

**Right2Know Strategy Seminar
Media Appeals Tribunal (MAT)
& the public broadcaster (SABC)**

Report compiled by Helga Jansen-Daugberg

Date: 26th September 2011

Seminar venues:

Institute for the Advancement of Journalism, 9 Jubilee Road, Parktown (Johannesburg)

AIDC Solidarity Centre, 129 Rochester Road, Observatory (Cape Town)

Seminar co-facilitators:

- Mark Weinberg (AIDC, R2K Media Freedom/Diversity task-team, Cape Town)
 - Rashied Galant (Freedom of Expression Institute, Johannesburg)

*** It must be noted that audio sound, particularly in the JHB venue was not conducive for direct transcribing. Levels were uneven, and a hollow-feedback affected audio quality. For this reason (**unclear**) denotes where input was lost or garbled.

Aim

The aim of the Right to Know (R2K) strategy seminar, held via Skype video link, was to develop campaign perspectives on the proposed Media Appeals Tribunal (MAT) and transformation of the South African public broadcaster (SABC). The seminar took place on Monday 26 September from 9h00 to 13h00 with venues in Cape Town and Johannesburg.

The conference was divided into two sessions. The first was the presentation on the Media Appeals Tribunal prepared for the conference by Glenda Daniels (Mail and Guardian). A response to this paper was delivered by Prakashnee Govendor (COSATU). The second session presentation entitled a Vision for Public Broadcasting was delivered by Kate Skinner (SOS campaign) with a response offered by Rehad Desai (Independent Producers Organisation).

Each section of this report will contain a summary of the respondents input on the MAT and the Public Broadcaster respectively, the discussions which flowed from this and the proposals on the way forward for each thematic. Seminar discussion documents prepared by Glenda Daniels (MAT) and Kate Skinner (Public Broadcasting) are attached in Annex A and B respectively. A complete list of conference participants is contained in Annex C.

At the R2K National Summit earlier this year the campaign identified the Secrecy Bill as a symptom of the deeper threat to the free flow of information in South Africa and resolved to campaign on broader access to information issues as well as to take up the struggle for media freedom and diversity. This seminar is the second in a series that aim to unpack aspects of media freedom and diversity and develop campaign strategies in these areas.

Introduction

Murray Hunter, R2K National Coordinator welcomed all participants and provided a context to the second in the series of strategic seminars, and an overview of the campaign, its achievements over the past period.

Session One

***** Presentation on Media Appeals Tribunal by Glenda Daniels. Please refer to Annex A.

Respondent: Prakashnee Govendor(PG) (COSATU Parliamentary Office Co-ordinator)

Establishing the principle

- The COSATU statement issued in August 2010 the organisation reserved its position on the MAT. Essentially COSATU wants to first assess the implications of any form of regulation. As it stands the federation has no explicit preference for any form of regulation. COSATU asserts that it would oppose any measure that suppresses the publication of information that prevents whistleblowing on irregularities and abuse.
- There two things we want to note – the right to access to information is fundamental, and the right to freedom of expression including that of the press and the media. We want to emphasise that it is a right as much as a responsibility. And that is where the press and media must pay due cognisance of this.

Challenges to supporting the MAT

- The COSATU position, as with other progressive civil society organisations, is not an unequivocal and uncritical support of the current mainstream commercial media. Our view of the current mainstream media (**unclear**)...and doesn't serve the interest of the masses. With regard to the ANC paper around transformation and diversity – the issues and principles raised in this paper have resonance with a number of people including COSATU and civil society organisations.
- The challenges (in the ANC paper) starts to cloud the issues in that you have those who support the tribunal for a number of problematic reasons including to suppress information. There are those who want to address transformation and diversity but may opt because the issues are clouded and therefor may opt for incorrect mechanisms. The challenge this raises is that the media needs to be more self-critical and embrace the issue of its own transformation in a much more sincere and holistic way and diffuse the lack of clarity that has arisen. Obviously this is in the interest of everyone because we want a society that is free of repression and censorship.

Concerns on regulation

- The first concern in regard to regulation, apart from suppressing the free flow of information, is that it hasn't identified how we can address the problems in the media. There are other problems around transformation which may not easily be corrected through state censorship and regulation. Ultimately progressive civil society organisations would want a more progressive media to emerge. This kind of censorship and regulation will not allow the kind of traditions that would be inherent to this kind of culture. This is starting point.

Responsibility

- What we want to emphasize that public access to information and public interest would be eroded and undermined by state censorship. We have to acknowledge that manipulation of information and the lack of quality that is growing in the media also erode the right to information and I have personal experience of this.
- Too often we have a situation where truth and accuracy is sacrificed for by-lines and sales revenue. And sometimes we have situations where the information which should be published, but will not generate sales revenue, is not published. We have to look at how the R2K and the media organisations respond to these challenges if we want the R2K campaign to be legitimate in all forms of the emphasis on the right to access to information.

