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Promoting human rights and democracy through the media since 1993

## **Submission to the Department of Communications (DOC) on the**

# **Public Service Broadcasting: Repositioning for National Development Discussion Paper**

**31 August 2009**

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**Submission by Media Monitoring Africa**

## **1. Introduction**

Media Monitoring Africa (MMA, formerly the Media Monitoring Project) welcomes the opportunity to make a submission to the Department of Communications (DOC) on the Public Service Broadcasting: Repositioning Broadcasting for National Development Discussion Paper-July 2009.

## **2. MMA's Constitutional Assumptions**

As an independent non-governmental organisation, MMA approaches all broadcasting within a human rights-based framework. MMA's point of departure therefore includes similar values to those originally contained in the Broadcasting Act, where in the preamble it noted that,

“[T]he South African broadcasting system comprises public, commercial and community elements, and the system makes use of radio frequencies that are public property and provides, through its programming, a public service necessary for the maintenance of a South African identity, universal access, equality, unity and diversity”.

(Broadcasting Act No.4 1999)

Within this rights-based framework, MMA understands the institutional role of the SABC as fundamental, not only to fulfilling its role as a public broadcaster, but also to realising citizen's constitutional right to receive and impart information. Further, as a key public institution and core component of the media environment in South Africa, the SABC's role in entrenching South Africa's democracy cannot be underestimated.

Given its function and purpose as a public broadcaster, when the SABC's ability to fulfil its role as public broadcaster is being discussed, South Africa's democracy is also under the spotlight. MMA's core principals in the submission are diversity, public participation, the importance of a public service broadcaster, accountability and culture of human rights.

## **3. MMA and the Save our SABC – Reclaiming Our Public Broadcaster (SOS Coalition)**

MMA is a founding member of a civil society coalition, **Save our SABC – Reclaiming Our Public Broadcaster (SOS Coalition)**. This submission is to be read in conjunction with the SOS Coalition Submission, and MMA fully supports the content and aims of the SOS Submission.

## **4. Responses to the Questions**

MMA is not in a position to answer all of the questions and we have therefore chosen to address a number of broad areas. We will use the numbering of questions contained in the Discussion Paper and headings have been inserted for clarity. SOS's responses used in this submission are quoted.

### **SABC Charter**

#### **1. In view of South Africa as a developmental state and further taking into account technological developments evidenced through convergence and broadcasting digital migration what should the new mandate of the public broadcaster be?**

SOS has made the following submission with regards to the SABC Charter:

We propose that the public mandate of the SABC ought to be clearly enshrined in an SABC Charter which ought to guide every radio and television service provided by the SABC. Please note that we believe that only the broad principles of public service broadcasting should be included in the Charter, the details of this mandate should be expanded on in the license conditions of SABC's various television and radio services. We propose that the following Charter be adopted:

This Charter of the Corporation sets out the public mandate of the SABC, which public mandate is to-

(1) build the nation and for this purpose to:

- (a) contribute to democracy, the development of society, gender equality, nation building and the provision of education;
- (b) safeguard, enrich and strengthen the cultural, political, social and economic fabric of the Country;
- (c) reflect both the unity and diverse cultural and multilingual nature of the Country and all of its regions to audiences;
- (d) develop a strong and committed public broadcasting service which will service the needs of society;
- (e) use its best endeavours to ensure that public broadcasting services are available throughout the Country; and
- (f) encourage the development of human resources, training and capacity building within the public broadcasting sector;

(2) provide the public with excellent up-to-date informative programming and for this purpose to:

