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Vision for the SABC and Public Service Media in South Africa

Purpose

The purpose of this document is to articulate the vision of the SOS Support Public Broadcasting Coalition (SOS) for audio and audio-visual content and services and, in particular, the SABC's public broadcasting and online services media, with the specific aim of lobbying government, regulatory authorities, relevant industries 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 dissemination of quality, diverse, citizen-orientated public-interest content across various public services media platforms aligned to the goals of the South African Constitution. The Coalition comprises of: independent film and television production sector organisations, including Independent Producers Organisation (IPO) and the South African Screen Federation (SASFED); community television including Cape Town TV (CTV), a host of non-governmental organisations (NGOs) and community-based organisations (CBOs), including amandla.mobi, Campaign for Free Expression (CFE), the Freedom of Expression Institute (FXI), Institute for the Advancement of Journalism (IAJ), Media Monitoring Africa (MMA), the Right2Know Campaign (R2K); Workers World Media Productions (WWMP), along with a number of academics, lawyers 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 audio and audio-visual content services in the country:

- Public;
- Community; and
- Commercial.

SOS believes that community media should play a public-interest, citizenship role at the local level, with a strong intent to contribute to community development and empowerment by means of improving social and economic conditions and making use of participation communication through working with marginalised societies and giving a voice to the voiceless. The Coalition supports the notion that participation and access are critical to community services but also believes that, equally important is transparency, accountability, financial sustainability and freedom from external influence of any kind.

The Coalition is of the view that commercial audio and audio-visual content and services should be required, through their licence conditions, to play a public interest role (albeit a much more limited one than that played by the SABC and community media) in terms of providing news, and adhering to certain language requirements, local content quotas etc. The SOS Coalition is not specifically focused on commercial services. However, it does recognise that there is a dearth of commercial broadcasters, particularly those with a national footprint.

The Coalition promotes public service content on all three tiers of the South African media environment. This dynamic system exists to facilitate freedom of expression and to serve the public interest by empowering and strengthening societies; politically, socially, culturally and economically through provision of a diverse range of audio-visual content. SOS also believes that, although it is important to look at the promotion of public service content across all three tiers, there is a need for an institution like the SABC, which specifically champions public service content and services.

SOS campaigns for the strengthening of public service content and associated online public service media offerings on the SABC's own platforms as well as through third party services such as YouTube, Facebook, Twitter, electronic messaging and email-based information services. Where possible, SOS develops and advocates for consensus positions on public service media 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 service media provider, (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 public service media 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 and various sub-committees. SOS has one or more funded staff-members, including the National Co-ordinator.

2. FUNDAMENTAL PRINCIPLES IN BRIEF

SOS promotes the following public service media principles that should be reflected in the SABC-related policies, laws, regulations, organisations and practices:

2.1 Content with a public service mandate

Public service media and other public content services 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 free access to public service content on online, radio and television platforms in all official languages.

2.2 Public Service Content

SABC content 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 a specific focus on views historically marginalised by the commercial media. In particular, SABC news must adhere to the highest ethical journalistic standards.

2.3 Funding for public service media

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

2.4 Independence of the SABC

The SABC 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 the SABC

Given the critical role of the SABC 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 status of the SABC's oversight and governance structures have been clarified by the courts: While the Minister remains responsible for national policy, Parliament exercises a legislative and oversight role, holding the SABC accountable through its independent Board for corporate plans and finances and performance.

A new SABC Charter – committing the public media institution to providing cutting-edge, quality public service media 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.

2.7 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 independent watchdog role and caters for all audiences in the evolving digital, multichannel, public service media environment.

2.8 Protection of SABC editorial staff

Editorial staff, including journalists, of the SABC must be protected from political and commercial interests, and from unwarranted editorial interference, including from attack and harassment in person and online, so that they can play their key information gathering and dissemination roles in the public interest.

2.9 Public accountability and participation mechanisms

The SABC must be more accountable to the public through innovative means such as public promises of performance, a Public Editor and Public Stakeholder Committees.

2.10 A three-tier broadcasting landscape

SOS supports the continuation of three tiers of broadcasting services. These tiers should continue to be: public, commercial (characterised by robust competition) and community.

