a fully-fledged Chapter 9 institution regulating all aspects of communications. 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.

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 SABC Board (cf Appendix A 'SOS's proposed amendments to Chapter 9').

### **7.1.4 Ministers and Departments of Communications (DOC) and Telecommunications & Postal Services (DTPS)**

After extensive debate on this issue, the SOS Coalition reiterates its belief that there needs to be a single Ministry and Department of Communications. This single Minister (spell) and Department should be responsible for drafting all high-level (national) policy and legislation to ensure the integrity and sustainability of the broadcasting sector within a converged ICT ecosystem. The policy must include all three tiers of broadcasters, and be in the public interest. In other words, the DOC and the DTPS should be re-integrated into a single Communications Department. A re-integrated DoC, along with Parliament and the SABC, should facilitate public participation processes such as the review of the SABC Charter, given their resources and governmental mandates.

Current government involvement in the broadcasting sector at management and operational levels must be changed to enable ICASA and the SABC to operate with the requisite independence.

Owing to existing capacity constraints, the DoC, along with Parliament, should facilitate public participation processes in policy development, reviews of the SABC Charter and the like.

Neither the Minister of Communications nor any regional or local government political appointment (MEC or councillor) or official should be involved in the operations and running of any community broadcaster.

The Minister of Communications should be the Shareholder representative in respect of the SABC but, on the express understanding that this role is exercised on behalf of the public and not of the government of the day.

## **7.2 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, SOS 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 that 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:

- a. Appropriate remuneration for SABC-related Board work and duties above mere attendance at Board meetings;
- b. Appropriate staff assistance to Board members, including secretarial, research and advisory services.

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

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

### **7.2.1 The SABC Board**

The Board must:

- a. 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;

- b. Be responsible for the strategic direction of the public broadcaster and hold executive management to account in this regard;
- c. Report annually to Parliament on its corporate strategies and plans and financial situation.
- d. 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;
- e. Appoint executive management without external influence or input;
- f. 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.

### **7.2.2 SABC executive management**

Executive management must:

- a. Report to the Board;
- b. Take responsibility for day-to-day management issues.

## **8. SABC Charter**

SOS reiterates the need for a new SABC Charter – one that commits the broadcaster to the provision of cutting-edge, citizen-orientated television and radio programming, and other public service media content. Such a charter must be developed through a consultative process between Parliament and the public. It should be reviewed and updated regularly.

The SOS Coalition is of the view that the current mandate of the public broadcaster is scattered throughout the 1999 Broadcasting Act, for example, in 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:

- a. Promoting the values and goals of the Constitution;
- b. Providing the public with programming of the highest quality;
- c. Contributing to the development of the country's cultures, 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 and publicly debated, and a consensus version drafted into law.

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). The Charter must be included in a new SABC Act that SOS hopes will ultimately replace the present Broadcasting Act.

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

For the full text of SOS's proposed SABC Charter see 'Appendix C Proposed Charter for the SABC'.

## **9. SABC editorial policies and Editor-in-Chief**

The SOS Coalition notes the problems with the 2013 to 2016 editorial policy review, and the subsequent withdrawal of the 2016 editorial policies. The Coalition notes that the original 2004 policies thus continue to be the policies in force. The Coalition notes the commencement of the new 2017 editorial policy review process.

SOS believes that the original 2004 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 and online environment. In principle, the SABC's editorial policies ought to be reviewed on an on-going basis immediately following the proposed seven-year review of the Charter.

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

- a. The SABC's watchdog role in terms of holding those in power in every sector of society to account;
- b. 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;
- c. The implications of the new multi-channel, multi-platform digital environment.

A further issue the SOS Coalition is concerned about is the issue of Editor-in-Chief. As a matter of principle, SOS believes in separating editorial from financial and organisational responsibilities.

SOS recognises that the SABC's editorial matters go beyond news and current affairs. Consequently, SOS recommends that an Editor-in-Chief position be created, to which the heads of SABC TV, SABC Radio and SABC Online report, and which, in turn, reports to, but is not instructed by, the COO, such that editorial decision-making rests with the Editor-in-Chief. All content departments across all platforms ought to report to the Editor-in-Chief on editorial matters. However, SOS is committed to the principle that journalistic decision-making ought to rest with the SABC journalists with regard to news and current affairs, and with commissioning editors with regard to other types of content. good

## **10. SABC adherence to local content quotas and licence conditions**

SOS reiterates its vision that 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 and fair criteria.