- (a) provide, in its public broadcasting services, radio and television programming that informs, educates and entertains;
  - (b) ensure a plurality of news, views and information;
  - (c) provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests;
  - (d) ensure that public broadcasting services provide a reasonable, balanced opportunity for the public to receive a variety of points of view on matters of public concern;
  - (e) cater for a broad range of services and specifically for the programming needs in respect of children, women, the youth and the disabled;
  - (f) 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 and contributing to a shared consciousness and identity;
  - (g) include national sports programming;
  - (h) ensure public broadcasting programming shall be drawn from local, regional, national and international sources;
  - (i) ensure that public broadcasting services comply with the code of conduct for broadcasting; and
  - (j) be responsive to audience needs and account on how to meet those needs;
- (3) contribute to the development of the Country's culture, languages and local cultural industries and for that purpose to:
- (a) encourage the development of local programming content
  - (b) enrich the cultural heritage of the Country by providing support for traditional and contemporary artistic expression;
  - (c) ensure, as far as is 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
  - (d) to nurture the Country's talent and carry out research and development for the benefit of audiences; and
- (4) provide a public broadcasting service of the highest technical standard and for that purpose to ensure that public broadcasting services comply with international technical standards.

MMA supports SOS's proposed SABC Charter, as it encapsulates concepts that MMA believes should be foundational and fundamental to the Charter, those of nation building, democracy, diversity, universality, accessibility (both in terms of programming and signal), independent and balanced news and current affairs, catering for the minority, childhood development and quality children's programming as well as the importance of local content.

MMA would like to propose the addition of the following to the SABC Charter:

(5) Ensure that the public interest will always be met and is central to fulfilling its mandate, and for that purpose to:

- (a) Treat all South Africans equally by treating audiences as citizens and not as consumers with unequal buying power.
- (b) Recognise diversity and provide programming that meets the diversity of audiences in South Africa.
- (c) Through its programming make a valuable contribution to enabling citizens to participate meaningfully in democracy as well as facilitating greater understanding of South Africa's diverse cultures and people.
- (d) Provide distinct programming that is easily distinguishable from commercial broadcasters.

## **2. What should be the term of the Charter?**

MMA proposes that the SABC Charter be reviewed every five years. While this is a minor deviance from the SOS submission, MMA believes that with digital convergence and the rapidly changing technological environment that the Charter should be amended on a more regular basis to ensure that this will be up to date and adapted to any new changes.

## **3. How should its review be conducted?**

SOS suggests the following:

...the review process ought to be characterized by openness, public consultation and participation and a willingness to hear what the SABC's audience thinks of the SABC's mandate and the direction it ought to be heading in. In our view, the DOC is the body best able to facilitate maximum public participation in such review process, given its resources and governmental mandate.

The SOS believes that the DOC, as is the case with other legislation, ought to present to Parliament its Charter review document containing proposed amendments based on the public review processes outlined above.

Parliament ought to be responsible for actually enacting the proposed amendments to the Charter, if any, through a Public Service Broadcasting Act amendment process which itself would allow for additional public comment and participation.

MMA endorses SOS's proposition; however, would like to add that the SABC, DOC and ICASA work together in this review process. ICASA is the only body mandated to monitor and enforce compliance with the SABC Charter and thus it should be actively involved in the review process. And, as the SABC is the subject of the Charter, they should at least be involved in its review process.

#### **4. Are the current procedures responsibilities relating to the charter efficiently and effectively workable?**

SOS stipulates:

...we point out that this question is very unclear but we understand it to be asking whether or not the provisions of the Charter are clear and implementable? In our view the answer is clearly “No”.

The Broadcasting Act makes numerous references to the SABC Charter and yet it is very difficult to identify precisely what the Charter is. Chapter IV is headed “Public Broadcasting Service and the Charter of the Corporation”. Part 1 of Chapter IV is headed “Public Broadcasting Service” but is made up of only one section, section 6 which is headed “Charter of the Corporation” but only one subsection, namely subsection 6(4) deals with any public mandate issues and includes requirements regarding languages and programming. Other subsections of section 6 include requirements which appear to relate to public mandate issues but do so only obliquely for:

SABC policies (including, news, programming, local content, education, universal service and access, language and religious); and

an SABC Code of Practice (to deal with equality of people and languages and the rights of South Africans to receive and impart information and ideas).