2.11 Independent, converged regulatory oversight

SOS holds that all electronic communications services, signal distribution and frequency spectrum, must be regulated by a constitutionally-mandated single, converged, capacitated, independent body, free of commercial and political interference.

2.12 Migration to digital broadcasting

Digital migration needs to deliver the digital dividend, with benefits for new, audio-visual content and services. But it must take account of technological change and market shifts, and the regulatory principle of technology neutrality. Above all it must protect access by the poor to free-to-air, public service media, as well as universal and free access to online public service content.

2.13 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. Audio and audio-visual policy, regulation and practice has to be aligned accordingly.

3. UNIVERSAL DIGITAL AND ONLINE ACCESS

SOS believes that every person has the right to affordable, accessible and meaningful access to quality public service content, which should be universally available on a variety of digital platforms.

SOS recognises that affordable, universal access to the internet requires affordable, universal access to mobile broadband.

SOS further recognises that affordable, universal access mobile broadband is not possible until after the migration of analogue terrestrial television to digital terrestrial television (DTT).

South Africa is massively behind schedule with its migration to DTT and has yet to meaningfully commence digital sound broadcasting services (DSB).

At the same time, terrestrial broadcasting – both analogue and digital - is a dying market, facing fundamental inroads from over-the-top online and streaming services delivering audio and audio-visual content on the one hand, and from subscription television services delivered via satellite on the other.

South Africa is currently facing a new television divide, with the consumption of premium television content having shifted to digital satellite platforms, along with the majority of ad spend. Consequently, it is now largely poorer households who consume analogue terrestrial television.

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.

The digital environment needs to be governed by the following objectives:

- To provide universal affordable access for all, to digital television infrastructure, services and content – whether DTT or satellite;
- To enable universal access to public service television broadcasting and public interest content, including via the imposition of must-carry obligations;
- To enable universal access to public service audio-visual content, including online;
- To deliver a wide choice of high-quality audio-visual content: newsworthy, entertaining, informative, educational and culturally enriching across all platforms;
- To ensure that the poor, the disadvantaged, those on social grants and in remote areas, are able to afford and benefit from the transition to digital platforms, including through the provision of subsidised or free STBs, radio receiver sets, satellite dishes and universal free or affordable internet access;
- To regulate digital television infrastructure on an open access basis in order to guard against the need for a plethora of devices. This will mean that dominant television broadcasters would have to ensure the interoperability of their STBs, to allow for the optional delivery of free and subscription services;
- To manage the digital dividend resulting from the transition to DTT so as to ensure optimal utilisation of the spectrum thus released, for the benefit of the public as a whole, including providing for universal free or affordable internet access;
- 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;
- To provide universal affordable access for all to digital audio infrastructure, services and content, whether DTT or satellite;
- To enable universal access to public service audio content, including online. This will enable all 11 official languages to be available to all citizens, wherever they are situated in the country; and
- To deliver a wide choice of high-quality audio content, newsworthy, entertaining, informative, educational and culturally enriching across all audio platforms, analogue, digital and online.

The provision of free public service content and the satisfaction of public information and communication needs must remain the central priority.

All licensees and all audio and audio-visual platforms, including online, must be subject to the necessary regulation to promote public service content, including must-carry obligations for satellite television broadcasters.

Universal access to public service content 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. Free or affordable access to television, radio and online services must be universal.

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; and
- Conditional access allows for stolen STBs to be blocked, thereby protecting public funding and investment in STBs.

Moreover, 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 (FTA and subscription) and radio operators must be licensed to ensure that a wide range of television and radio 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.

That said, universal free or affordable internet access is also a national priority.

4. REGULATING FOR A DIGITAL PUBLIC SERVICE MEDIA ECOSYSTEM

The digital 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, and broadcasting, most notably online.

The opportunities presented by the increasing rollout of high-speed, high-capacity broadband are massive. SOS looks forward to the benefits of a converged content ecosystem. We anticipate a wide range of benefits being realised through widespread access to fast, free or affordable, 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 content and the public interest, and which encourages our citizens to reach their and our country's full potential.