Owing to a number of factors, including the absence of an effective monitoring system, ICASA has failed to monitor the SABC's adherence to its licence conditions and to applicable South African television content quotas contained in the regulations.

This has led to a situation where the SABC has been allowed to air far too many repeats and to carry too great a proportion of international programming. SOS notes that for a brief period in 2016/17 the SABC hastily implemented 90% local music and 80% local television quotas. However, these policies were implemented without proper research or planning, and the SABC was forced to withdraw them due to audience switch-off and to advertiser unhappiness at the resultant revenue losses.

ICASA's 2016 local content regulations need to be implemented, particularly in respect of television. Further, ICASA's monitoring and evaluation systems need to be strengthened to grow ICASA's ability to ensure compliance.

## **11. SABC programming in the digital environment**

There needs to be a fundamental shift away from the traditional public service broadcasting (PSB) platform approach to an integrated public service media (PSM) environment, in which public services and public-interest content are made widely available across an integrated multi-platform media space.

The SABC needs to ensure that all its programming is made available for free across its many radio stations, television channels and on-line platforms. It needs to have a coherent content strategy across these platforms. In particular, where a radio station broadcasts in a particular language, its online presence needs to reflect that language.

SOS believes that the SABC needs to create an on-demand portal such as MultiChoice's Showmax or the BBC's iPlayer.

The person responsible for SABC's online media needs to report to the Editor-in-Chief.

## **12. Protection of journalists**

Journalists in the SABC have been subject to serious intimidation and death threats.

Suna Venter, an SABC journalist, lost her life in June 2017 to cardiomyopathy, a stress-induced condition brought on by the severity of the intimidation against the so-called SABC 8 and directed at herself, in particular.

Journalists must be protected from political, commercial and other interests, so that they can play their key information-gathering and dissemination roles in the interests of citizens and audiences.

The SABC's own editorial policies must provide for the protection of its journalists. These policies need to be overseen and implemented by the Editor-in-Chief. Further, journalists should be encouraged to create their own editorial forum to ensure further collegial support.

## **13. SABC accountability to audiences**

SABC audiences have complained that they do not have sufficient say in programming produced and programming line-ups. Mechanisms need to be investigated to ensure greater audience input into programming.

The SOS Coalition proposes that a Public Editor position be created, which will take responsibility for ongoing consultations with audiences (see section 7.1.1 above). The Public Editor will initiate regular consultations on different programming genres, including news, current affairs, education, drama and children's programming. These consultations will be conducted through the SABC's various channels and platforms, and via social media campaigns and focus groups. The purpose of such consultations will be to solicit audience opinions on programming and ways to improve this.

## **14. Framework for regulation**

### **14.1 International principles of regulating broadcasting<sup>5</sup>**

The importance of broadcasting is captured in a number of African and international instruments including, but not limited to, the African Charter on Broadcasting, the African Principles of Freedom of Expression Declaration, the Dakar Declaration, and the Access to the Airwaves Principles (see Appendix D: 'Key International Instruments' for elaboration).

The eight key principles of democratic broadcasting regulation are:

- a. National frameworks for the regulation of broadcasting set down in law;
- b. Independent regulation of broadcasting;
- c. A pluralistic broadcasting environment, with a three-tier system for broadcasting: public, commercial and community;
- d. Public as opposed to state broadcasting services;
- e. Availability and nature of community broadcasting services;
- f. Equitable, fair and transparent processes for licensing;
- g. Universal access to broadcasting services and equitable access to broadcasting signal distribution and other infrastructure;
- h. Regulating broadcasting content in the public interest.

SOS supports these, and many are incorporated below.

### **14.2 National frameworks**

National frameworks for the regulation of broadcasting must be set down in law and provide for independent regulation of broadcasting.

The South African Constitution at s192 requires broadcasting to be regulated by an independent authority in the public interest.

Currently broadcasting in South Africa is regulated in terms of three main pieces of legislation: the ICASA Act (2000), the Broadcasting Act (1999), and the Electronic Communications Act (2005).

The Constitution was drafted in the mid-1990s, well before the era of convergence. Technological convergence has been a reality for two decades already as is evidenced by the ICASA Act that created a single converged regulator, and the repeal of the Independent Broadcasting Authority and Telecommunications Acts, and their replacement with the Electronic Communications Act.