Immediately under section 6 is a large heading titled “Charter of the Corporation” which is made up of seven parts but very few of these parts in fact contain traditional “Charter issues” in the sense of dealing with the public mandate of the SABC.

In fact the “public mandate” of the SABC is gleaned from a number of different sections including:

- section 6 (discussed above);
- section 10(1) which appears to set out the mandate of the public service of the SABC;
- section 11(1) which appears to set out the mandate of the commercial services of the SABC;
- section 2 which sets out the objects of the Broadcasting Act as a whole and certain of these relate to public broadcasting specifically; and
- section 8 which sets out the objects of the SABC and some of these contain public mandate obligations.

Consequently the SOS has proposed that new legislation includes a single clearly identifiable Charter. See answer to question 1 above.

MMA supports SOS in this argument and would like to add that in light of the issues highlighted above, policy and legislation needs to clearly demarcate the ambit of the SABC Charter, which is currently unclear. This is fundamental to ICASA's regulation of the SABC, since the regulator is mandated to monitor and enforce compliance with the SABC Charter. This will make provision towards the effective regulation of the SABC as the regulator's mandate will be made more explicit, clear and precise.

**5. In view of the changing landscape, what should be the new mandate of the SABC as a public broadcaster? Is the SABC mandate, as constituted, still relevant to fulfil national goals in the wake of developments in the broadcasting sector particularly the objectives of the Digital Migration Policy, 2008?**

MMA is of the view that the SABC's Charter is even more relevant and fundamental in this era of digitalization as South Africans rely on, and need, quality information to exercise their roles as citizens in a participatory democracy, as well as for the larger goal of nation building. The advent of new technology has meant a greater plurality of content and thus more services available to audiences. This increase in the amount of services and content does not guarantee that citizens will be receiving quality and diverse content that will cater for a diversity of audiences. Thus the role of the public service broadcaster and its Charter, is essential in the age of digitalization to ensure that citizens receive quality and diverse content that will meet their needs.

## **SABC Organisation**

**6. Is the reorganization as envisioned by the Broadcasting Act still relevant for public service broadcasting taking into consideration the technical developments outlined above and the various services that it continues to introduce, including its international services, Channel Africa and SABC International?**

No. Please refer to Question 8. MMA is of the view that all the SABC channels should be transformed into public service channels, and an establishment of a 'public service' fund, as well as an introduction of a SABC commercial operations arm (which should include its international

services) that has many specialist channels. The SABC commercial operations should compete in the market for advertising, sponsorship and other programming rights, such as sports rights.

**7. What should be the role of its international services? In view of the objectives for the international services, should SABC International be made available free-to-air domestically?**

The role of the international services should be to provide more diversity in content for its audiences and seen as a lucrative revenue stream, functioning as part of its commercial operations arm.

SABC International services should be made free-to-air domestically. Please, refer to Question 8 below that the international services should be apart of the SABC's commercial operations arm. Since we propose that the channels be apart of the SABC commercial operations which should be available free to air, then SABC International services would be free to air.

**8. How should the public broadcaster be funded?**

MMA suggests a mixed funding model for the SABC going forward, comprising of three components. Public service stations that are publically funded, a 'public service' fund financed by a fee from commercial broadcasters, and a SABC commercial operations arm.

Firstly, MMA suggests that all the SABC stations be transformed into public service channels, and be financed by a mix of licence fees and Parliament appropriation with minimal commercial revenue. The SABC public service stations should be allowed very limited commercial funding comprising of no significant benefit for the SABC. MMA would like to stress that the SABC's public service channels' advertising share must not in any manner dominate the advertising market. Advertising must be very minimal, for example, not exceeding sixty seconds in total in an hour during prime time. The fulfilment of this requirement for minimal advertising is key to the incentive for the commercial broadcaster's contribution towards the 'public service' fund, as mentioned below.

