

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

A Right2Know Campaign
Discussion Document

September 2011

Prepared by Kate Skinner

SOS: Support Public Broadcasting Campaign

For the Right2Know Campaign

www.right2know.org.za

September 2011

CONTENTS

ACRONYMS	5
1. INTRODUCTION.....	6
1.1. The Right 2 Know Campaign – Media Diversity Sub-Committee.....	6
1.2. Purpose of this document.....	6
2. CONTEXT	6
2.1. International principles of public broadcasting.....	6
2.2. International principles of community broadcasting	7
2.3. Implications of the digital environment for public broadcasting.....	7
2.3.1. Digital standards debate	8
2.3.2. Current pre-eminence of the SABC	8
2.4. Present crises in public and community broadcasting in South Africa.....	9
2.4.1. Public broadcasting	9
2.4.2. Community broadcasting	9
2.5. The need for a comprehensive policy review process	11
3. VISION AND PRINCIPLES FOR PUBLIC BROADCASTING.....	11
3.1. Vision	11
3.2. Principles.....	12
4. PUBLIC BROADCASTING CONTENT AND PROGRAMMING.....	12
4.1. Concerns.....	12
4.2. Good practice	13
4.3. Key mechanisms and other issues.....	14
4.3.1. The SABC Charter	14
4.3.2. Licence conditions.....	14
4.3.3. Editorial policies.....	15
4.3.4. Other contributing factors to poor programming quality	15
5. LEGAL STRUCTURE OF THE SABC	16
5.1. Problems with the present structure	16
5.2. Options for a new structure.....	17

5.2.1.	The SABC as Chapter 9 institution	17
6.	OVERSIGHT AND GOVERNANCE OF THE SABC	18
6.1.	Oversight structures to ensure accountability of the SABC	18
6.1.1.	Public	18
6.1.2.	Parliament	20
6.1.3.	ICASA: the Regulator	20
6.1.4.	Minister and Department of Communications	22
6.2.	Governance structures to ensure accountability within the SABC	22
6.2.1.	The Board	22
6.2.2.	Executive management.....	23
7.	FUNDING	23
7.1.	Public broadcasting funding.....	23
7.1.1.	International background issues.....	23
7.1.2.	National background issues	23
7.1.3.	The SABC's present financial model.....	23
7.1.4.	Considerations for the development of a new funding model	24
7.2.	Community broadcasting funding	24
8.	CONCLUSION	25
	APPENDIX 1: KEY INTERNATIONAL INSTRUMENTS	28
	APPENDIX 2: SOS - PROPOSED CHARTER FOR THE SABC	30
	APPENDIX 3: SOS PROPOSED PROCESS TO APPOINT THE SABC BOARD	32
	APPENDIX 4: SOS COALITION DISCUSSION DOCUMENT – FUNDING FOR PUBLIC AND COMMUNITY BROADCASTING.....	35

ACRONYMS

Afrimap	African Governance Monitoring and Advocacy Project
BCCSA	Broadcasting Complaints Commission of South Africa
BEMAWU	The Broadcast, Electronic Media and Allied Workers Union
CBO	community-based organisation
COSATU	Congress of South African Trade Unions
CWU	Communication Workers Union
CWUSA	Creative Workers Union of South Africa
DTT	digital terrestrial television
DVB-T	Digital Video Broadcasting for Terrestrial
DVB-T2	Digital Video Broadcasting for Terrestrial, second generation
FEDUSA	Federation of South African Unions
FXI	Freedom of Expression Institute
GCEO	Group Chief Executive Officer [of the SABC]
ICASA	Independent Communications Authority of South Africa
ITU	International Telecommunications Union
MISA-SA	Media Institute of Southern Africa
MMA	Media Monitoring Africa
MWASA	Media Workers Association of South Africa
NCRF	National Community Radio Forum
NGO	non-governmental organisation
OSF-SA	Open Society Foundation for South Africa
OSMP	Open Society Media Programme
PFMA	Public Finance Management Act (1999)
R2K	Right to Know Campaign
SABC	South African Broadcasting Corporation
SADC	Southern African Development Community
SADIBA	Southern African Digital Broadcasting Association
SASFED	South African Screen Federation
SOS Coalition	SOS: Support Public Broadcasting Coalition
STB	set top box

1. INTRODUCTION

1.1. The Right 2 Know Campaign – Media Diversity Sub-Committee

The Right 2 Know (R2K) Campaign has set up a Media Diversity Sub-Committee. The Committee is looking at a number of issues to ensure the free flow of a genuine diversity of views and opinions in South African society. One of the key issues that the campaign is looking at is the reinvigoration of public broadcasting to ensure it plays its critical, central role in the South African media environment.

The South African media environment consists of three tiers of broadcasting - public, community and commercial. The R2K Campaign believes that all three tiers of broadcasting should be strengthened to play their distinct and diverse roles. Further, the Campaign believes that all three tiers should have public service obligations, although in the commercial media sector these should be limited to certain local content quotas, imperatives to carry news etc.

The Campaign considers both public and community media as forms of public broadcasting and therefore will comment on both these tiers of the media and possible ways to strengthen them.