Examples

PG offered a personal experience which indicated her reluctance to speak to the media as quotes are not recognised when it appears in print.,

- A more recent example displays how journalists have a different interpretation in the use of quotation marks than the rest of the population. COSATU was critical of the Moegeng appointment and remains critical. We distinguished ourselves from a number of organisations including the Bar-Council. Interestingly enough the MG journalist Nirin Tolshi manipulated a quote from a written document and misquoted thereby disregarding the emphasis we wanted to put forward. Our message was not accurate enough for their story and a different quote was slightly altered was put in the newspaper. This is fraudulent.
- As COSATU we can't fight every inaccuracy so we don't go to the ombudsman and raise complaints. At the same time this kind of tendency doesn't create a degree of respect for journalism and we are faced with a situation where this is the very medium we are dependent on for the free flow of information.
- The reality is that when we emphasize the right to access to information, the media is the most critical form of mass dissemination of information. So if you want to implement the right of access to information for every citizen that is where the key component is to implement. Where there is manipulation of information it actually

doesn't further our cause. It doesn't ensure that the information out there is written and it doesn't further the cause to gain legitimacy.

- There are people in progressive civil society organisations where the idea of state regulated MAT has gained root not because they want to suppress information, but because they are concerned about abuse by journalists. That for me is really missing in the campaign and the voices heard by journalist, particularly in relation to the paper I have used in the example.

Rights in the campaign

- The media owes the R2K campaign and the civil society component in the campaign a great deal. The media has benefited, from an unequal relationship. It has managed to gain a broad-based form to lobby which may not have been available if they had entered the campaign alone. At the same time what has been put out has not always reflected what has been put out by the campaign in terms of documentation. I can give one example on the question of whistleblowing. COSATU has had to emphasize whistle-blowing recently at the expense on the right to access to information not because we think it less important. Last year when entered this conversation there were a number of organisations within R2K that emphasized whistle-blowing. That was largely jettisoned until we issued our statement in May 2011. The reality is that the rights of journalists were emphasised over that of ordinary citizens and workers who were brave enough to risk jobs to blow the whistle.
- I am raising this in the context of the information bill and make reference to the MAT. There is a need for the media to look long and hard at itself. Civil society has to maintain the balance and conclude that while we don't have the media we deserve, we are going to have to defend the media. We have to look at questions of diversity and the growth of community media as well.

In conclusion I want to close with one reference a slogan which caught my attention at the beginning of this campaign – “*Our freedom is your freedom*”. The media irony that comes to mind is that there is a suggestion that if you manage to trump or fight against state censorship then that is an unequivocal faith and support that the media as it currently is constituted is free. And we would disagree.

Discussion and input from the floor

What follows are the main discussion points flowing from the presentation by Glenda Daniels, and the response offered by Prakashnee Govendor.

- *The workings of the MAT* - How will the MAT work in relation to the existing appeal structure of the Press Council. Is the thinking that the MAT will replace that structure or will there be two paths to appeal to the Press Ombudsman. Will people have the choice of accessing the appeal mechanism of the voluntary structure or the legislative structure?

- *Finding a campaign position on regulation of the press* - The campaign needs to adopt a substantive position on regulation, and self-regulation. There needs to be broader discussion in a larger summit, that concrete proposals need to come out of the conclusion, and that the campaign should work towards a clearer resolution on existing moves to improve self-regulation. The Press Freedom Commission(PFC) needs to be discussed at greater length. How much consensus is there in the campaign and the media task team on self-regulation.
- *Consensus* - There is not much consensus and for that reason the position paper cannot be adopted as yet. It is difficult to come up with a position on MAT when nothing much has been concretised. There are so many different views on the MAT.
- *Consensus* - While we may not have consensus it doesn't mean we don't have agreement on the issues. The perspectives that have been raised have been agreed in the campaign however it needs a more democratic platform to guide the work in this area.
- *Bad journalism* - There is a distinction on bad journalism and role of regulation, and this is a serious dis-service to the majority of the population. Often reports and journalists expose their lack of understanding on issues and as such cannot engage in debate. However this kind of journalism informs public perceptions and opinion. The quality of journalism must get some emphasis in the campaign if we are to establish its relevance.
- *Press regulation* - In terms of establishing a R2K position in the area of press regulation. SA is not the first country to ask this question. We should look abroad to the debates in other countries and see how they regulated the press. Germany has a free press and even they have had difficulties. Many countries have adopted press self-regulation. The system of press self-regulation will never find a perfect model. But it is still better than statutory regulation. Yes we want diversity in the media, but how can MAT solve the problems in the media.

Summary discussion points on the practicalities involving the PFC and its proceedings.