Broadcasting and audio and audio-visual content services delivered via the internet 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 subjected to hate speech;
- c) Providing for audience advisories and parental controls;
- d) News that is fair and accurate; and
- e) The development of independently-produced local content, including in all official languages.

SOS is of the view that content regulation ought to be primarily conducted through self-regulatory bodies and a unitary code to replace the plethora codes which have been developed 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 the internet.

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.

5. SABC PUBLIC SERVICE CONTENT

SOS reiterates its vision for SABC public service content offerings, 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 and, in particular, focus on views historically marginalised by the commercial media. The SABC must lead the way in commissioning independent local content. The single largest element of the SABC's budget must be allocated to regionally-diverse locally produced public service content in all South African languages, including sign language. SABC commissioning protocols and terms of trade 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, due to both capacity and resource constraints at the SABC and failure by the regulator to monitor and enforce compliance with its licence conditions and regulations.

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 services.
- d) Parliament's oversight failures of the SABC.
- e) Continued delays in updated audio and audio-visual content services policies, including a new SABC Bill.
- f) Delays in achieving universal access to the internet.
- g) The failure to grow a vibrant independent local content production sector, exacerbated by the regulator's inability to enforce compliance with local content quotas, and broadcasters' commissioning protocols and terms of trade.

SOS believes the SABC's ongoing (often self-imposed) financial crises have negatively impacted public services, including:

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

SOS believes these must be addressed.

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.

6. 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 public interest content. Budgets have steadily decreased over the years. The SABC, in complying with the Public Finance Management Act (PFMA) 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 audio-visual productions.

SOS believes that efficient and transparent commissioning practices (as reflected in the commissioning protocols and terms of trade) 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.

7. SABC FUNDING AND BROADCASTING MARKET STRUCTURE

7.1 Context

The struggle to create an independent and sustainable public service media provider 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 service media 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 service content and media are preserved and protected in the public interest.

7.2 Strategic vision

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

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

While an economic modelling exercise is required to ascertain the optimal 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 uncompetitive business practices and the absence of a policy on the funding model for public service media [or for the SABC]. 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 Information Levy), 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 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 public interest content in terms of genre, language and regional coverage.
- The SABC must spend the majority of its funds on local public interest content (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 service media mechanisms need to be specifically introduced with regard to designated subscription broadcasting services licensees. This is because broadcasting

services licensees that are deemed to exercise significant market power or hold a dominant position, not just in the subscription television market, but in the entire audio-visual sector, create distortions in the market. This negatively affects the viability of all other broadcasting services licensees, whether public or commercial. Therefore, policy, law and regulation must ensure that:

- ICASA completes its competition inquiry into subscription broadcasting services as a matter of urgency;
- Subscription broadcasting services licensees continue to pay commercial rates for the SABC channels it carries as part of its “must carry” obligations;
- Subscription broadcasting services licensees carry the SABC channels such that they are discoverable;
- All licensees collect the Public Information Levy from each of its subscribers and pays this over (monthly or annually as the case may be) to the SABC;
- Subscription licensees have a sliding scale of allowable advertising revenue to protect the viability of FTA television broadcasters without a subscriber revenue stream;
- Designated licensees treat their 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;
- All broadcasting or audio-visual services licensees are subject to regularly reviewed policy and regulation on access to sports rights of national sporting events that takes into account international best practice; and
- All broadcasting or audio-visual services licensees are not able to 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 interest media environment and to protect the long-term financial sustainability of the SABC.

8. LEGAL STRUCTURE OF THE SABC

The roles and responsibilities of the SABC’s oversight and governance structures must be clarified to ensure that¹:

- 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;
- ICASA is strengthened and resourced to play its monitoring, oversight and regulatory role as regards public interest content and media;

¹ 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.

- The SABC Board is strengthened to play its strategic governance role, including through its employment of executive staff; and
- SABC management is empowered to manage the institution without political, board and other interference.

8.1 Problems with the present structure

The Role of the Minister as Shareholder Representative:

- 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 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 in which the court 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”².

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 Report³ and the Companies Act.

² At paragraph 3 of the Order.

³ The King IV Report for Corporate Governance™ for South Africa, 2016 (“King IV”) was launched on 1 November 2016.