1.2. Purpose of this document

The purpose of this document is to articulate the vision of the R2K Coalition with the specific aim of lobbying government to implement this vision through, amongst a number of processes, the Minister of Communication's 2011 broadcasting policy review process.

2. CONTEXT

2.1. International principles of public broadcasting¹

The importance of public broadcasting is captured in a number of African and international instruments including, but not limited to, the African Charter on Broadcasting, the African Principles of Freedom of Expression Declaration, the Dakar Declaration, the Access to the Airwaves Principles. See [Appendix 1: Key International Instruments](#) for further detail.

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

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

- Quality, independent programming that contributes to a plurality of opinions and an informed public.
- Comprehensive news and current affairs programming which is impartial, accurate and balanced.
- Reporting and programming that is not one-sided, particularly during election periods.
- A range of broadcast material that strikes a balance between programming of wide appeal and specialised programming that serves the needs of different audiences.
- Universal accessibility and serving all the people and regions of the country, including minority groups.
- Educational programmes and programmes directed towards children.
- Local programme production including, through minimum quotas, original productions and material produced by independent producers.

The instruments call for:

- Editorial independence for public broadcasters.
- Public broadcasters to be run by independent boards that operate in the public interest, and are not subject to political or economic / commercial interference.

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

- Independence of the boards to be protected by legislation and, if possible, by the Constitution. Further, they state that a public broadcaster must be accountable to the legislature (a multi-party body) and not to government.
- Public broadcasters to be adequately funded in a manner that protects their independence.

The SOS Coalition supports these principles.

2.2. International principles of community broadcasting

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

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

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

2.3. Implications of the digital environment for public broadcasting

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

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

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

- The boxes are too expensive; and / or
- The programming on the new digital channels is not attractive enough to warrant buying an STB.

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

The R2K Campaign thus needs to call for:

- Clarity around the subsidy scheme for STBs and government’s rollout plans in this regard.
- A commitment from government and all relevant stakeholders to ensure public awareness campaigns are rolled out as regards the digital migration process
- A commitment from government to ensure that there are sufficient resources to roll out the necessary digital infrastructure and networks.
- A commitment from ICASA to ensure that the issuing of digital incentive licenses to the incumbent broadcasters is through an open, consultative public process.

1. RECOMMENDATIONS: DIGITAL MIGRATION PROCESS

- 1.1 Clarity must be provided in terms of a subsidy scheme for STBs and government’s rollout plans in this regard, including public awareness campaigns.
- 1.2 An enabling environment must be created to assist broadcasters to ensure that new offerings on their digital incentive channels add sufficient public value such that citizens buy STBs. As part of this ICASA must ensure that it issues its digital incentive licenses through an open, consultative public process.

2.3.1. Digital standards debate

The R2K Campaign notes that the Minister of Communications announced in January 2011 that South Africa would adopt the European Digital Video Broadcasting for Terrestrial (second generation) (DVB-T2) standard.

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

2.3.2. Current pre-eminence of the SABC

One of the major questions that arises within the new, digital multi-channel environment is should the SABC, as the public broadcaster, be enabled to maintain its dominant position through protection from competition with commercial broadcasters, or not?

The R2K Campaign needs to consider a number of positions to ensure a genuine diversity of programming and opinion.

Some of the key questions include:

- To what extent can and will new services on broadband or DTT provide new public benefits?
- In a landscape of 'convergence' and increasing services (increased television channels and internet content) via DTT and broadband, what should be the long term role and mandate of the public broadcaster?
- How will the public broadcaster afford to provide all the proposed new channels and services?
- Is it realistic to believe that the 'migration' / dual illumination process will be completed within the tight time frames set by the Ministry, and should no new entrants be allowed until the migration process is complete?
- How will public broadcasting in this context be funded, governed and regulated?
- How will the public broadcaster ensure that its additional new channels will also result in a greater diversity of content?

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

2.3.3. Policy suggestions on the digital dividend

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

The R2K Campaign has a number of policy suggestions in this regard:

- 1 That public broadcasting and public information and communication needs are prioritised.
- 2 That spectrum is not merely sold off to the highest bidder to the detriment of the needs of all South Africans.
- 3 That spare frequency capacity is made available to all three tiers of broadcasting i.e. public, commercial and community broadcasting, and that sufficient frequency capacity is set aside to meet future broadcasting needs.

2. RECOMMENDATIONS: DIGITAL DIVIDEND

- 2.1 Public broadcasting and public information and communication needs must be prioritised.
- 2.2 Spectrum must not be sold off to the highest bidder if this will be to the detriment of the needs of all South Africans.
- 2.3 Spare frequency capacity must be made available to all three tiers of broadcasting i.e. public, commercial and community broadcasting, and sufficient frequency capacity must be set aside to meet future broadcasting needs.

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

2.4.1. Public broadcasting

It is generally acknowledged that public broadcasting in South Africa has been in crisis for a number of years. The R2K Campaign is aware of the fact that a number of public institutions have experienced similar problems. The crisis in public broadcasting must be seen within this broader context.

Some of the problem areas include:

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

2.4.2. Community broadcasting

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

- There are no sustainable public funding options for community media, particularly in light of

high transmission costs.

- Governance structures of many community broadcasters are weak and ineffective.
- Many community broadcasters adopt commercial imperatives to attract advertising in order to survive.