- The R2K should argue for the commission to complete its proceedings before government moves on its processes on alternatives to the self-regulatory system. Once the MAT process is in place the PFC may not have the chance to show what it wants to do. It should be given the chance to do so.
- Participant Jane gave input on the previous point. Jane had a discussion with chair of the parliamentary Portfolio Committee on Communications, about the process they will be following in the next few months. They are dividing the issue of accountability and transformation. The first step will be to hold an *indaba* on media transformation, and in April 2012 they will have a follow-up *indaba*. In April or May they will move on the second part of discussions on MAT. They want to give the PFC the chance to complete its work and input into the parliamentary hearings.
- While they are giving the PFC a chance to complete its review nothing that comes out of the Press Council review or the PFC review is going to have a chance to be

practically tested or implemented before we start discussing a Media Appeals Tribunal. We won't be able to measure any of the findings or recommendations. I have a problem that government wants to rush into discussion before the PFC does its work.

Mark gave guidance on this discussion by informing participants that there will be space in the period ahead for the R2K to have input as to whether parliament should discuss this or if the campaign is satisfied with the outcome of the reviews. However this issue need only be resolved in the New Year.

Overall discussion summary

- 1) The campaign needs to facilitate engaging the dialogue with the ANC much more substantially to flesh out the way forward and the ANC's thinking around structure of such a Tribunal.
- 2) Generally the campaign needs to come up with clearer proposals and positions. For example what will be the nature of the delegation (to the PFC hearings), what are the different kinds of regulation we need to investigate – statutory regulations, independent regulation, co-regulation and self-regulation.
- 3) Need to gain more clarity on the concepts, notions and principles of good and bad journalism. There is also a need to identify the principles in which we want to regulate – and have a more detailed discussion on this.
- 4) There is a need to emphasise the discussion on the potentially central role of journalists in the regulatory process and the weakness of journalism trade unions in South Africa. The paper must look at alternatives to state regulations. The R2K should see a central role for journalists and see how we can engage different journalism bodies through our organising and mobilising efforts.

Jane cautioned against the kind of language used when making decisions and advised steering away from phrasing such as 'facilitate dialogue with the ANC'. We want to give the ANC a hearing in a forum like this and put questions to them on their thinking (on the MAT and regulation). The R2K should consider a separate seminar on what is going on in South African newsrooms and under which conditions are journalists working under. It would be in the interest of the campaign to get working journalists to start a dialogue on what is going on in newsrooms.

Proposals flowing from discussion

1. The R2K engage the Press Council in terms of short-term goals. That a presentation is developed which can be delivered at the Press Freedom Commission hearings in end-January 2012.
2. There must be a R2K delegation at the Press Freedom Commission (PFC) hearings who present the positions of the R2K campaign. Key to the campaign's presentation must be how we would like the press council to proceed from this point onwards.

3. The R2K tactical position is to engage with every opportunity. The presentation should analyse how the Press Council operated in the past and how we like it to operate in the future.

This proposal was seconded by delegates in the Johannesburg and Cape Town venues.

Way forward

It is important to incorporate the additions and perspectives into Glenda's paper by way plotting a way forward other than a single focus on state regulation. The following persons were tasked to refine the paper drafted by Glenda.

- Julie (JHB)
- Kate Skinner (JHB)
- Jane (Cape Town)
- Glenda (Cape Town)

The team was tasked to co-opt individuals from the following sectors

- A working journalist
- Pro-journ
- Mwasa
- SANEF
- COSATU
- Community Media

Session Two

***** Presentation of R2K discussion doc on Public Broadcasting by Kate Skinner, R2K Media Freedom/Diversity Team. Please refer to Annex B.

Respondent: Rehad Desai on Vision for a Public Broadcaster

What does a Public broadcaster mean to South Africans?

- If we are to run a popular campaign which speaks to the tens of millions of audiences we must ask what does the SABC mandate mean for this audience. If we are to map a popular campaign which speaks to the tens of millions audiences we have to map out the details of what does the PBS mandate mean for the screen, for the viewing schedule and for the audiences. And this is missing from the vision document because it is dominated by experts. I think we got to say we can hammer this vision document now because its overdue and yes there is a policy review process, but most of it is redundant when it comes to a serious campaign which is taken to the public.
- The broadcast landscape has changed dramatically and unless you have people who have a real vision of how to use the digital media landscape in the new era we will be lost.

Parliament and the SABC board

- We do believe parliament has a role in the SABC board - in terms of clarity and the oversight. As long as we retain the quality of MP and people who manage the oversight structures inside parliament. There has to be consistent vigilance and campaigning around the SABC for them to take their jobs serious. One of the amendments we are calling for is a programme committee which is made up of civil society I think we should this into the campaign.

Funding

- There are number of 'super-indies' - 6 or 7 producers who dominate the independent producers organisation. Nothing gets acted upon unless these companies say yes or no. When it comes down to their payments about two or three years ago they were prepared to take to the streets. And to get involved in the campaign. But actually their key issue is the stability of the SABC and to keep their revenue stream. This is the conservative bent of the hundreds of freelancer professionals and documentary filmmakers who have a lot of stake when it comes to the SABC and the PBS vision.
- The commercialisation of the PB and its funding model will make the SABC far less responsive to audiences. And the commercial market makes it more responsive to what audiences are watching. Audience ratings are god rather than audience

appreciation. To some extent we have similar problems inside the (media) trade unions. The issue is to have people committed to generate a PB committed to citizen-participation and building democracy and social justice. This is the only way to build a strong clear vision based on the profound understanding of what SA audiences need, and what PBS can be. The question is how will we achieve this amidst an economic crises in which a government is still committed to economic austerity, which has an interest in a weak PB and an industry which grows stronger and stronger.