In 2012 the then DOC embarked on an ICT Policy Review Process for the entire electronic communications sector, including broadcasting. However, this was effectively stalled by the 2014 Presidential Cabinet Reshuffle that split the DoC into the DOC and the DTPS. The DTPS proceeded to finalise its White Paper on ICT Policy without dealing with broadcasting or audio-visual content services. The DOC began to develop a stand-alone broadcasting/audio and audio-visual content services White Paper. The announcement that the Ministries and Departments are to be re-converged in 2019 means that this process will need to be re-defined.

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<sup>5</sup> This section draws on Limpitlaw, J (2012) *Media Law Handbook for Southern Africa*, Konrad Adenauer Stiftung.

The ICT world is characterised by the technological reality of convergence – the provision of content over a range of platforms spanning the traditionally separate sectors of telecommunications, broadcasting and computing.

The 2014 separation of the former DoC into the DOC and DTSPS has been disastrous. The proposed creation of different regulators to regulate what is a converged sector is a non-starter.

The convergence egg cannot be unscrambled. Nowhere in the world has convergence been reversed or such reversal even attempted. What the ICT sector needs is a single Ministry and Department, and a single converged, independent regulator with the full protection of s192 of the Constitution.

The legal frameworks that currently exist need to be amended to provide as follows:

- a. Chapter 9 of the Constitution must be amended such that it provides for the establishment of an independent authority to regulate electronic communications, including but not limited to broadcasting. Our proposals in this regard are set out in Appendix A.
- b. To provide for a converged ICT/broadcasting/OTT environment characterised by a range of audio and audio-visual content services provided over a range of platforms. This will require significant changes to all existing legislation (i.e. ICASA Act, Broadcasting Act and Electronic Communications Act). In this regard:
  - i. The ICASA Act must be amended to reflect the constitutionally-mandated independence of the converged regulator and its role in regulating broadcasting and broadcasting-like services and content over a range of platforms.
  - ii. The Broadcasting Act must be amended to become a stand-alone SABC Act to provide for a public broadcaster that meets international best practice standards for public broadcasting in line with other proposals set out in this document.
  - iii. The Electronic Communications Act must be amended to become a properly converged piece of legislation that does away with the silo treatment of broadcasting. This will require regulating for broadcasting as well as audio and audio-visual services (such as OTT and other broadcasting-like services) and content provided over a range of electronic platforms.

SOS is of the view that the work done by then DTSPS in Chapter 5 of the National Integrated ICT Policy Review Report (2015)<sup>6</sup> provided an excellent roadmap for regulating for audio and audio-visual content services into the digital age. SOS strongly supported much of what was put forward at that time, and is of the view that the roadmap is still relevant for South Africa's digital future, and ought to be revisited.

The following are requirements for an effective converged regulator in addition to the required legislative amendments set out above:

- a. ICASA's capacity, including financing, systems and methodologies, must be boosted to allow it effectively and independently to monitor compliance with licence conditions, regulations and the SABC Charter.
- b. ICASA's local content regulations must be reviewed to ensure that sustainable maximum local content quotas are set in terms of international good practice across audio and audio-visual content services.
- c. Transparency and accountability must be ensured, particularly through public participation, in processes such as licensing, complaints, and micro-policy processes developed by ICASA.

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<sup>6</sup> The Review Report is available at:

[https://www.dtps.gov.za/index.php?option=com\\_phocadownload&view=category&id=102:ict-policy-review-reports-2015&Itemid=328](https://www.dtps.gov.za/index.php?option=com_phocadownload&view=category&id=102:ict-policy-review-reports-2015&Itemid=328). Accessed 23 February 2018.

- d. ICASA must retain full responsibility for radio frequency spectrum planning, allocation and assignment, management and licensing. Further, ICASA must ensure that spectrum is allocated in the most efficient way possible to ensure the maximum number and range of services are available to the people of South Africa.
- e. ICASA must ensure that signal distribution for audio and audio-visual content services guarantees universal access and is made available on a non-discriminatory basis.

### **14.3 Pluralistic and diverse environments with a three-tier system**

SOS is of the view that traditional broadcasting must continue to be made up of three tiers: public, commercial and community; and that these tiers must continue to exist in the audio and audio-visual content services provided on other digital platforms.