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

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

3. RECOMMENDATION: COMMUNITY BROADCASTING

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

2.5. The need for a comprehensive policy review process

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

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

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

A number of civil society organisations at the time including the SOS: Support Public Broadcasting Coalition argued that it was critical that at the very least the Broadcasting White Paper (1998) should be reviewed, and that detailed research on broadcast funding in the digital age needed to be conducted by the Department.

The new Minister of Communications, Mr Roy Padayachie, MP, withdrew the Draft Public Service Broadcasting Bill in November 2010. He has agreed to a review of the Broadcasting White Paper, and to conduct substantive research, including an economic modelling exercise, as regards potential funding models for the SABC and community media. On 2 September 2011 he agreed to a comprehensive policy review process focusing on all three tiers of the media. He stated that this would be a full green paper/ white paper process.

The R2K Campaign views the Minister’s announcements as important and positive interventions.

4. RECOMMENDATION: THE POLICY REVIEW PROCESS

The broadcasting policy review must be transparent and widely consultative. It should review all relevant broadcasting policy, legislation (including draft legislation) and regulations to ensure a coherent broadcasting environment in the public interest.

3. VISION AND PRINCIPLES FOR PUBLIC BROADCASTING

3.1. Vision

The vision of the R2K Campaign is to create a public broadcasting system dedicated to the broadcasting of quality, diverse, citizen-orientated public programming committed to the values of the Constitution of the Republic of South Africa (1996). The Campaign believes that this should be done by ensuring three things:

- That the SABC is transformed into a genuine public broadcaster with a Charter setting out its public mandate in relation to its programming.

- That community media plays its public service broadcasting role at the local level.
- That commercial broadcasting contributes to the public good by carrying certain public service obligations set out in regulations and / or licence conditions including: news, local content, and language requirements.

5. RECOMMENDATION: VISION FOR PUBLIC BROADCASTING

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

3.2. Principles

A number of civil society organizations including the SOS Coalition have extensively debated a set of principles they believe should underpin public broadcasting. These are:

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

The R2K Campaign endorses these principles.

6. RECOMMENDATION: PRINCIPLES FOR PUBLIC BROADCASTING

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

4. PUBLIC BROADCASTING CONTENT AND PROGRAMMING

4.1. Concerns

Along with a number of other civil society organizations including the SOS Coalition, the R2K Campaign is concerned by a number of issues:

- The SABC's lack of vision for content and programming on its analogue channels, and its lack of communication as regards its vision for its new digital channels.
- The SABC's vulnerability to capture by commercial, political and / or state interests.

The Coalition believes the SABC's financial crisis has exacerbated the problems of editorial interference by:

- Encouraging the SABC to pursue advertiser-funded programming and product placements.
- Cutting back on local content and encouraging repeats.
- Cutting back on the production of more expensive public programming including drama, documentaries, educational and children's programming.
- Insufficiently prioritising African language programming.

4.2. Good practice

The R2K Campaign believes that the attributes of public broadcasting are credibility, reliability, variety and balance.

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

- Serves the interests of all people irrespective of religion, political belief, culture, race and gender.
- Reflects, as comprehensively as possible, the range of existing opinions and of social, political, philosophical, religious, scientific and artistic trends.
- Reflects regional diversity.
- Ensures that the voices of the poor and marginalised are clearly reflected.
- Upholds and promotes free speech and expression.
- Enables citizens regardless of their social status to communicate on the airwaves.
- Encourages the production of citizen-generated content.
- Offers a forum for democratic debate.
- Offers news and current affairs that is balanced and explanatory; and that covers as broadly as possible issues and events in South Africa, but also events in Africa and the rest of the world.
- Offers a mix of documentaries, drama, education, youth and children's programmes.
- Includes issues originated outside the country to contribute to citizen's knowledge of and exposure to the world.
- Sets standards and leads the way in the broadcasting sector in terms of citizen-orientated, compelling, creative, cutting-edge offerings.
- Leads the broadcasting sector in promoting local content and independent production of local content.

The Coalition believes that, although the above is captured broadly in existing South African policy and legislation much is not implemented.

7. RECOMMENDATION: PRINCIPLES FOR PUBLIC PROGRAMMING

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

4.3. Key mechanisms and other issues

The R2K Campaign believes that its vision for public programming should be shaped by the following key mechanisms - the SABC's Charter, licence conditions and its editorial policies. There are also other contributing issues, as discussed below.

4.3.1. The SABC Charter

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

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

In terms of the above, the SOS Coalition has crafted a proposed new Charter for the SABC. The R2K Campaign broadly endorses this Charter but believes it should be extensively debated and a consensus version included in draft legislation developed by the Ministry and, finally, adopted by Parliament.

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

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

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

For the full text of the Charter document see [Appendix 4: Proposed Charter for the SABC](#).

8. RECOMMENDATION: THE SABC CHARTER

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

4.3.2. Licence conditions

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

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

9. RECOMMENDATIONS: THE REGULATOR

ICASA must:

- 9.1 Have its capacity, including financing, boosted to allow it to effectively monitor all SABC channels and community radio stations to ensure adherence to their license conditions.
- 9.2 Review its local content regulations and adjust these to ensure appropriate percentages of local content particularly during the digital age.
- 9.3 Follow a public process as regards the issuing of all new digital incentive channels (to be issued during the digital migration process).
- 9.4. Create an effective monitoring system both for now and for the digital migration process and beyond.