Discussion and input from floor

- *SOS Vision of a PB* - The important points are the key principles around the SOS vision and also taking into account the crises at the SABC and the urgency of addressing and resolving the crises and how this can be done.
- *Establishing a principle and vision for alternatives* - One of the big problems is that the campaign that is trying to establish a principle and vision for an alternative PB and it stepped into the crises and attempted to mitigate this crises. In this the campaign has made a strategic error in that we lost any notion of an alternative. When you Google the SABC one of the main voices against public funding is the SOS campaign. I am drawn to the idea which says we must establish a vision and principles for the SABC that does not draw us into the daily crises management. A vision that says this is the kind of PB we need. The provision of the information cannot be left to the commercial producer sector. There is a critical role for the state but governance must be at arm's length. That the SABC is the only media SA's have. In the villages and small towns it is the SABC that provides info. The whole controversy that focuses on the print media ignores the fact that it sets agendas in the cities. On those grounds I would support the R2K that focuses on the SABC but ours must be one of a set of visionary demands not getting dragged into co-managing a crises – a crises that is part of the structural problems we want to resolve.
- *The SABC crises* - In truth co-managing the crises is not the way to go. **(Unclear)**...the important thing is the media unions...we agreed amongst ourselves to reclaim credibility ... what is important is that the crises at the SABC cannot be allowed to continue. By the time the policy review comes around there may well not be an SABC to speak of. To stabilise the SABC take those who have no interest in the SABC out of the equation.
- *Local content* - Where is local content beyond soap operas. The R2K should be looking at programming and content.
- The SOS has spent a small amount of time on programming and more on structure. Certainly it would be helpful to rework a lot of the material. We seem to have stalled on policy review. There needs to be constant pressure to make sure the policy review process takes place.
- *Relationship between SOS and R2K* - We haven't worked out what the relationship between the SOS and the R2K campaigns but both have strengths and weaknesses. We must find a way to get the best out of both to strengthen both campaigns. SOS has

been strong on structure of PB and legislation and R2k strong on campaigning. We must make sure that we can marry the strength of both campaigns to complement each other. A practical way is to take the recommendations in the document which we can build on – turn it into something similar of the R2K’s 7 point test in the secrecy bill. If we can come up with a very similar set of principles that incorporate what SA want to see on the PB –that could be used as a campaigning document. It should be developed as more accessible than the document which exists now. We could have a national discussion around the country to see what the principles are which SA wants out of their public broadcaster.

Mark supported Jane’s suggestion on developing a more accessible document on PB. The media freedom and diversity task-team should develop one set of principles and a statement that covers the entire spectrum of media freedom and diversity. The success of the campaign is that we have focused people one problem statement, one solution and one set of demands. We need to craft a document that covers press freedom, media diversity, community media and public broadcasting.

Discussion Summary

People are saying they are appreciative of the work of the SOS campaign in giving the principles on public broadcasting. At the R2K we can simplify and inspire people to get behind a vision for a public broadcaster. We also cannot ignore the reality of the digital world and that citizens can produce content and communicate in multiple communities. The R2K campaign should take this into account when we develop our position on access to information and the media, and new media. This is a challenge to the campaign.

Proposals and Way Forward

1. Develop an accessible pamphlet highlighting the problems of PB and the alternatives, and take these discussions to the grassroots for input. The issue of programming and content must also be incorporated into the way forward.
2. Mark proposed that Murray to set up provincial summits where the discussions can be tabled.
3. It was decided that Kate and Jane share what they have worked on with the Media Diversity task-team and that it be developed into a pamphlet. This proposal was accepted.

Closure and concluding remarks by Mark Weinberg

The most critical point for R2K to make is that it was easier to mobilise for the Secrecy Bill, The questions raised in today’s discussion are far more difficult and challenging. The challenge is to take the discussion into the base of he campaigns and work towards the provincial summits and find a language and package of positions that SA can get behind. Mark thanked all for their contributions, particularly to those who prepared discussion documents and responses.

Annex A

**Guarding the guardians: A Media Appeals
Tribunal?**

A Right2Know Campaign
Discussion Document

September 2011

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Prepared by Glenda Daniels

***M&G Centre for Investigative Journalism
(amaBhungane)***

For the Right2Know Campaign

www.right2know.org.za

September 2011

Introduction

The African National Congress (ANC) has proposed that a statutory Media Appeals Tribunal (MAT) be investigated by Parliament in South Africa.¹ At present the country's press is self-regulated. This system works relatively well, with more cases found against the media than for.

The ANC's proposal for a MAT was made as a formal resolution at its policy conference in Polokwane, December 2007, and remains as an issue for implementation. The press at present enjoys relative freedom, governed as it is through self-regulation: The Press Code; the Ombudsman and the Appeals Panel.