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 considered 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”⁴. 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 money than the public-commercial channel (SABC 3). The influence of advertising on all SABC channels, therefore, remains significant. Further, the accounting separation has never been implemented in practice.

8.2 Proposal: the SABC as Chapter 9 institution

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.
- 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.
- d) The Broadcasting Act should stipulate that while the state is the sole shareholder, it represents the interest of the 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.

South Africa is a country with development challenges. These include high levels of poverty, inequality 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 interest and information role and is crucial to the proper functioning of our democracy. A democracy cannot function effectively without an informed citizenry.

When the SABC 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

⁴ Section 9(1).

of the SABC as the public broadcaster. 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 has proved 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, even if it remains a public company, 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 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 service media provider into a genuine means of empowering citizens; and
- b) Wanting a public service media institution 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.

9. OVERSIGHT AND GOVERNANCE OF THE SABC

9.1 Oversight structures to ensure accountability of the SABC

9.1.1 *Public Editor*

While the public is not a "structure" per se, the SABC, as the public service media provider, needs to be accountable to the public in the first instance. This can be realised through various modalities and through public representatives in existing fora like parliament or more direct mechanisms such as consultative committees and editorial forums.

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 communications legislation, make nominations to the SABC Board, and debate the SABC's editorial policies.

Nonetheless, SABC audiences have complained that they do not have a sufficient say in programming and content choices. 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 service media.

The SOS Coalition therefore proposes, in addition to existing opportunities, the appointment of a Public Editor. 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 online 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.

The incumbent would be:

- a) An experienced journalist or media practitioner who has held a senior editorial or executive position for at least five years in digital or broadcast or audio-visual 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) or the Press Council of South Africa.

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

- a) Adjudicate complaints regarding editorial content or conduct of the SABC, in regard to editorial matters, 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 both the ICASA and the BCCSA's Broadcasting Code of Conduct, the Press Code for Print and Online Media and the SABC Charter, and promote the values of high quality content and ethical standards of journalism;
- d) Promote dialogue between the SABC and its audience(s), including through:
 - i. Consulting SABC audiences through the SABC's various channels and platforms;
 - ii. Publication of on-line opinions; and
 - 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.

9.1.2 Parliament

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

It should, through a process of maximum public consultation, participation, 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 public service media and audio-visual content, media and services 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.

9.1.3 ICASA: the Regulator

All electronic communications 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 of the Regulator must be increased in order for it to monitor and regulate effectively, and to safeguard its independence. This should be done as a direct appropriation through parliament and not subject to the whims of the executive.

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, and prevent regulatory capture.

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

9.1.4 *Minister and Department of Communications and Digital Technologies (DCDT)*

Current government involvement in the electronic communications 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 DCDT, along with Parliament, should facilitate public participation processes in policy development, reviews of the SABC Charter and the like.

Neither the Minister 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 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.

9.2 *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, autonomy, independence and strength of the various Board members 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, autonomous, 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; and
- 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.

9.2.1 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 service media provider;
- b) be responsible for the strategic direction of the SABC 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; and
- f) ensure that its operations are open and transparent to the public by making Board minutes (excluding only those matters that are commercially sensitive to the SABC) available to the public, including on the SABC's website.

9.2.2 SABC executive management

Executive management must:

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

10. SABC CHARTER

SOS reiterates the need for a new SABC Charter – one that commits the SABC to the provision of cutting-edge, citizen-orientated public service media. 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 SABC 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 public interest content and media of the highest quality; and
- 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 (see Annexure C).

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'.

11. SABC EDITORIAL POLICIES AND EDITOR-IN-CHIEF

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 media; and
- 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. The SABC Editorial Policies have now adopted the long-standing SOS position and the SABC Editor-in-Chief is the Group Executive, News and Current Affairs.

SOS recognises that the SABC's editorial matters go beyond news and current affairs. Consequently, SOS recommends that 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.

12. 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 local content production. SABC commissioning must be streamlined to develop a set of consistent and fair criteria, transparent commissioning protocols and terms of trade.

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

13. 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 interest of citizens and audiences.