SOS is of the view that the SABC is the public broadcaster and needs to provide radio and television services that are independent, and that provide a diversity of high quality, distinctive public-interest programming that supports a democratic mandate as set out in its Charter and to meet the information needs of the people of South Africa.

Commercial broadcasters, whether FTA or subscription, ought to operate in an environment in which they are sustainable, competitive and contribute to viewpoint and ownership diversity as well as to investment, economic growth and job creation in the broadcasting and associated technical and content-development industries.

SOS supports the following principles of community broadcasting endorsed in the African Charter on Broadcasting and the African Principles of Freedom of Expression Declaration:

- a. Article 1 of Part III of the African Charter on Broadcasting provides, in its relevant part: “Community 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”.
- b. 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.

## **15. Reaping the digital dividend**

South Africa is massively behind schedule with its migration to digital broadcasting.

At the same time, terrestrial television – both analogue and digital - is a dying market, facing fundamental inroads from over-the-top (OTT) and streaming services delivering television-like content on the one hand, and from subscription services delivered via satellite on the other. We already face a new television divide, with the consumption of premium television content having shifted to digital satellite platforms, along with the majority of ad spend. Already it is largely the poorer households who are left as consumers of analogue terrestrial television.

In the meantime, the broadcasting digital migration, already massively behind schedule, continues to stagnate, beset by implementation failure and policy vacillation, leaving the digital dividend still a far off dream.

These changed market and technological circumstances mean, in our view, that a full transition to a digital terrestrial television environment as originally envisaged is no longer an option. This has been exacerbated by the confusion caused by two Ministries and two Departments in the electronic communications space.

Accordingly, we believe that a fundamental and urgent review of the entire broadcasting digital migration project is essential, with the following options, inter alia, placed under consideration:

- the shelving in its entirety of the entire digital terrestrial television project, and its replacement with the delivery of all television services and content by means of digital satellite, in combination with optic fibre broadband;
- the restriction of digital terrestrial television services and content to the more cost-effective, affluent urban areas, supplemented by digital satellite television in the more remote and rural areas.

This reappraisal needs to be governed by the following objectives:

- To provide universal affordable access for all to digital television infrastructure, services and content;
- To safeguard access for all to public service television broadcasting and public interest content, including via the imposition of must-carry obligations;
- To deliver a wide choice of high-quality television content, newsworthy, entertaining, informative, educational and culturally enriching;
- To support the poor, the disadvantaged, those on social grants and in remote areas, so that they are able to afford and benefit from the transition to digital platforms, including through the provision of subsidised or free STBs, aerials or satellite dishes;
- To regulate television infrastructure on an open access basis in order to ensure interoperability of devices, and to allow for the optional delivery of encrypted services;
- To manage the digital dividend so as to ensure optimal utilisation of the spectrum thus released, for the benefit of the public as a whole;
- To introduce digital radio (both DAB+ and DRM) to ensure that the diverse language and public audio content needs of all are fully catered for.

The provision of free-to-air public service broadcasting and the satisfaction of public information and communication needs must, however, remain the central priority. All licensees and all platforms must be subject to the necessary regulation to promote public broadcasting, including must-carry obligations.

Universal access and service considerations must remain a key consideration. Set top boxes (STBs) and aerials / satellite dishes must be affordable (and free for those surviving on government grants), interoperable, and provide for encryption. Existing decoders must be regulated as an essential facility, on an open access basis.

Further, SOS supports the inclusion of conditional access facilities, via a common interface (CI) slot, as part of both satellite and terrestrial STB specifications, for the following reasons:

- Protecting premium content from piracy is an imperative for FTA broadcasters, and this cannot be done without conditional access systems;
- Conditional access systems ensure a level of STB uniformity which enables broadcasters to assist audiences through their call centres with technological support and installation queries;
- Conditional access allows for stolen STBs to be blocked, thereby protecting public funding and investment in STBs.

Also, SOS supports the migration of all existing broadcasting services, radio and television, to digital platforms, including OTT, FTTx, DTT, DAB+ and DRM. This will enable all 11 official

languages to be broadcast to all citizens, wherever they are situated in the country. It will allow for a significant increase in content diversity, and spur growth in the production sector.

New community and commercial television operators (FTA 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.

Spare frequency capacity must be made available to all three tiers (public, commercial and community) of broadcasting, and sufficient frequency capacity must be set aside for future use, and not simply made available for broadband entirely.