MMA proposes that all the SABC stations be public service in order to focus on fulfilling its public service remit without the pressures of profit making and vulnerability to the dictates of the market. For the sake of a healthy participatory democracy, South African citizens require a public service broadcaster that fulfils its public service mandate and thus functions in the public interest, and not in the commercial interest. This is currently the case with the SABC's current commercial funding model (78% advertising , 17% license fee's, 2% government and 3% other revenue<sup>1</sup>). It is for this reason that MMA is proposing that all the current SABC stations and the regional television stations be regarded as public service channels. This draws from the traditional ethos of public service broadcasting that a public service broadcaster should be supported

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<sup>1</sup> SABC Annual Report 2008, pg. 23

primarily by public funds for public purposes (Schudson 2003; Croteau and Hoynes 2003; Scannel 1992).

Secondly, MMA proposes that a 'Public service' fund be established for the purpose of the production of public service programming.

The 'public service' fund should have contributions from: commercial broadcasters, as well as, telecommunications operators including MTN, Vodacom and Cell C etc, and potentially internet service providers in future. As a means of ensuring that there is greater responsibility and possibility for providing public service programming MMA envisages that the SABC, commercial broadcasters and community broadcasters should all be allowed to apply to the 'public fund' to produce public service programming. Incentive for commercial broadcasters to participate is in the form of a larger advertising pie, as the SABC will no longer dominate the advertising market. Additionally, there is the opportunity for them to also apply to the 'public service' fund to produce public service programming. MMA suggests that the administrators of the 'public service' fund could include the Media Development and Diversity Agency.

Thirdly, we propose the SABC establish a commercial operations arm, while we emphasise the fundamental importance of the SABC not operating as a commercial broadcaster, we also see some value in retaining certain commercial activities as a means of ensuring sustainability of the SABC. We propose that SABC's commercial operations have limited individual specialist channels that are available free to air in markets where there is a material public interests and where there currently is virtually no competition. This may include, for example, a sports channel (currently Multichoice has the monopoly on this – not only international sport but also local and national sports) and BBC programming (which is public service programming currently only accessible to privileged DSTV subscribers). The SABC channels apart of the commercial operations should compete in the market for advertising, sponsorship and other programming rights, such as sports rights.

While the notion of a commercial arm may seem to undermine the possibilities of funding for other broadcasters etc, MMA submits that as these would only be restricted to very limited number of channels, and in areas where there is currently no competition, for example, sports on Multichoice. The possibility of the SABC operating in this sector has been made possible only by the fact that Multichoice has been granted both a satellite subscription service and a digital terrestrial service (See MMA digital migration submission). MMA also envisages that the SABC's commercial arms include the selling of programming rights, as the BBC Worldwide does. MMA suggests that the revenue generated from the commercial arm be used for areas like brand building, building professionalism, market research to keep in touch with its audiences and audience engagement, MMA would like to further suggest that this audience research be reflected in its Annual Report, similar to the BBC.

MMA believes that this proposed funding model will equate to a sustainable, viable SABC fulfilling its public service remit.

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<sup>2</sup> Schudson, M. 2003. *The Sociology of News*. New York and London: W.W Norton and company.

<sup>3</sup> Croteau, D and Hoynes, W. 2003. *Industries, Images and Audiences Media Society*. Thousand Oaks, London, New Delhi: Pine Forge Press.

<sup>4</sup> Scannell, P. 1992. 'Public service broadcasting and modern public life' in *Culture and Power*: Scannell, P and Schlesinger, P and Sparks, C (ed). London, Thousand Oaks and New Delhi: Sage.

**9. Is the hybrid model sustainable in a multi-channel environment and how can it be revised?**

No. We refer to our response in Question 8 and re-iterate that all SABC stations be transformed into public service and support the establishment of a 'public service' fund and a commercial operations arm.

**10. Should there be a distinction between the revenue streams for both public and commercial divisions?**

Refer to our response in Question 8 that all SABC channels be transformed into public service, and the establishment of a 'public service' fund and a commercial operations arm.