The SABC's own editorial policies must provide for the protection of its journalists. These policies need to continue to specify that they are to be overseen and implemented by the Editor-in-Chief.

14. FRAMEWORK FOR REGULATION

14.1 National Frameworks

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.

The broadcasting environment has revolutionised in the digital era. ICT has sparked profound and drastic changes that have impacted and completely transformed the field of broadcasting. ICT 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 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/online 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 online and other broadcasting-like services) and content provided over a range of electronic platforms.

SOS is of the view that a policy framework that provides a roadmap for South Africa's digital future is mandatory.

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.
- 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.

14.2 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.

In line with the Declaration of Principles on Freedom of Expression and Access to Information in Africa, 2019 SOS is of the view that the South African government should take positive measures to promote a diverse and pluralistic media, which shall facilitate:

- a) the promotion of free flow of information and ideas;
- b) access to media and other means of communication, including
- c) by marginalised groups, linguistic and cultural minorities;
- d) access to non-discriminatory and non-stereotyped information;
- e) access to the media by poor and rural communities, including by
- f) subsidising household costs associated with digital migration;
- g) The promotion of transparency and diversity in media
- h) ownership;
- i) The promotion of local and African languages, content and
- j) voices; and
- k) The promotion of the use of local languages in public affairs,
- l) including by the executive, legislature and the judiciary.

These principles are applicable across all three tiers of broadcasting. SOS is of the view that the SABC as public service content and media provider needs to offer radio, television and online services that are independent, and provide a diversity of high quality, distinctive public-interest content offerings that support 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 as endorsed in the African Charter on Broadcasting and the African Principles of Freedom of Expression Declaration, 2019

1. States shall facilitate the establishment of community media as independent non-profit entities, with the objective of developing and disseminating content that is relevant to the interests of geographic communities or communities sharing common interests such as language and culture.
2. The regulation of community broadcasting shall be governed in accordance with the following principles:
 - a) The ownership, management and programming of community broadcasters shall be representative of the community.
 - b) Licensing processes shall be simple, expeditious and cost effective, and guarantee community participation.
 - c) Licensing requirements shall fulfil the objectives of community broadcasting and shall not be prohibitive.
 - d) States shall allocate a fixed percentage of available radio frequency spectrum to community broadcasters to encourage diversity.

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.

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. 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

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.”

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.”

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.”

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

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.

- e. Publish the short-list of candidates for public comment before the Parliamentary Portfolio Committee on Communications makes recommendations to the National Assembly.⁵

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.
- 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.

⁵ 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*.

- 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 service media content and 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 service media 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 content, 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 and cultural programming.
 - h. Ensure public service content is drawn from local, regional, national, continental and international sources.
 - i. Ensure that public service media 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 service media 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:**⁶ 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:**⁷ 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:**⁸ The Southern African Development Community Protocol on Culture, Information and Sport was adopted in 2000.
- **The African Charter on Broadcasting:**⁹ 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:**¹⁰ 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.

⁶ http://www.unesco.org/webworld/peace_library/UNESCO/HRIGHTS/327-331.HTM [accessed 29 February 2012].

⁷ <http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf> [accessed 29 February 2012].

⁸ [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].

⁹ http://portal.unesco.org/ci/en/files/5628/10343523830african_charter.pdf/african%2Bcharter.pdf [accessed 29 February 2012].

¹⁰ <http://www.afrimap.org/english/images/treaty/africa-declaration-of-principles-on-foe.pdf> [accessed 29 February 2012].

- **The Access to the Airwaves Principles:**¹¹ 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.
- **The WSIS Geneva Principles:**¹² 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:**¹³ The Dakar Declaration was adopted in Senegal in 2005 by a UNESCO-sponsored World Press Freedom Day Conference.
- **The African Democracy Charter:**¹⁴ 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:**¹⁵ 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:**¹⁶ 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**¹⁷: 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.

¹¹ <http://www.article19.org/data/files/pdfs/standards/accessairwaves.pdf> [accessed 29 February 2012].

¹² <http://www.itu.int/ws/s/docs/geneva/official/dop.html> [accessed 29 February 2012].

¹³ <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].