Digital radio (both DAB+ and DRM) must be introduced to ensure that the diverse language needs of all South Africans are fully catered for.

## **16. Regulating for a digital public service media ecosystem**

The ICT world is characterised by the technological reality of convergence - the provision of content over a range of platforms spanning the traditionally separate sectors of telecommunications, broadcasting and computing.

The opportunities presented by the increasing rollout of high-speed, high-capacity broadband are massive. SOS looks forward to the benefits of a converged and integrated ICT ecosystem. We anticipate a wide range of benefits being realised through widespread access to fast, cheap, reliable, high-quality and high-bandwidth broadband. This will ensure that citizen-enriching news, information, economic opportunity, entertainment, education and more are available on our phones, tablets, computers, television screens and radio dials. SOS looks forward to a wide array of locally-produced apps and locally-created content that prioritises public service broadcasting and the public interest, and which encourages our citizens to reach their and our country's full potential. NICE

Accordingly, the SOS welcomes the proposed reunification of the departments of Communications (DoC) and Telecommunications & Postal Services (DTPS), both placed in the interim under a single Minister.

We trust that the proposed creation of two different regulators to oversee what is a converged will likewise be dropped. What the ICT sector needs is a single Ministry and Department, and a single converged, independent regulator with the full protection of section 192 of the Constitution. We look forward to a return to an integrated approach to policy-making and regulation across the entire sector, as envisaged in the 015 recommendations of the ICT Policy Review Panel.

Broadcasting and broadcasting-like audio and audio-visual content services delivered via OTT services or broadband platforms will continue to require content regulation in order to protect the public interest and to promote the rights in our Constitution including:

- a. Protecting children;
- b. Not being subject to hate speech;
- c. Providing for audience advisories and parental controls;
- d. News that is fair and accurate;
- e. The development of local content;.
- f. A Code of Conduct.

SOS is of the view that content regulation ought to be primarily conducted through self-regulatory bodies and codes, provided these have been approved by ICASA, in accordance with South Africa's co-regulatory system.

SOS is also of the view that there is a plethora of content regulatory bodies and codes which have been set up on an incremental, *ad hoc* basis without due regard for the increasing convergence of technologies and platforms, and the challenges posed by widespread use of social media.

SOS is of the view that the current regime, where regulation and co-regulation are technology-specific, will prove unworkable in the era of convergence. Consequently, SOS is of the view that statutory bodies (such as ICASA and the Film and Publications Board [FPB]), together with self-regulatory bodies (such as BCCSA and the Press Council), as well as bodies such as the Internet Service Providers Association (ISPA) and the Wireless Applications Service Providers Association (WASPA), need to come together to develop a co-regulatory scheme for audio and audio-visual content services across all platforms, including: print, cinema, broadcasting, Internet and broadband, OTT and streaming services.

## Appendix A: SOS's proposed amendments to Chapter 9

### SOS'S PROPOSED AMENDMENTS TO CHAPTER 9 OF THE CONSTITUTION TO PROVIDE FOR AN INDEPENDENT CONVERGED REGULATOR TO REGULATE ELECTRONIC COMMUNICATIONS AND TO CONVERT THE SABC INTO A CHAPTER 9 INSTITUTION

#### 1.1. Introduction:

For the reader's ease of reference, we set out below the proposed amendments to, or insertions in respect of, sections: 181(1), 192, 192A, 193 and 194 of the Constitution, all of which are contained within Chapter 9 of the Constitution, in the manner of a Bill, that is:

Words in **bold type** in square brackets [ ] indicate omissions from existing provisions

Words underlined with a solid line indicate insertions in existing enactments

#### 1.2. SOS's Proposed Amendments to Section 181(1) of the Constitution:

*"Establishment and Governing Principles*

##### **181.** Establishment and governing principles

(1) The following state institutions strengthen constitutional democracy in the Republic:

(a) The Public Protector.

(b) The South African Human Rights Commission.

(c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

(d) The Commission for Gender Equality.

(e) The Auditor-General.

(f) The Electoral Commission.

(g) The Independent Authority to Regulate Communications.

(h) The Public Broadcaster."