**11. What mechanisms should be put in place to ensure that the commercial division fulfils its obligations in respect of subsidizing the public division as per the objective of the legislation?**

MMA is not in favour of the continuation of the "cross-subsidisation" model, additionally, refer to our response to Question 8 and 9.

**12. How should Channel Africa and SABC international be funded, especially if it has to be available domestically free-to-air?**

MMA proposes that Channel Africa and SABC International be part of the SABC's commercial arm and be available free to air.

**13. What about regional television which despite being provided for in the Broadcasting amendment Act 2002, is yet to take off due to lack of funding, thus underlying the difficulty of the funding model proposed in the Act? How should it be funded? Should provincial funding be considered in this regard?**

MMA is of the view that regional television should be considered a part of the SABC public service channels, as such should be funded like the rest of the SABC public service channels, i.e. public funds (Parliament appropriation and license fees). But there needs to be mechanisms to ensure that the regional requirements catered for and that there is regional representation.

**14. Depending on the proposals on the funding model, how can we ensure that the public service division's funding ensure and promotes the public interest mandate?**

MMA's proposed funding model will ensure the promotion of the public service mandate as it will have public service channels that are funded by public funds for public purposes, and will only be allowed to carry minimal advertising, thus it will be freed from the pressures of profit making and be in a 'healthy' position to focus on the fulfilment of its public service mandate.

**15. Should there be financial accountability mechanisms instituted in conjunction with the provisions of the PFMA Act, to ensure transparency in expenditure?**

Yes, MMA endorses SOS's view that

the problem has been a lack of enforcement of existing financial accountability requirements in terms of, for example, the PFMA and the Broadcasting Act, rather than a problem of a lack of accountability mechanisms at all.

Parliament ought to have played, and must in future play, a much more hands-on oversight role with regard to the SABC's financial affairs, both through the Parliamentary Portfolio on Communications and also through the Public Accounts Committee.

MMA would also like to add that ICASA should be actively involved in this proposed new financial reporting process, as the regulator is vested with a fundamental role regarding the SABC's financial status. ICASA is statutorily required to act to protect the integrity and viability of public broadcasting services in terms of section 2(t) of the Electronic Communications Act.

**16. Should television ownership method still be justified as a requirement for a television license even when television receivers are no longer the sole means broadcast content is distributed?**

MMA endorses SOS's view that "a television licence fee ought to be levied upon all devices capable of receiving free to air television content".

**17. Should Section 27(1)(a) be revised to incorporate the use of any television receiving equipment such as a digital box, DVD or video recorder, PC, laptop or mobile phone to watch or record TV programmes as they are being shown on TV?**

Yes, MMA supports SOS's view that "a television licence fee ought to be levied upon all devices capable of receiving free to air television content." MMA would like to add that it would need to ensure that simple models are available and affordable to the public, especially taking into consideration the massive inequalities of per capita/household income in South Africa.

**18. In view of technological changes, can license fees be maintained as a revenue stream for funding public broadcasting services?**

Yes, MMA is of the view that this form of revenue accompanied with Parliament appropriation would make the SABC both viable and sustainable.

In addition, MMA would like to add that the current requirement of an annual tariff of R250<sup>5</sup> (as of 1 August 2009) for business, dealers and domestic users alike, is inequitable as it does not consider per capita income. Although concessionary TV licenses are granted to people over the age of 70 and grant receivers from the state, who are required to pay R70 per annum (as of as of 1 August 2009). This model does not show regard for the massive inequalities of per capita/household income in South Africa. MMA is of the view that citizens should be paying a license fee amount based on income. This concept is not new and has been adopted around the world, reductions and/or exemptions in the license fee can be adopted mainly for social reasons, i.e. in cases where the annual income of households does not exceed a certain amount, age, disability, unemployment and retirement<sup>6</sup>. In Ireland and France, the broadcaster's loss of revenue through such reductions and exemptions is compensated through allocations from the state budget,<sup>7</sup> MMA would like to suggest that this could be an option for consideration for South Africa.