¹⁴ <http://www.un.org/democracyfund/Docs/AfricanCharterDemocracy.pdf> [accessed 29 February 2012].

¹⁵ <http://www.wan-ifra.org/articles/2011/02/16/the-declaration-of-table-mountain> [accessed 29 February 2012].

¹⁶ <http://unesdoc.unesco.org/images/0016/001631/163102e.pdf> [accessed February 2012].

¹⁷ <http://africaninternetrights.org/wp-content/uploads/2015/11/African-Declaration-English-FINAL.pdf>.

1. Legal structure of the SABC

The roles and responsibilities of the SABC's oversight and governance structures must be clarified to ensure that¹⁸:

- As the public broadcaster, the SABC is not just another SOE such as Eskom or Transnet or Denel. It performs a critical public information role, and not a state enterprise role. Consequently, its governance structures and functioning must recognise its *sui generis* role within government.
- The responsible Ministry confines itself to its policy-making role and to representing the public in its role as shareholder representative to the SABC
- Parliament plays its legislative and oversight roles in terms of the SABC's corporate plans, finances and accountability;
- ICASA is strengthened and resourced to play its monitoring, oversight and regulatory role as regards public interest content;
- 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 operational affairs of the institution without political, board and other interference.

1.1 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 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.

¹⁸ 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.

In the case of *SOS Support Public Broadcasting Coalition and Others v the SABC and Others* (81056/14) [2017] ZAGPJHC 289 (17 October 2017) Matojane J 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”¹⁹.

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 Report²⁰ and the Companies Act and are useful for accountability mechanisms.

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”²¹. 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 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 and the Draft White Paper of 2020 has recognised the failure of the divisional separation since its inception in 1999

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.
- 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.

¹⁹ At paragraph 3 of the Order.

²⁰ The King IV Report for Corporate Governance™ for South Africa, 2016 (“King IV”) was launched on 1 November 2016.

²¹ Section 9(1).

- c. The SABC should continue to exist as a public company - provided the other changes suggested here are implemented, including becoming a Chapter 9 Institution.
- d. The Broadcasting Act should stipulate that while the state is the sole Shareholder, it represents the interest of the 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, including specifically costing local content and independently-commissioned programming.

1.2 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, inequality 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 interest and 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 processes 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 general 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 and public content media provider into a genuine means of empowering citizens; and
- b. Wanting a public service media institution 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.

2. Oversight and governance of the SABC

2.1 Oversight structures to ensure accountability of the SABC

2.1.1 *Public Editor*

While the public is not a "structure" per se, the SABC, as the public service media provider, needs to be accountable to the public in the first instance. This can be realised through various modalities and through public representatives in existing fora like parliament or more direct mechanisms such as consultative committees and editorial forums.

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 communications 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 service media.

The SOS Coalition therefore proposes, in addition to existing opportunities, the appointment of a Public Editor to address matters specific to editorial content. The incumbent would be:

- a. An experienced journalist or media practitioner who has held a senior editorial or executive position for at least five years in digital or broadcast or audio-visual 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) or the Press Council of South Africa.

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

- a. Adjudicate complaints regarding editorial content or conduct of the SABC, in regard to editorial matters, 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 both the ICASA and the BCCSA's Broadcasting Code of Conduct, the Press Code for Print and Online Media and the SABC Charter, and promote the values of high quality content and ethical standards of journalism;
- d. Promote dialogue between the SABC and its audience(s), including through:
 - i. Consulting SABC audiences through the SABC's various channels and platforms ;
 - 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.

2.1.2 Parliament

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

It should, through a process of maximum public consultation, participation, transparency and political consensus, appoint skilled Board members and/or other appropriate governance structures that are broadly representative of constituencies in society. A process to ensure this is articulated in the SOS Coalition draft SABC Bill attached as Appendix B.

Parliament must focus on passing comprehensive, good practice legislation for public service media and audio and audio-visual content, media and services both broadcasting and online, 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 proposals as contained in its Draft SABC Bill 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 focused on the public interest.