#### 1.3. SOS's Proposed Amendments to Section 192 of the Constitution:

*"Independent Authority to Regulate [Broadcasting] Communications*

##### **192.** [Broadcasting] Communications Authority

National legislation must establish an independent authority to regulate [broadcasting] communications in the public interest, and in particular:

- (1) to ensure fairness and a diversity of views broadly representing South African society with regard to broadcasting services; and

(2) to promote convergence and the efficient use of communications infrastructure and services.”

1.4. SOS's Proposed Insertion of Section 192A of the Constitution:

*“Public Broadcaster*

192A. Public Broadcaster

National legislation must establish an independent national public broadcaster to provide broadcasting services in the public interest and in accordance with its national public broadcasting mandate set out in such legislation.”

1.5. SOS's Proposed Amendments to Section 193 of the Constitution:

*“Appointments*

**193. Appointments**

(1) The Public Protector, **[and]** the members of any Commission and of the Communications Authority and the Non-Executive Board members of the Public Broadcaster established by this Chapter must be women and men who

- (a) are South African citizens;
- (b) are fit and proper persons to hold the particular office; and
- (c) comply with any other requirements prescribed by national legislation.

(2) The need for a Commission and the Communications Authority and the Public Broadcaster established by this Chapter to reflect broadly the race and gender composition of South Africa must be considered when members are appointed.

(3) The Auditor-General must be a woman or a man who is a South African citizen and a fit and proper person to hold that office. Specialised knowledge of, or experience in, auditing, state finances and public administration must be given due regard in appointing the Auditor-General.

(4) The President, on the recommendation of the National Assembly, must appoint

(a) the Public Protector, the Auditor-General and the members of

(i) the South African Human Rights Commission;

(ii) the Commission for Gender Equality; **[and]**

(iii) the Electoral Commission[.]; and

(iv) the Communications Authority; and

(b) the Non-Executive members of the Board of the Public Broadcaster.

- (5) The National Assembly must recommend persons
  - (a) nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and
  - (b) approved by the Assembly by a resolution adopted with a supporting vote
    - (i) of at least 60 per cent of the members of the Assembly, if the recommendation concerns the appointment of the Public Protector or the Auditor- General; or
    - (ii) of a majority of the members of the Assembly, if the recommendation concerns the appointment of a member of a Commission or of the Communications Authority or of a Non-Executive Board member of the Public Broadcaster.
  
- (6) The involvement of civil society in the recommendation process may be provided for as envisaged in section 59(1)(a).” YES

1.6. SOS’s Proposed Amendments to Section 194 of the Constitution:

*“Removal from office*

**194.** Removal from office

- (1) The Public Protector, the Auditor-General, **[or]** a member of a Commission or of the Communications Authority, or a Non-Executive Board member of the Public Broadcaster established by this Chapter may be removed from office only on
  - (a) the ground of misconduct, incapacity or incompetence;
  - (b) a finding to that effect by a committee of the National Assembly; and
  - (c) the adoption by the Assembly of a resolution calling for that person’s removal from office.
  
- (2) A resolution of the National Assembly concerning the removal from office of
  - (a) the Public Protector or the Auditor-General must be adopted with a supporting vote of at least two thirds of the members of the Assembly; or
  - (b) a member of a Commission or of the Communications Authority, or a Non-Executive Board member of the Public Broadcaster must be adopted with a supporting vote of a majority of the members of the Assembly.
  
- (3) The President
  - (a) may suspend a person from office at any time after the start of the proceedings of a committee of the National Assembly for the removal of that person; and
  - (b) must remove a person from office upon adoption by the Assembly of the resolution calling for that person’s removal.”

## **Appendix B: 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 TO generally apply to the appointment of ICASA Councillors 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:

- a. Publish prominent advertisements in a number of high circulation national and regional newspapers, run a series of public service announcements across all SABC channels, and use its online presence to call for nominations for potential board members.
- b. Give sufficient time for the nomination process.

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

- a. Publish the names of all nominees and those nominating them; including electronically on the Internet.
- b. 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.
- c. 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, television stations and online platforms.
- d. 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. GREAT
- e. Publish the short-list of candidates for public comment before the Parliamentary Portfolio Committee on Communications makes recommendations to the National Assembly.<sup>7</sup>

### **Criteria for appointment**

Besides improving the actual appointments' process (set out above), the criteria for appointment to the Board must be strengthened. The criteria ought to be 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 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, television, film, radio or other media industry expertise, journalism, the business of content production and the application of new technologies.

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<sup>7</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*.

- 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.

SOS further thinks 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.