**19. Should the collection of license fees be the responsibility of the SABC or another statutory organization that will also manage and distribute funds collected in this manner?**

MMA recommends that the SABC continue to collect its own license fee through an internal department, as this is a great cost saving. The BBC for example collects its own license fees and has made savings in collections costs since 2006/2007 of 43.5 million pounds. The BBC's Trust (i.e. the Governing body of the BBC) is in charge of collection and therefore to ensure that license fee's are "efficient, appropriate and proportionate"<sup>8</sup>

**20. What activities of the public broadcaster should be funded by the licence fees?**

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<sup>5</sup> 'South Africa: Television license fees to go up'. <http://allafrica.com/stories/200908050694.html>

<sup>6</sup> European Broadcasting union 2000. 'The funding of public service broadcasting'. [http://www.ebu.ch/CMSImages/en/leg\\_p\\_funding\\_psb\\_tcm6-4443.pdf](http://www.ebu.ch/CMSImages/en/leg_p_funding_psb_tcm6-4443.pdf)

<sup>7</sup> European Broadcasting union 2000. 'The funding of public service broadcasting'. [http://www.ebu.ch/CMSImages/en/leg\\_p\\_funding\\_psb\\_tcm6-4443.pdf](http://www.ebu.ch/CMSImages/en/leg_p_funding_psb_tcm6-4443.pdf)

<sup>8</sup> BBC Annual Report 2008/2009. [http://downloads.bbc.co.uk/annualreport/pdf/bbc\\_executive\\_08\\_09.pdf](http://downloads.bbc.co.uk/annualreport/pdf/bbc_executive_08_09.pdf)

Refer to our response in Question 8 that all the SABC public service channels be funded mostly by public funds (Parliament appropriation and license fees).

**21. What mechanisms should be in place to ensure transparency in revenue generated through licence fees?**

MMA endorses the view of SOS that “the SABC should be required to reflect this clearly in its audited financial statements contained in its Annual Report.”

**22. What other methods can be utilised for the collection of television license fee to address non-payment?**

MMA supports SOS’s view that “there ought to be a statutory obligation upon all providers of mobile television services and subscription television services to provide the SABC with the contact details of their customers.” MMA would like to suggest the passing of a fine for failure to pay the license fee by a certain date.

**23. Subject to the continuation of license fees as a revenue stream, should a separate agency be identified or established to collect and distribute licence fees?**

No. Refer to our response to Question 19.

**24. In view of the economic constraints and South Africa's economic profile, what should be the future of license fees as a revenue stream for sustaining public broadcasting services?**

MMA believes that license fees are a sustainable form of revenue, provided it is accompanied by larger Parliament appropriation (Refer to Question 8), and will continue to be in the future. This premise is based on the condition that the SABC become far more effective in collecting license fees, of course the current crises surrounding the SABC have made it difficult to implement and raise funds and collect licence fees. In New Zealand, for example, total license fee funding increased from 1990 to 1994 as a result of a determined campaign to get more people to pay their licence fee; by 1997 compliance had reached 95% <sup>9</sup>. Thus, MMA strongly urges the development and research into a determined campaign for the “effective and efficient” collection of license fees, for this form of revenue to be beneficial and contribute to the sustainability of the SABC.

**25. *Should the license fees funds continue to be directly payable to the SABC?***

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<sup>9</sup> European Broadcasting union 2000. 'The funding of public service broadcasting'. [http://www.ebu.ch/CMSimages/en/leg\\_p\\_funding\\_psb\\_tcm6-4443.pdf](http://www.ebu.ch/CMSimages/en/leg_p_funding_psb_tcm6-4443.pdf)

Yes.

**26. What sustainable percentage should constitute government funding, as a revenue stream, for public broadcaster?**

MMA proposes that the Treasury, along with an independent commission, determine the contribution from Parliament for the budget year. We are in favour of the inclusion of an independent commission at this juncture for similar reasons to the “European Broadcasting Union [stipulation] that it is vital that the decision making process of state funding for public service broadcasting be structured in a transparent manner and based on objective criteria so as to avoid exposure to undue interference in editorial and other matters, one of these safeguards can be the involvement of an independent body of experts.”<sup>10</sup> We propose that the independent commission should consist of, for example, experienced media, financial and budget experts. If the Treasury solely determines the amount of contribution it could leave the SABC open to undue political interference.