“Effective self-regulation is the best system for promoting high standards in the media,” according to the Declaration of principles on Freedom of Expression by the African Commission on Human and Peoples' rights.

This paper argues that if a MAT were to be introduced in South Africa it would signify significant closures for freedom of expression, media freedom and therefore democracy, as has occurred in a number of African countries post colonialism. It reaches this conclusion after moving from the premise that while the present self-regulation system, may be imperfect and while the media make mistakes, government control would be infinitely worse: the proposed MAT would ultimately ensure political control of the media. And at the very least, journalists would self-censor, for fear of offending the statutory regulatory body.

The MAT proposal, a political proposal, can also be viewed alongside the state threat to the media be if within the context of the Secrecy Bill having just been adopted by the ad-hoc committee in Parliament in September 2011, without a public interest defence: journalists, whistle-blowers, trade unionists, academics, activists against corruption all face jail time for possession, disclosure, and publication of classified information.

Professor Franz Kruger² quotes French academic Claude-Jean Bertrand, who used the term Media Accountability Systems, abbreviated as M*A*S and defined as “any non-state means of making media responsible towards the public” (2004). In a nutshell, Kruger argues that while the media makes mistakes, this does not translate into an argument for statutory regulation.

¹ The ANC passed a resolution to this effect in Polokwane December 2007, and this was re-asserted at the national general council of the ANC in September 2010 in Durban.

² See Kruger (2009) paper: Media Courts of Honour: self-regulatory councils in Southern Africa and elsewhere in *Fes Media Africa series*

Presently the press is “guarded” by self-regulation, and the public and protected by the Constitution. Should a Tribunal be instituted, this would change to control and guarding by whichever ruling party is in power.

Even if the ANC assures opponents of such a statutory tribunal that its proposal is for an “independent body” merely to make journalists more “accountable”, opponents of the MAT are wary.

From the ANC’s point of view³, and other supporters’ of the MAT such as the South African Communist Party (SACP) the Tribunal can be called an accountability mechanism consisting “independent” individuals. But such independent bodies⁴ have, in recent years, come under severe pressure from the ANC.

Guy Berger, who is anti a MAT and is an activist for the free flow of information, points to the argument by the proponents (in a paper Best Practice in Media Self-Regulation (July 2011) published in *Ecquid Novi* Vol 32 (2) the “existing press council and ombudsman were portrayed as being slow in responsiveness, low in profile, violating the principle of separating player and referee, being exclusive author of their code of conduct, reactive rather than proactive in initiating complaints, structurally empowered to impose only symbolic sanctions giving insufficient weight to rights like dignity and privacy, and failing to raise standards in the press as a whole.”

The question now is: Are these deficiencies in the system sufficient reasons to warrant a ruling party taking control to impose a statutory tribunal? This issue is interrogated in the introductory chapters to the Press Council’s Review, released August 18, 2011.

The implications and the Reactions

The ANC’s big concern is the different or out of tandem “ideological outlook of the media”. Clearly it would prefer a more sympathetic and less critical press. It also does not like investigations, such as the arms deals and the Oilgate scandals, which embarrass it. In addition, the issue of how to balance constitutional imperatives of both freedom of expression and dignity and respect for privacy has not been resolved. Sanef and the Press Council have responded in a few ways to the proposal of a MAT: Sanef set up a Press Freedom Commission in July, which is chaired by retired judge Pius Langa. The Press Council completed a year long process of public hearings and submissions and drew up a new proposal for a Press Code, one which would have stricter sanctions on media for making mistakes. This Review would now go to the constituents of the Press Council for acceptance or rejection.

Critics of a MAT have pointed to several possible or even probable implications of having a statutory body control what goes into the press, and which is accountable to Parliament. It would result in self-censorship, as journalists would be afraid of whatever punishment could be meted out to them for making mistakes. In the view of this paper, it would most certainly mean regulation of speech and freedom of expression.

³ Not all in the ANC, there is no one view in the organisation about MAT but some of the well-known supporters include president Jacob Zuma, secretary general Gwede Mantashe, spokesperson Jackson Mthembu, and government spokesperson Jimmy Manyi.

⁴ The Office of the Public Protector and the Judicial Services Commission are two such examples. There is alleged executive interference in these independent bodies.

Not all newspapers are of one view. A *Business Day*⁵ editorial expressed the view that the MAT was intended to replace the self-regulation system. This is not precisely what the ANC has proposed (although this might well be the ultimate intention). The ANC says it wants to “strengthen and complement” the present system. Nevertheless the editorial perceived, correctly, the ANC’s intentions in the following way: “It argues editors and newspapers ruin lives and reputations without having to take responsibility for their actions; and they must be held to account by a body that can dish out punishments for bad behaviour that really hurt.