### **Disqualification criteria**

Another important issue regarding appointments is the issue of disqualification criteria. SOS thinks the current provisions in the Broadcasting Act do not sufficiently protect the public from conflicts of interest that have arisen in relation to the previous two boards. Consequently, SOS thinks these should be bolstered to protect against political and/or commercial conflicts of interest too.

A person may not be appointed as a Board member if s/he:

- 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 director.
- d. Is employed as a member of a public body that 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 Act 12 of 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.
- 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 she or he 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 that may cause such conflict of interest to arise on her or his part:

- a. Such Board member must forthwith fully disclose the nature of her or his 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
- b. 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 she or he 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**

SOS does not support the Broadcasting Act Amendments of 2009 that provided for the removal of the entire Board. Consequently, SOS is of the view that section 15A of the Broadcasting Act needs to be substantially amended to remove any mention of removing the SABC Board as a whole and replacing it with an interim Board.

Consequently, SOS is of the view that only the appointment and removal provisions in regard to individual Board members should remain part of the Broadcasting Act.

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

## Appendix C: Proposed Charter for the SABC

The SOS Coalition proposes that a Charter such as the following be adopted subsequent 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:

- a. Contribute to building democracy.
- b. Promote respect for freedom of expression.
- c. Offer a forum for democratic debate.
- d. Reflect a range of opinions and of social, political, philosophical, religious, scientific and artistic trends.
- e. Reflect regional diversity.
- f. Give a voice to the poor and marginalised.
- g. 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 and sexual orientation.
- h. Safeguard, enrich and strengthen the cultural, political, social and economic fabric of the country.
- i. Reflect both the unity and diverse cultural, political, social and economic fabric of the country.
- j. Develop a strong and committed public broadcasting service that will service the needs of society.
- k. 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:

- a. Set industry standards for innovation, excellence, and creativity.
- b. Provide, in its public broadcasting services, radio and television programming that informs, educates and entertains.
- c. Provide a plurality of news and public affairs programming that:
  - i. Meets the highest standards of journalism.
  - ii. Provides fair, unbiased and explanatory analysis that is independent of those wielding public power.
  - iii. Covers events in the country, Africa and the world.
  - iv. Gives voice to the disempowered and the marginalised.
- d. 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.
- e. 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.
- f. Include significant amounts of educational programming that contributes to a shared consciousness and identity. It must be both curriculum-based and informal. Topics from a wide range of social, political and economic issues must include, but not be limited to, human rights, health, early childhood development, agriculture, culture, justice and commerce.
- g. Include national sports' programming.
- h. Ensure programming is drawn from local, regional, national, continental and international sources.
- i. Ensure that public broadcasting services comply with the code of conduct for broadcasting.

- j. Be responsive to audience needs and account to the public on how to meet these needs.

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

- a. Encourage the development of original local programming content.
- b. Enrich the cultural heritage of the country by providing support for traditional and contemporary artistic expression.
- c. Ensure that public broadcasting services provide a range of high-quality programming in all of the country's official languages to all citizens.
- d. Encourage the development of local content production throughout the country, particularly in marginalised regions.
- e. Nurture the country's talent and carry out research and development for the benefit of audiences.

## Appendix D: Key international instruments

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

The selected instruments, charters, protocols and declarations are listed below in the order in which they were adopted:

- **The Windhoek Declaration:**<sup>8</sup> The Windhoek Declaration on Promoting an Independent and Pluralistic Press was adopted in 1991 by participants at an UN-UNESCO seminar on promoting an independent and pluralistic African press, and was thereafter endorsed by UNESCO's General Conference. The Windhoek Declaration is an important international statement of principle on press freedom and the date of its adoption, 3 May, is now the annual World Press Freedom Day.
- **The Johannesburg Principles:**<sup>9</sup> The Johannesburg Principles on National Security, Freedom of Expression and Access to Information were adopted in October 1995 by a panel of experts in international law, national security and human rights. The panel was convened by Article 19, the International Centre Against Censorship and the University of the Witwatersrand's Centre for Applied Legal Studies. The Johannesburg Principles have been endorsed by the UN Committee on Human Rights and the UN Special Rapporteur on Freedom of Opinion and Expression.
- **The SADC Protocol:**<sup>10</sup> The Southern African Development Community Protocol on Culture, Information and Sport was adopted in 2000.
- **The African Charter on Broadcasting:**<sup>11</sup> The African Charter on Broadcasting was adopted by participants at a 2001 UNESCO conference to mark the 10th anniversary of the Windhoek Declaration. While the Windhoek Declaration focuses mainly on print media, the African Charter on Broadcasting focuses on broadcast media.
- **The African Principles of Freedom of Expression Declaration:**<sup>12</sup> The Declaration of Principles on Freedom of Expression in Africa was adopted in 2002 by the African Commission on Human and Peoples' Rights, a body established under the auspices of the AU.
- **The Access to the Airwaves Principles:**<sup>13</sup> 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 in 2002 by Article 19, the International Centre Against Censorship, as part of its International Standards series.