2.1.3 ICASA: the Regulator

All electronic communications 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, the 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 to include all electronic communications

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 of the Regulator must be increased in order for it to monitor and regulate effectively, and to safeguard its independence. This should be done as a direct appropriation through parliament and not subject to the whims of the Executive.

Further, 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, and prevent regulatory capture.

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

2.1.4 *Minister and Department of Communications and Digital Technologies (DCDT)*

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

The Minister 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.

2.2 Governance structures to ensure accountability within the SABC

The SOS Coalition believes that the crises that beset the SABC from 2007-2017 were a direct result of the lack of assertiveness, autonomy, independence and strength of the various Boards that were appointed during 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, autonomous, 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.

2.2.1 *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 and public service media provider;
- b. Be responsible for the strategic direction of the SABC 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 and applicable regulations;
- e. Appoint executive management without external influence or input;
- f. Ensure that its operations are open and transparent to the public by making Board minutes (excluding only those matters that are commercially sensitive to the SABC) available to the public, including on the SABC's website.

2.2.2 *SABC executive management*

- a. Executive management, under the leadership of the executive directors, must:
- b. Report to the Board;
- c. Take responsibility for day-to-day management/operational issues.

1. SABC editorial policies and Editor-in-Chief

Relevant Principles:

1.1 Independence of the public broadcaster

The SABC 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.

1.2 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.

1.3 Public participation mechanisms

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

We recognise that the 2020 version of the SABC's Editorial Policies have taken a number of the Coalition's previous concerns and statements of principle into account, including in two critical aspects:

- That the GE for News is the SABC's formal Editor-in-Chief ending the upward-referral system to the GCEO which conflated editorial and managerial responsibilities.
- That the Editorial Policies make reference and undertake to uphold all of the Codes of Conduct developed by the Broadcasting Complaints Commission of South Africa; the Advertising Regulatory Board and the Press Council, for all editorial content whether published online or broadcast.

Technological convergence fundamentally alters how audiences engage with content across a variety of platforms. Consequently, the SOS Coalition is of the view that the logical next step in respect of editorial self-regulatory codes of conduct and ethics, is the creation of a unitary code.

Such a Code would be applicable to content distributed via print, broadcast and online platforms.

SOS consequently supports efforts to establish such a self-regulatory Unitary Code. SOS is of the view that such a Unitary Code will make lodging complaints about unethical media conduct much simpler for members of the public and will assist in enforcement that does not risk two different bodies ruling on the same content.

As a matter of principle, the Coalition believes that the SABC's editorial policies will always 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 media;
- c. The need for Editorial Policies to apply across all distribution mechanisms, particularly, the multi-channel, multi-platform digital environment;
- d. Publish content that meets the needs of all South Africans, including children, women, the youth, and people with disabilities.

As a further issue of principle, the SOS Coalition is of the view that the Head of News should always be the Editor-in-Chief of the SABC. As a matter of principle, SOS believes in separating editorial from financial and managerial responsibilities as follows:

Relationship between the SABC Editor in Chief and SABC's Executive Directives:

Responsibilities of the Editor:

1. Editorial independence means the Editor-in-Chief is able to make editorial decisions based primarily on the SABC's public service news values, free from managerial, financial, advertising, political or other undue influence or interference.
2. The Editor is obliged to consider financial, political or other such factors. But it is the editor's duty and prerogative to find the right balance between public service news and editorial values and other factors or interests requiring consideration.
3. The editor, for their part, has to be willing and able to justify their decision on the basis of public service news values and show that they gave due consideration to the financial, political or other consequences of their decision, in order to promote accountability and transparency of editorial decision-making.
4. The editor may seek the advice of management, where relevant, but should not ask management to intercede on their behalf on editorial matters.
5. The Editor must treat information provided by a member of the Board for editorial use in the same way as any other information provided by a source. Using it, or not, as they deem fit. As with any source, if the information is provided on a confidential basis, this must be respected.
6. If the editor faces an editorial decision which has serious potential financial or legal implications, the editor should inform Executive Management and take into account its view but retain editorial control.
7. The editor must have the freedom to allocate the news budget within the SABC's policies and parameters. For example, if the editor needs to make a trip for editorial reasons, or spend on research for a story, they should only need permission if it is beyond their budget.