“The MAT would bring the press under political control, which is why the media and civil society have opposed it.” (op cit).⁶

However, in the end the argument is, and supported by the argument in this discussion/position paper, is that the current system of self-regulation may be weak but it should be strengthened rather than replaced or complemented by a statutory body. A statutory body would be anti-democratic, close spaces for real debate and investigations, as sanctions against newspapers and journalists could be severe. To have a body, which controls the media, under the auspices of Parliament – irrespective of which party has the majority in Parliament or near majority, is shortsighted and not a democratic way to guard the guardian.

But *Business Day* argued further that regulation of the media should not just be out of the hands of politicians but should perhaps be out of the reach of journalists too: “If media regulation needs to be independent of politicians, does it not also need to be independent of journalists and publishers? Where self-regulation is insufficiently convincing, genuinely independent regulation surely would be. The point, anyway, isn’t what regulation works or doesn’t. The point is what the public is comfortable with.” Half-Touché. The point gives one food for thought but it is not necessarily the way to go. After all, no one understands the newspaper industry better than a newspaper journalist. A guardian body should consist of an equal number of citizens – men and women from diverse backgrounds, civil society stakeholders, retired judges but also journalists.

This argument in *Business Day*’s editorial is for independent regulation, against statutory regulation as in a MAT, but is also against self-regulation. Proponents of self-regulation argue that the industry is best equipped to handle regulation, as it understands better than any one or institution how things work, and depending on peer review is powerful indeed.

⁵ *Business Day*: media needs an independent fix: 11 July 2011

⁶ The editorial was written after the saga of the News of World newspaper from the famous Murdock group News Corp was shut down after advertising was withdrawn because it was discovered the methods used to gain information were illegal. The owner closed the paper on 8 July 2011 after 168 years of publishing sex, and crime stories. The saga is now called the hacking scandal. Journalists hacked into phones to get information and admitted it and it was alleged that they bribed policemen to get information.

Don't conflate and collapse issues

Now let's turn to an argument from the Democratic Left Front (DLF).⁷ The organisation made a convincing argument about why a MAT is unworthy of the ANC's attention in a recent⁸ statement-cum-paper.

The Forum stated that it condemned the attempts to suppress the freedom of expression through the establishment of a statutory MAT and the promulgation of a Protection of Information Bill. The DLF was "under no illusion about the lack of transformation in the media" but did not believe that the Tribunal was being proposed to address these problems.⁹

The intention of the Tribunal in the ANC and the SACP is to "stifle the spaces that do exist for critical journalism, especially of their own leaders, who because of the elite nature of much journalism, are the main subjects of critical reporting: "Both the Tribunal and the Protection of Information Bill [Secrecy Bill] are intended to make investigative journalism impossible."

The DLF supported the concept of self-regulation but not as it is currently practiced. Instead it believed self-regulation should be about ethics, and about keeping journalistic decision-making as far away from centres of power such as Parliaments, media owners, governments and so forth. Unfortunately, the paper noted that journalists were not organised enough to run it as a peer review system, and there is substantial evidence to support this.

The Forum's conclusion was that the Secrecy Bill and the Tribunal were part of a bigger malaise in South African society and politics today: the present ruling elite is enhancing the coercive capacities of the state, and was in "the process centralising power in an increasingly unaccountable security cluster".

The Forum did not offer too many practical solutions but then this was not their intention. It is worth noting though that in their proposal for an "investigation" into a Tribunal, the ANC and the SACP do not offer any ideas on how this investigation would take place, nor any implementable plan either. Parliament should investigate this, they state, and it becomes unclear how Parliament can investigate such a thing. Can such an investigation be part of Parliament's mandate, or is it stretching it? For some clarity, Stella Ndabeni ANC communications whip would have been ideal to interview. She did not respond to email questions. However, one of the authors of the resolution, Lumko Mtimde did grant an interview to amaBhungane (M&G: 19 June 2011).

The below argumentation should draw out some good discussion points to engage with.

⁷ The interim steering committee of the DLF consists Brian Ashley, Ayanda Kota, Jane Duncan, Mazibuko Jara, Martin Legassick, Noor Nieftagodien, Vishwas Satgar, Roy Chetty, Trevor Ngwane, Phumi Mtetwa

⁸ The statement is not dated but it arrived by email in June 2011.

⁹ Some of the problems include "middle class and politically centrist biases of the mainstream media", the urban bias and neglect of the rural areas, "socialism barely exists as a political concept worthy of serious debate in the media".

Explaining the ANC's rationale for the MAT

Interview (June 2011)¹⁰: Lumko Mtimde – Chief executive of the Media Development and Diversity Agency¹¹ and one of the authors of the discussion documents on the media tribunal for the ANC's national general council (ngc) in September last year.

Who will run this tribunal? This tribunal will be independent of all interests – political and commercial and will be passed through an act of parliament – the same way that the IEC, Icasa and the HSRC has.

Registration of journalists? There will be no such thing. People who want to trivialise the idea have come up with the idea of registration.

What's the problem with self-regulation?

It has no teeth. It's a process for itself.

On the self-regulation review

It's good that the review was done, so hopefully the outcomes of the review will be debated as part of a public enquiry.

What's behind the idea of the tribunal?