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<sup>8</sup> [http://www.unesco.org/webworld/peace\\_library/UNESCO/HRIGHTS/327-331.HTM](http://www.unesco.org/webworld/peace_library/UNESCO/HRIGHTS/327-331.HTM) [accessed 29 February 2012].

<sup>9</sup> <http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf> [accessed 29 February 2012].

<sup>10</sup> [http://www.unctadxi.org/sections/DITC/SADC/docs/SADC%20Regional/SADCProtocolon Culture.pdf](http://www.unctadxi.org/sections/DITC/SADC/docs/SADC%20Regional/SADCProtocolon%20Culture.pdf) [accessed 29 February 2012].

<sup>11</sup> [http://portal.unesco.org/ci/en/files/5628/10343523830african\\_charter.pdf/african%2Bcharter.pdf](http://portal.unesco.org/ci/en/files/5628/10343523830african_charter.pdf/african%2Bcharter.pdf) [accessed 29 February 2012].

<sup>12</sup> <http://www.afrimap.org/english/images/treaty/africa-declaration-of-principles-on-foe.pdf> [accessed 29 February 2012].

<sup>13</sup> <http://www.article19.org/data/files/pdfs/standards/accessairwaves.pdf> [accessed 29 February 2012].

- **The WSIS Geneva Principles:**<sup>14</sup> The WSIS Geneva Principles were adopted in Geneva in 2003 at the World Summit on the Information Society (WSIS), held by the UN in conjunction with the International Telecommunications Union. While the WSIS Geneva Principles cover mainly issues concerning universal access to information and communication technologies (ICTs), they also contain some important statements on the media more generally.
- **The Dakar Declaration:**<sup>15</sup> The Dakar Declaration was adopted in Senegal in 2005 by a UNESCO-sponsored World Press Freedom Day Conference.
- **The African Democracy Charter:**<sup>16</sup> The African Charter on Democracy, Elections and Governance was adopted by the AU in 2007. It came into [force](#) on 15 February 2012. Nevertheless, the African Democracy Charter contains a number of important statements on the media, even if these are only aspirational.
- **The Declaration of Table Mountain:**<sup>17</sup> The Declaration of Table Mountain was adopted in 2007 by the World Association of Newspapers and the World Editors Forum. It contains a number of important statements on African media issues made by a civil society forum of newspaper publishers and editors.
- **UNESCO's Media Development Indicators:**<sup>18</sup> UNESCO's International Programme for the Development of Communications in 2008 published a document entitled 'Media Development Indicators: A Framework for Assessing Media Development'.
- **African Declaration on Internet Rights and Freedoms**<sup>19</sup>: A civil society declaration of principles and their application, designed to protect human rights and freedoms on the Internet in the current digital age, and across the African continent.

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<sup>14</sup> <http://www.itu.int/wsis/docs/geneva/official/dop.html> [accessed 29 February 2012].

<sup>15</sup> <http://www.unesco.org/new/en/communication-and-information/flagship-project-activities/world-press-freedom-day/previous-celebrations/worldpressfreedomday200900000/dakar-declaration/> [accessed 29 February 2012].

<sup>16</sup> <http://www.un.org/democracfund/Docs/AfricanCharterDemocracy.pdf> [accessed 29 February 2012].

<sup>17</sup> <http://www.wan-ifra.org/articles/2011/02/16/the-declaration-of-table-mountain> [accessed 29 February 2012].

<sup>18</sup> <http://unesdoc.unesco.org/images/0016/001631/163102e.pdf> [accessed February 2012].

<sup>19</sup> <http://africaninternetrights.org/wp-content/uploads/2015/11/African-Declaration-English-FINAL.pdf>.