4.3.3. Editorial policies

The present SABC editorial policies capture the key principles around the SABC's independence, its public mandate and the importance of its accountability to audiences. However, the latter now need to be debated and updated to take into consideration the new digital environment.

Further, one of the key controversies in the present editorial policies is the role of the Group Chief Executive Officer (GCEO) simultaneously playing the role of Editor-in Chief. Although this needs to be debated, the Campaign believes that the respective roles and responsibilities of the GCEO and Editor-in-Chief need to be clearly delineated. The GCEO needs to attend to the running of the business of the SABC. In this context it is therefore more appropriate for the Head of News to play the role of Editor-in-Chief.

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

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

10. RECOMMENDATIONS: EDITORIAL POLICIES

Editorial policies must be reviewed and updated to:

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

4.3.4. Other contributing factors to poor programming quality

Commissioning processes are perceived by some as ad hoc and unfair, and are not seen to prioritise the production of cutting edge programming. Budgets have steadily decreased over the years. Further, independent producers have strongly complained about the intellectual property rights regime that vests

intellectual property rights with the broadcasters rather than producers, thus stopping producers from selling their products on other platforms.

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

11. RECOMMENDATIONS: IMPROVING PROGRAMMING QUALITY

Programming quality must be improved by:

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

5. LEGAL STRUCTURE OF THE SABC²

5.1. Problems with the present structure

The Broadcasting Act provides for the conversion of the SABC into a "public company incorporated in terms of the Companies Act (1973), to be known as the South African Broadcasting Corporation Limited". The SABC was converted into a public company (i.e. corporatised) in 2004.

The law emphasises that the state is the sole shareholder of the SABC – but unfortunately does not stipulate that this is on behalf of the public. The Broadcasting Act provides that the Minister is responsible for determining the SABC's Memorandum and Articles of Association. The Broadcasting Act is silent on a Shareholders' Compact. Accordingly, the Minister of Communications determines the SABC's Memorandum and Articles of Association, without public involvement or approval by a body such as Parliament. Further, the Minister signs an annual Shareholder's Compact with the SABC. This, too, is not part of a public process. These documents give the Minister significant powers in terms of appointments of executive directors to the Board, input in terms of corporate plans etc. This ultimately compromises the SABC's independence. The Broadcasting Act contains critical gaps in relation to who appoints the executive Board members, and the legislated practice of Ministerial involvement compromises the SABC's independence.

A further problem is that the Broadcasting White Paper calls for the creation of "public" and "public-commercial" divisions within the SABC. This division is aimed at ensuring financial viability, with the commercial wing cross-subsidising the public wing. However, the public channel SABC 1 generates more money than the public-commercial channel SABC 3, and the influence of advertising on all SABC channels therefore remains significant.

Overall it appears there is insufficient protection of the SABC's independence both from commercial and government pressure. R2K has thus given consideration to a number of options that may better protect the SABC's independence.

One of the key issues for the R2K Campaign to consider is the termination of the public and public-commercial divisions within the SABC.

² 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.

12. RECOMMENDATION: DISPENSE WITH PUBLIC AND PUBLIC-COMMERCIAL DIVISIONS WITHIN THE SABC

New policy and legislation must dispense with the artificial division of public and public-commercial.

5.2. Options for a new structure

5.2.1. The SABC as Chapter 9 institution

South Africa is a developing country with developing country challenges. These include high levels of poverty and illiteracy. Consequently, the SABC is, for many of South Africa's people, the only source of news and information. It therefore plays a critical public information role. A democracy cannot function effectively without an informed citizenry. The SABC is therefore crucial to the proper functioning of our democracy and, when it fails to function effectively, our democracy can be said to be under threat.

It is clear the current statutory regime is insufficient to protect the interests of the South African public. Consequently the R2K Campaign needs to debate civil society's calls for the transformation of the SABC into a Chapter 9 institution as a way of protecting the SABC's independence. Chapter 9 of the Constitution provides for a number of state institutions that support Constitutional democracy, including an independent authority to regulate broadcasting (that is, ICASA), the Public Protector and the South African Human Rights Commission. These institutions are directly answerable to Parliament, and the Constitution specifically protects the appointments and removals of Chapter 9 institutions' governing bodies from political and other interference.

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

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

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

The Campaign is aware that making the SABC into a Chapter 9 institution would entail a Constitutional Amendment process requiring sufficient political support and this will not necessarily be an easy process.

De-corporatisation of the SABC

The option to de-corporatise the SABC has been discussed in some detail by civil society organisations. The problems with the SABC's existing corporate structure and the role of the Minister as representative of government have been clearly identified. However, the corporate structure does allow for stakeholders to insist that the SABC complies with the corporate governance requirements as set out in the King III Report³ and this is a significant benefit. To date no consensus has been reached on whether a corporate structure is the best option for the SABC.