It's to strengthen and complement the self-regulation process. The resolution is clear, read it, and don't trivialise it.

Problems with the media?

They are unfair to the ANC, inaccurate reporting. They write about the opposition winning but it was the ANC that won the last election. Why can't the media acknowledge that the ANC did well?

Now there's a double threat – Secrecy Bill and Media tribunal?

These two are separate processes; they are not the same thing, they must be delinked. There is legislation of state security all over the world. If the issue is that it is too broad then that must be the focus of the criticism.

The above interview did not take the issue any further than what has already been discussed. There are a few things to note however: opponents of the Secrecy Bill and the Tribunal are keen to link both as together they both strangle freedom of expression, investigative journalism and ultimately democracy.

¹⁰ See Mail & Guardian 10 June 2011: Press not off ANC's hook

¹¹ The MDDA was set up as a statutory body – a government agency to work in partnership with media groups to develop and diversify media in terms of the MDDA Act no 14 of 2002.

Research on the media and the Self-Regulation system

Media Monitoring Africa (MMA), a research group into the media freedom and diversity issues, among other, in a similar way to the DLF, Sanef and other opponents of a statutory MAT condemned the idea but also offered some practical solutions in a submission to the Press Council,¹² under topics, for instance, the overall framing of the code, how to minimize harm, children, public interest and discouraging brown envelope journalism.

Reviewing self regulation

The Press Council conducted a two-month countrywide public hearing process, while the entire review process took a year, to end a few months ago, April 2011. The report from these hearings has been handed over to the constituent associations of the Press Council: the Newspaper Association of SA, the Magazine Publishers Association, the Association of Independent Publishers, PMSA the Forum of Community Journalists and Sanef.¹³

Sanef and PMSA launched a Press Freedom Commission in July 2011, which would appoint an eminent persons panel to examine self-regulation of the media in South Africa. The ANC was contemptuous in its dismissal.

Mthembu told the media, at the launch, that the commission was already flawed. "If you get a group of eminent people to investigate media control with specific reference to your favoured mechanism, they will be nothing more than playboys of Sanef and PMSA."¹⁴

Which makes one wonder at the commitment of the ANC to press freedom, to strengthening and enhancing self-regulation or to just wanting control over something it does not have control over, the print media - something it fears will continue to expose all its secrets, as it is doing.

¹² The MMA's submission is online.: MMA Submission Press Council October 2010

¹³ See Daniels, G: 24 June 2011 Overhaul of self-regulation on the cards. AmaBhungane website: www.amaBhungane.co.za

¹⁴ See *Mail & Guardian*: ANC slams Press Freedom Commission: July 8-14 2011

Some concluding reflections

Self-regulation must be strengthened. Journalists must be more aware of the code of professional ethics: the Press Code. They must adhere to it at all times, and must apologise when they err. The press does seem to have a credibility problem with some sections of the public, and some NGOs, but not all.

The ANC is not committed to self-regulation. It seems to be highly committed to a statutory tribunal. However, to date, no plan of action is on the table.

The MAT must be fought by all those who have reservations about the intentions: although there seems to be no concrete implementation plan, the idea has been mooted, a resolution has been taken which cannot be rescinded until the next ANC policy conference takes place (Mangaung: December 2012).

Meanwhile, this Tribunal signifies significant closures for democracy and its implementation would completely squeeze out the space for investigative journalism, especially when coupled with the Secrecy Bill.

The Press Freedom Commission set up by Sanef could be a creative and imaginative initiative. It should be supported, although there are detractors arguing this is just more of the same. The MMA's proposals should be examined more closely, as there are several interesting ideas in there about self-regulation. In addition, various academics (Berger, Duncan, Harber, Froneman, Teer-Tomaselli and Fourie) have done much commendable on this issue.

To end of a low note, however, on the ground journalists seem to be quite complacent about their freedoms being whittled away (see interview with amaBhungane's Stefaans Brummer 2009, for my research¹⁵: in which he states that over the Secrecy Bill "the media is in a deep slumber").

Journalists appear to have left all their protests (and we haven't heard too many of these) to Sanef, the editors' body. The question of who will guard the guardians, if self-regulation is okay, how could it be improved, what would happen if there was a MAT and a Information Act, is hardly discussed in journalist circles, which is astonishing. Besides the Mail & Guardian¹⁶, and AmaBhungane attending in activist capacity (and 702 and Daily Maverick in reporting mode)¹⁷ not too many journalists attended the Right2Know rally and march to the Constitutional Court on August, 13, 2011, for example.

Those who are concerned about freedom of expression and the whittling away of the free space of the media (irrespective of what their criticisms of the press are, and these are many: profit driven media, middle class bias, concentration of ownership/lack of diversity and so forth) should be strongly opposing the proposed MAT. There are ways to make the media more accountable (but to the public) and more responsible in its reporting without having to resort to draconian statutory regulation. As Guy Berger

¹⁵ Daniels 2010: *The Role of the Media in a Democracy: Unravelling the Politics between the Media, the State and the ANC in SA* (PhD thesis)

¹⁶ Editor in chief of the M&G Nic Dawes was a speaker at the rally.