8. The quid pro quo for this budgetary discretion is that the editor takes full responsibility for their decisions and can be called to account for them.

Responsibilities of Executive and non-Executive Directors

9. If the editor can demonstrate compliance with her responsibilities in justifying an editorial decision, then the SABC, its board and its executive management should back and protect the editor and should not interference in editorial decisions.
10. If the editor cannot demonstrate such compliance, or is in breach of the editorial policies of the SABC or industry codes of conduct, then management can address the matter through formal proceedings. These can include asking the Public Editor to give an opinion on the matter and/or instituting a disciplinary process in terms of the applicable labour law.
11. Directors, whether non-executive or executive, should politely and firmly refer all queries, tip-offs, complaints, suggestions or other interventions (such as a call from a politician) of an editorial nature to the Editor or, in the case of a complaint, to the Public Editor.
12. If a member of the Board has information that may be of interest or use to the news team, then they should pass this on to the Editor with the explicit understanding that the editor may – as with any source – do with it as they deem appropriate.
13. If a member of the Board has a suggestion or idea for the Editor, they should make it explicit that it is just that – a suggestion or idea that the Editor may use or not use as they see fit.
14. If the editor faces an editorial decision which has serious potential financial or legal implications, which they have informed Executive Management about, Executive Management may express a view on the decision and ensure the editor is fully appraised of the potential impact of the decision on the SABC, but should respect the editor's responsibility and right to make that editorial decision.

Public Editor and Other Public Accountability Mechanisms

15. The SABC must provide suitable means for regular inputs of public opinion on its broadcasting and online content services and ensure that such public opinion is given due consideration. To this end, the SABC must establish the office of the Public Editor to act as an independent public advocate and to opine on editorial content distributed by the Corporation with the aim of improving editorial excellence, in particular high standards of quality content and ethical journalism, in the public interest.
16. In this regard:

- (a) After calling for public nominations, the Board must appoint as the Public Editor, an experienced journalist or journalism academic, not currently employed at the Corporation, who has held a senior editorial position for at least five years in the print, broadcast or online media.
- (b) The Public Editor is accountable to the public and is to provide an annual report to the Board which is to be included in the SABC Annual Report.
- (c) The Public Editor is to play an advisory and public interest advocate role on editorial-related complaints involving the SABC that:
 - i. are laid with the Broadcasting Complaints Commission of South Africa (BCCSA), the Press Council of South Africa, the Advertising Regulatory Board and similar self-regulatory bodies against the SABC; and
 - ii. (ii) are addressed to her or him and received from members of the public pertaining to the SABC's editorial policies or any other content-related matter;
- (d) The Public Editor is to be consulted prior to the SABC amending its editorial policies and may be consulted by the Editor-in-Chief and/or a Board member or a Board Committee on an *ad hoc* basis on any editorial-related matter; and
- (e) The Office of the Public Editor must promote dialogue between the SABC and its audiences on editorial issues including through:
 - i. its own online presence for publishing his or her opinions on the Corporation's editorial matters and it may do so *mero motu*, that is without a complaint having been made to him or her;
 - ii. audience focus groups to be established from time to time by the SABC; and
 - iii. bi-annual local content engagement forums with relevant civil society organisations and other interested persons to be established by the SABC.

1. Protection of SABC Journalists

Journalists at the SABC have been subject to serious intimidation, threats of violence and even death threats for years.

Harassment and intimidation of journalists is an attack on freedom of expression and the SABC needs to ensure that it acts to protect its editorial staff.

Journalists must be protected from political, commercial and other interests, so that they can play their key information-gathering and dissemination roles in the interest of citizens and audiences. The SABC's editorial policies must set out the positive obligations of the SABC in providing for the protection and security of its journalists, including when covering protests and other dangerous assignments. This also means providing legal and other support to challenge harassment and abuse, whether on or offline.

The provisions of section 2A(1)(ii) of the National Strategic Intelligence Act, 1994 ought to be amended to exclude SABC editorial staff from being subject to security vetting by National Intelligence Structures as a result of their working at the SABC, which is defined as being critical infrastructure in terms of the Critical Infrastructure Protection Act, 2019.

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