Civil society organisations including the SOS Coalition are of the view that if the corporate structure is to remain, it will be critical to change the role and position of the Minister from that of representative of the government to that of representative of the public with a clear understanding that there are numerous stakeholders whose interests must be taken into account by the SABC.

13. RECOMMENDATIONS: OPTIONS FOR A NEW LEGAL STRUCTURE FOR THE SABC

13.1 The SABC MUST be reconstituted as a Chapter 9 institution.

13.2 The de-corporatisation of the SABC (as a Chapter 9 institution) should be investigated and, at the very least, if the SABC's corporate structure remains, the role of the Minister needs to shift from that of representative of government to that of representative of the public.

•

6. OVERSIGHT AND GOVERNANCE OF THE SABC

The current range of governance and oversight structures have unclear and sometimes overlapping mandates, roles and functions. Clarity around the roles and functions for each including specifying clear lines of accountability would ensure significantly improved corporate governance at the SABC.

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

14. RECOMMENDATION: ROLE AND RESPONSIBILITY CLARIFICATION

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

6.1. Oversight structures to ensure accountability of the SABC

6.1.1. Public

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

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

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

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

- Public Editor:
 - Is an experienced journalist who has held a senior editorial position for at least five years in the print or broadcast media and who is recognised for her or his expertise.
 - The role of the Public Editor is to represent the public interest in relation to SABC editorial matters.
 - Is appointed by the Editor in Chief through a transparent public process.
 - Is to be consulted on all editorial-related complaints involving the SABC that are laid with the BCCSA.
 - Is to adjudicate complaints regarding editorial content or conduct of the SABC that are laid with the SABC directly.
 - May advise the Editor in Chief of the SABC (ie the Head of News) and the Board regarding the SABC's overall editorial policy and direction, although the Editor in Chief retains the right to make all overall editorial decisions.
 - Must ensure that the SABC's editorial policies and practices uphold the BCCSA's Broadcasting Code of Conduct and SABC Charter and promote the values of high quality programming and ethical standards of journalism.
 - Is required to promote dialogue between the public broadcaster and its audience(s), including through
 - addressing SABC audiences directly on radio and television current affairs programmes; and
 - through the publication of on-line opinions and social media forums.

- Is to submit annual reports to the Board, as well as to the National and Regional Stakeholder Committees, which reports are to be included in the Annual Report of the SABC.
- National Public Stakeholder Committee:
 - The National Public Stakeholder Committee is coordinated by the Board although its members are nominated by the various representative stakeholder bodies, and is made up of the SABC's key national stakeholders, including representatives from:
 - SABC staff unions
 - Cultural industry representatives including in respect of:
 - independent producers,
 - script writers,
 - actors,
 - technical services providers.
 - educational, labour, business, sport, language and faith-based national bodies
 - National NGOs, CBOs and/or Chapter 9 institutions that deal specifically with:
 - Children
 - Youth
 - Women
 - Disabled persons
 - Gay, lesbian, bi-sexual, transgendered, intersexed persons
 - Public broadcasting or freedom of expression
 - General human rights issues
 - Refugee matters
 - Traditional matters
 - Socio-economic issues
 - The role of the National Public Stakeholder Committee is to ensure that the SABC is performing its public broadcasting role with specific reference to its programming, and to review the SABC's Charter periodically with a view to advising the Board and the Minister of Communications on changes required over time to ensure that it continues to provide an up-to-date public broadcasting mandate.
 - The National Public Stakeholder Committee should submit a written report annually to the SABC Board, which report is to be included in the SABC's Annual Report.
 - In performing its tasks, the National Stakeholder Committee is required to promote dialogue between the public broadcaster and its various audiences and stakeholders including electronically.
- Provincial / Regional Public Stakeholder Committees
 - The Board is to coordinate the establishment and running of nine Provincial / Regional Public Stakeholder Committees, each of which is made up of key provincial / regional stakeholders, including:
 - Community-based regional or provincial groupings.
 - Audience feedback panels.

- The Provincial / Regional Public Stakeholder Committees should each submit a written report annually to the SABC Board and to the National Public Stakeholder Committee, which report is to be included in the SABC's Annual Report.
- In performing its tasks, the Provincial / Regional Public Stakeholder Committees are required to promote dialogue between the public broadcaster and the various regions and provinces in South Africa on programming issues, including electronically.

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

15. RECOMMENDATION: PUBLIC PARTICIPATION MECHANISMS

New public participation mechanisms should be investigated including the launching of a Public Editor / Office of the Public Editor and National and Regional Public Stakeholder Committees. These mechanisms should be included in new legislation.

6.1.2. Parliament

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

It should, through a process of maximum public consultation and transparency, appoint skilled Board members and / or other appropriate governance structures that are broadly representative of constituencies. A process to ensure this is articulated in the SOS Coalition document entitled Proposed Process to Appoint the SABC Board (Appendix 5)

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

16. RECOMMENDATIONS: ISSUES FOR PARLIAMENT

- 16.1 The capacity of Parliamentarians must be strengthened in order to hold the SABC to account in terms of its corporate plans and finances.
- 16.2 The SOS Coalition discussion document entitled Proposed Process to Appoint the SABC Board should be used as a guide to improve current appointment processes and to ensure that the role of Parliament in the appointment of the Board is consultative and transparent.
- 16.3 Parliament must focus on passing comprehensive, good practice broadcasting legislation in the public interest.