¹⁷ There may have been more media reporting

concludes in his article on Best Practice – we must rise above “expedience” and “vested interests” such as no doubt party political interests.

Appendix 1: The ANC’s Polokwane resolution: The Media Appeals Tribunal Resolution re-adopted at the ANC ngc in Durban, 20-24 September 2010.

The existing self-regulatory system (Press Ombudsman and Press Council) is ineffective and needs to be strengthened to balance the rights of the media and those of other citizens, guided by the values enshrined in our bill of rights, for example human dignity, equality and freedom. The commission affirmed the call for Parliament to conduct a public enquiry on:

- a) balancing the rights enshrined in the Constitution, like rights to dignity, freedom of expression and media, guided by the values enshrined in our bill of rights, human dignity, equality and freedom.
- b) enquiry on transformation of the print media in respect of a [black economic empowerment] media charter, ownership and control, advertising and marketing and the desirability of the establishment of a media accountability mechanism, for example the media appeals tribunal.
- c) the media accountability mechanism [should be] in the public interest including the investigations into the best international practices, without compromising the values enshrined in our Constitution
- d) on what regulatory mechanisms can be put in place to ensure the effective balancing of rights, this may include self-regulation, co-regulation and independent regulation. Any media accountability mechanism, should be independent of commercial and party political interests, should act without fear, favour and prejudice, should be empowered to impose appropriate sanctions and must not be pre-publication censorship.

ANNEX B

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

A Right2Know Campaign

Discussion Document

September 2011

**Prepared b Kate Skinner
SOS Support
Public Broadcasting Campaign For theRight2KnCampaign**

www.right2know.org.za

**September
2011**

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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 it 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 broadcasting ¹

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) (DVBT2) 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 under developed 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.

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 Report 3 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 issue 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:**

- o 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.
- o The role of the Public Editor is to represent the public interest in relation to SABC editorial matters.
- o Is appointed by the Editor in Chief through a transparent public process.
- o Is to be consulted on all editorial-related complaints involving the SABC that are laid with the BCCSA.
- o Is to adjudicate complaints regarding editorial content or conduct of the SABC that are laid with the SABC directly.
- o 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.
- o 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 high quality programming and ethical standards of journalism.
- o 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.
- o 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:
 - o 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**

o **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.**

o **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.**

o **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**

o **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.**

o **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.

o 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 mismanagement 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 models

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 governments⁶. 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 on going 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 regard less 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 ;**
 - o meets the highest standards of journalism**
 - o provides accurate, balanced and explanatory analysis which is independent of those wielding public power**
 - o 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:**
 - o a representative of a freedom of expression or other human rights organization**
 - o a media-related trade union representative**
 - o a representative from the independent film and television production sector organization**
 - o a broadcasting or media studies academic**
 - o a freedom of expression, media or broadcasting lawyer**
 - o an appropriately skilled economist with expertise in the media sector**
 - o 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:

- (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, journalism, the business of production and the application of new technologies; and**
- (e) broadly represent the following key constituencies and stakeholders in society including, but not limited to, business, labour, and NGOs active in the human rights field.**

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

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

Disqualification criteria

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

- (a) is not a citizen of the Republic;**
- (b) is not permanently resident in the Republic;**
- (c) is a senior public servant above the level of national director;**

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

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

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

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

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

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

participates in the proceedings of the Board, the relevant proceedings of the Board will be null and void.

Removal of Members of the Board

This is a vexed issue within the Coalition. Certain members do not support the principle of the removal of the entire Board at once and its replacement with an Interim Board. They claim that this was an anomaly that became necessary only due to political interference in the appointment of the 2007 Board, which meant that the latter lacked public legitimacy.

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

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

APPENDIX 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:
 - o The concrete costs of the SABC fulfilling its public mandate.**
 - o 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 transmissions costs and few sources of funding, particularly those in rural or impoverished areas.

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

-end-

ANNEX C

Right2Know Strategy Seminar Media Appeals Tribunal (MAT) & the public broadcaster (SABC)

Participants List

Johannesburg

- Raashied Galant – FXI
- Glenda Daniels - M&G
- Julie Reid – Unisa
- Jayshree Pather - R2K
- Kate Skinner – SOS
- Tuwani Gumani - _ MWASA
- Rehad Desai – IPO
- Thandi Smith - MMA
- Jenny Dry - R2K

Cape Town

- Prakashnee Govendor (COSATU)
- Murray Hunter (R2K)
- Nkwame Cedile (R2K)
- Eleanor Hoedemaker
- Mathilda Groepe (Anti Eviction Campaign)
- Khaya Xhintolo (Mandela Park)
- Lorraine (ISIS)
- Shireen (ISIS)
- Tobela (Silvertown TAC)
- Moira (OSF)
- Hennie van Vuuren (ISS)
- Nonceda (TAC)
- Mark Weinberg (AIDC/R2K)
- Jane (Rhodes University)