6.1.3. ICASA: the Regulator

All broadcasting regulatory matters fall within the jurisdiction of the Regulator – the Independent Communications Authority of South Africa (ICASA). ICASA has an ambiguous constitutional position. An independent regulator is provided for in Chapter 9 of the Constitution that deals with state institutions supporting constitutional democracy. However, the provision relating to broadcasting is then not placed in section 181 of the Constitution which then lists the other institutions found in Chapter 9.

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

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

The Campaign believes there are a number of problems that require attention in order for the Regulator to fulfill its obligations. R2K believes that one of the primary problems is lack of capacity due to systematic under-funding of ICASA.

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

Civil society groupings have argued that the Bill will not solve ICASA's inefficiencies, in fact, the Bill may instead create a new set of problems by undermining the Regulator's independence from government. (The Regulator is already unduly beholden to commercial operators.)

R2K believes that the broadcasting polity review process must investigate the role of ICASA and how best to ensure its efficient and effective operations in the public interest.

17. RECOMMENDATIONS: ISSUES FOR THE REGULATOR

- 17.1 Funding to the Regulator must be increased in order for it to monitor and regulate effectively, and to safeguard its independence.
- 17.2 The previous practice of allowing the Regulator to retain its licence and other administrative fees to use in supplementing its budget should be reinstated.
- 17.3 The independent research capacity of the Regulator must be significantly strengthened.
- 17.4 The Regulator should be re-constituted as a fully-fledged Chapter 9 institution. Its ambiguous position as a Chapter 9 institution must be rectified, thereby better safeguarding its independence.
- 17.5 Appointment procedures to the ICASA Council should be similar to those proposed by the SOS Coalition to be used in the appointment of non-executive members of the SABC Board i.e. a public consultation process culminating in a Parliamentary decision.

6.1.4. Minister and Department of Communications

The appropriate role of the Minister and Department of Communications should be to draft all policy and legislation, and ensure the integrity and sustainability of the broadcasting sector, including all three tiers of broadcasters, in the public interest.

The Minister should not be involved in the appointment of the Board and / or executive management of the public broadcaster.

The Minister should not be involved in the operations and running of the public broadcaster. Further, neither the Minister nor any regional or local government political appointment (MEC or councilor) or official should be involved in the operations and running of any community broadcaster.

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

18. RECOMMENDATIONS: ISSUES FOR THE MINISTER AND DEPARTMENT OF COMMUNICATIONS

- 18.1 The role of the Minister and Department of Communications must be to draft all policy and legislation, and ensure the integrity and sustainability of the broadcasting sector, including all three tiers of broadcasters, in the public interest. Current legislated involvement in the broadcasting sector at management and / or operational levels must be reviewed to enable ICASA and the SABC to operate with the requisite independence.
- 18.2 Owing to existing capacity the Department, along with Parliament, should facilitate public participation processes (such as the review of the Charter).

6.2. Governance structures to ensure accountability within the SABC

The structure of the public broadcaster 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 and Parliament.

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

6.2.1. The Board

The Board must:

- Be independently minded, uphold the public interest (i.e. should exclude those with commercial or party-political or other vested interests), and view as its main task the protection of the independence and the deepening of the public mandate of the public broadcaster.
- Be responsible for the strategic direction of the public broadcaster and hold executive management to account in this regard.
- Report annually to Parliament on its corporate strategies and plans and financial situation.

- Report annually to both ICASA and Parliament on how it is meeting its mandate (i.e. complying with its Charter) and complying with its various licence conditions.
- Appoint executive management without external influence or input.

6.2.2. Executive management

Executive management must

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

Policy and legislation must give consideration to the current conflicting roles of GCEO (with a business focus) and Editor-in-Chief (with a public interest focus). Ideally the Editor-in-Chief should be the SABC Head-of-News.

19. RECOMMENDATION: ISSUES FOR THE SABC BOARD AND MANAGEMENT

The lines of accountability and reporting of the SABC Board and the SABC Management must be clarified to ensure that the Board sets the strategic direction for the public broadcaster; and that Management operationalises this.

7. FUNDING

7.1. Public broadcasting funding

7.1.1. International background issues

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

7.1.2. National background issues

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

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

7.1.3. The SABC's present financial model⁵

Despite the fact that the SABC is a public broadcaster it relies heavily on advertising. SABC funding is derived from the following main sources – approximately 80% from advertising, 18% from licence fees, 2% from government⁶. Further, cross-subsidisation from the Corporation's public-commercial channels to the public channels is supposed to be an important additional funding source for the public channels. However, as discussed above, this is not happening.

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

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

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

7.1.4. Considerations for the development of a new funding model

The SOS Coalition has debated a number of different funding models, all of which need to be thoroughly investigated by the Department of Communications. R2K plans to debate these further. The Department must take account of specific financial modelling before any one, or a combination thereof, is adopted.

Appendix 6 contains the SOS Coalition Discussion Document – Funding for Public and Community Broadcasting. This document provides background to SOS's current and ongoing debates on potential funding models and areas for further debate on funding options for the sector.

20. RECOMMENDATIONS: SABC FUNDING ISSUES

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

7.2. **Community broadcasting funding**

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

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

21. RECOMMENDATIONS: COMMUNITY BROADCASTING FUNDING ISSUES

21.1 Community broadcasters must have sufficient public funding to pursue their public service mandate in respect of programming so that their editorial independence is not compromised through commercial funding sources.

21.2 Parliament and the Ministry and Department of Communications must investigate, through an economic modeling exercise, appropriate public funding models. (A key issue to be investigated is the unsustainably high transmission costs for the community broadcasting sector.)

8. CONCLUSION

Civil society groupings have expressed the need for evidence-based research and economic modeling to underpin a comprehensive policy and legislative review process in relation to all three tiers of broadcasting, culminating in new public service broadcasting policy and legislation, and ensuring necessary Constitutional amendments. The R2K Campaign endorses this.

The Campaign would like to see the Minister and the Department of Communications act on its Constitutional mandate to undertake comprehensive public consultation in the review process.

APPENDIX 1: KEY INTERNATIONAL INSTRUMENTS

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

1. The Windhoek Declaration

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

2. The Johannesburg Principles

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

3. The SADC Protocol

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

4. The African Charter on Broadcasting

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

5. The African Principles of Freedom of Expression Declaration

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

6. The Access to the Airwaves Principles

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

7. The WSIS Geneva Principles

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

8. The Dakar Declaration

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

9. The African Democracy Charter

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

10. The Declaration of Table Mountain

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

11. UNESCO’s Media Development Indicators

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

APPENDIX 2: PROPOSED CHARTER FOR THE SABC

The R2K Coalition proposes that a Charter such as the following be adopted consequent to extensive debate and discussion with citizens, audiences, interested stakeholders, etc.

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

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

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

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

- set industry standards for innovation, excellence, and creativity
- provide, in its public broadcasting services, radio and television programming that informs, educates and entertains
- provide a plurality of news and current affairs programming which
 - meets the highest standards of journalism
 - provides accurate, balanced and explanatory analysis which is independent of those wielding public power
 - covers events in the country, Africa and the world
- ensure that public broadcasting services provide a reasonable and fair opportunity for the public to receive a variety of points of view on matters of public concern, including through citizen-generated content
- cater for a broad range of programming meeting the needs of the public, including providing drama and documentaries that cater specifically for the programming needs of children, women, the youth and the disabled, and niche programming catering for specific interests
- include significant amounts of educational programming, both curriculum based and informal educative topics from a wide range of social, political and economic issues, including, but not limited to, human rights, health, early childhood development, agriculture, culture, justice and commerce contributing to a shared consciousness and identity

- include national sports' programming
- ensure programming is drawn from local, regional, national, continental and international sources
- ensure that public broadcasting services comply with the code of conduct for broadcasting
- be responsive to audience needs and account to the public on how to meet these needs

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

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

APPENDIX 3: PROPOSED PROCESS TO APPOINT THE SABC BOARD

The R2K Coalition proposes an appointment process such as the following be adopted consequent to extensive debate and discussion with citizens, audiences, interested stakeholders, etc. The SOS Coalition further supports this appointments process generally applying to the appointment of ICASA Councilors too.

Public Participation, Transparency and Political Consensus

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

As regards maximum public participation Parliament needs to:

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

As regards maximum transparency, Parliament needs to:

- publish the names of all nominees and those nominating them; including electronically on the Internet
- publish the long-list of candidates to be interviewed (as determined by it on the advice of the civil society panel) together with their CVs, including electronically on the Internet
- ensure interviews of long-listed candidates (which are to take place before the Parliamentary Portfolio Committee on Communications and the civil society advisory panel) are open to the public and to publicise these widely, including on SABC radio and television stations;
- publish written reasons as to why the final shortlist of candidates was selected by the Parliamentary Portfolio Committee on Communications (as determined by it on the advice of the civil society panel), including electronically on the Internet
- publish the short-list of candidates for public comment before the Parliamentary Portfolio Committee on Communications makes recommendations to the National Assembly.⁷

As regards Political Consensus, Parliament needs to:

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

- at least five members of the civil society advisory panel; and

⁷ 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*.

- at least one of the two largest minority parties represented in Parliament.

Criteria for appointment

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

- enjoy the confidence and trust of the broad spectrum of South African society;
- be broadly representative of South African society in terms of: race, gender, regional, economic and social interests;
- 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;
- have, collectively, qualifications and / or experience in at least the following areas: corporate governance, finance, broadcasting policy and regulation, journalism, the business of production and the application of new technologies; and
- broadly represent the following key constituencies and stakeholders in society including, but not limited to, business, labour, and NGOs active in the human rights field.

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

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

Disqualification criteria

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

- is not a citizen of the Republic;
- is not permanently resident in the Republic;
- is a senior public servant above the level of national director;
- is employed as a member of a public body which funds or regulates the broadcasting industry;
- is a member of Parliament, any provincial legislature or any municipal council;
- is a national office-bearer or senior employee of any party, movement or organisation of a party-political nature;
- has a direct or indirect financial interest in the broadcasting industry, other than a passive investment stake;
- is an un-rehabilitated insolvent;
- has been declared by a court to be mentally ill or disordered;
- has at any time been convicted, whether in the Republic or elsewhere, of–
 - theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any other offence involving dishonesty; or
 - an offence under this Act;
- has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), to a period of imprisonment of not less than one year without the option of a fine; or

(l) has at any time been removed from an office of trust on account of misconduct.

A person who is subject to a disqualification contemplated in subsection 3.5.1 (a) to (h) may be nominated for appointment as a Board member, but may only be appointed if at the time of such appointment he or she is no longer subject to that disqualification.

If at any stage during the course of any proceedings before the Board it appears that any Board member has or may have an interest which may cause such conflict of interest to arise on his or her part—

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

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

Removal of Members of the Board

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

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

APPENDIX 4: DISCUSSION DOCUMENT – FUNDING FOR PUBLIC AND COMMUNITY BROADCASTING

1. Public broadcasting

1.1. Possible new funding models for the public broadcaster

The R2K Campaign must debate these models.

Model one – SABC is a public broadcaster with public funds

This model argues that the SABC's present hybrid commercial / public funding model is unworkable. Commercial radio and television stations should be sold off and operated as commercial broadcasting services. Even a number of the proposed new digital channels allocated to the SABC should be sold off, leaving the SABC with a slimmed public service offering consisting of both public TV and its public radio stations. These remaining stations should be dedicated to excellent public interest content i.e. South African-related news, information, current affairs, quality entertainment such as drama, children's programming and educational content aimed at South African citizen empowerment. There should be no adverts on these stations.

The funding generated from the sales of the commercial radio stations and television stations should be retained by the SABC.

A further source of funding would be taxes on the commercial broadcasters in recognition of the vastly-increased advertising spend available. Commercial stations should continue to be given some public service obligations.

Debate re: model one - One argument against this model is that a public broadcaster must provide universal programming which includes programming that is entertaining e.g. soaps, sport. Further concerns were raised about the marginalisation of public broadcasting in this model since in the new digital era there will be a proliferation of channels.

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

This model argues that the problem is not commercial funding per se. but the potential influence of commercial funding on certain types of editorial content including focusing on more aspirational content to the exclusion of gritty day-to-day working class content etc. and marginalisation of poorer audiences. The model suggests that there are particular ways to manage this influence. The model calls for – as part of a mix of funding including advertising and licence fees – long-term, assured national appropriations by Parliament. These grants need to be targeted at very specific budget line items including the following: certain operational costs (salaries), infrastructure (particularly new digital infrastructure and transmission costs) and particular kinds of programming promoting the values of the Constitution i.e. programming promoting civil rights (news and current affairs), programming promoting socio-economic rights (development focused programming) and programming promoting cultural rights (particularly African language programming but also arts and culture programming). The SABC should account for this money through Parliament's communications and / or public accounts committee. It suggests that the SABC retain its present and new digital television channels. Channels however should no longer be divided into commercial and public-commercial wings – all stations should be public. Stations should focus on a mix of information, education and entertainment (Kupe, 2009).

Debate re: model two – one of the most important questions is how to ensure that government grants are properly targeted, that grants don't increase bureaucracy, don't decrease the SABC's responsiveness to audiences, and don't introduce direct government influence through the "backdoor".

1.2 Areas of agreement

R2K Coalition members have agreed to the following:

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

- That all proposed funding models must be costed, and a decision must be taken on sustainability of funding and cost-effectiveness.
- To ascertain the actual funding requirements of the SABC, government needs to do an economic modelling exercise to look at:
 - The concrete costs of the SABC fulfilling its public mandate.
 - The costs of digital migration and the new multi-channel environment.
- That new legislation must emphasise transparent accounting. For instance, the SABC must report on the percentages it spends of its budget on different genres of programming, language programming, regional programming etc.

1.3 Issues for further debate

R2K Coalition members agree that the following issues require further debate:

1. Whether funding could be linked to adherence by the SABC to its Charter and the Charter renewal process to ensure the SABC's accountability to the public while ensuring its financial viability.
2. What would be the best mechanism for determining ideal public funding levels. Who should decide this? Should it be Parliament, the Ministry, National Treasury, an independent body, the Regulator, a combination? What capacity should this body have?
3. Special provisions should be put in place to ensure support for independent producers e.g. independent producers should retain copyright on the material they produce; there should be subsidies from the Department of Trade and Industry etc.
4. In terms of government advertising and sponsorships – these should be pooled to avoid the direct influence of individual government departments on editorial content.
5. The idea of a public programming fund should be investigated. This could be made available to all broadcasters who broadcast public programming. However, some Coalition members were concerned that this could lead to the undermining of the SABC. The problem is that someone needs to pay for the institutional costs of running a public broadcaster as opposed to just the programming costs.
6. Further suggestions include introducing a specific fund for educational broadcasting and a children's broadcasting fund (IPO, 2009).

Parliament and the Department of Communications need to ensure that the SABC has sufficient funding to pursue its public service mandate in respect of programming so that editorial independence is not compromised through advertising, funded programming or product placement.

2. Community broadcasting

The R2K Coalition recognises that the geographically-based community broadcasters are largely financially unsustainable. This particular sector is plagued by high transmission costs and few sources of funding, particularly those in rural or impoverished areas.

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