The contribution from Parliament must be adjustable for inflation linked increases, and should the SABC require additional funding during the course of the budget year, there should be a strict process in place to accommodate this, taking into consideration the reasons for the shortfall.

**27. What should this type of funding be used for? Should the commercial service division be exempted from government funding?**

Refer to our response in Question 8 that all SABC stations should be public service and predominantly funded by public funds (i.e. license fees and Parliament appropriation).

**28. What should be the future considerations of this revenue [commercial] stream?**

Refer to our response to Question 8 and we re-iterate that the SABC public service channels should be predominantly funded by public funds, and there should be very limited commercial funding that would not be a significant benefit for the SABC. MMA would like to stress that the SABC’s public service channels’ advertising share must not in any manner dominate the advertising market. Advertising must be very minimal, for example, not exceeding sixty seconds in total in an hour during prime time. The fulfilment of this requirement for minimal advertising is key to the incentive for the commercial broadcaster’s contribution towards the ‘public service’ fund.

In addition, as stipulated in Question 8, the SABC should establish a commercial arm that must have limited individual specialist channels that are available free to air in markets where there is a material public interest and where there currently is virtually no competition.

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<sup>10</sup> European Broadcasting union 2000. 'The funding of public service broadcasting'. [http://www.ebu.ch/CMSimages/en/leg\\_p\\_funding\\_psb\\_tcm6-4443.pdf](http://www.ebu.ch/CMSimages/en/leg_p_funding_psb_tcm6-4443.pdf)

**29. Should policy distinguish between public and commercial services divisions of the SABC in respect of this revenue stream?**

Refer to our responses to Question 8. Policy should distinguish between the SABC's public services (channels) and the 'public service' fund and commercial operations arm.

**30. Should there be limitations on advertising on the broadcaster's public division and an increase in its funding by other avenues to ensure maximum fulfillment of its public service mandate?**

Refer to our response to Question 28 and we re-iterate that there should be very limited commercial funding that would not be a significant benefit for the SABC. MMA would like to stress that the SABC's public service channels' advertising share must not in any manner dominate the advertising market. Advertising must be very minimal, for example, not exceeding sixty seconds in total in an hour during prime time. The fulfilment of this requirement for minimal advertising is a key to the incentive for the commercial broadcaster's contribution towards the 'public service' fund.

**31. As part of reducing the SABC reliance on commercial, advertising quotas be introduced during different time-channels?**

Yes. We refer to our response to Question 30 that there should be a minimal amount of commercial revenue allowed on the SABC's public service channels, MMA suggests that this vital requirement be applicable for every hour, i.e. not exceeding sixty seconds per hour.

## **Composition of the Board**

**32. In view of the problems experienced at the SABC, should the definition of the Board of the SABC refer only to non-executive members identified in s12 (a)?**

Yes.

**33. Will the relegation of the GCEO, CFO and COO to ex officio status provide clear accountability between the Board and the executive since the Board appoint them?**

Yes.

## **Appointing Procedures for the Board**

**34. Is this model effective enough in ensuring that the individuals identified through the process are experienced and skilled requisite for managing the affairs of the corporation?**

MMA supports SOS's view that:

this is Parliament's key task. If the appointments process encourages public participation through public nominations, requires in-depth public interviews of shortlisted candidates and strengthens the criteria for non-executive Board members, the SOS has no doubt that the a Board will emerge that is representative of a range of constituencies from among the public and is able to play that public representative strategic directive role that is required of the Board.

Importantly, the Board will not be required to have hands-on managerial skills and this is not its role. Its role will include appointing executive management with such skills and the Board will be accountable for ensuring that such executive management is indeed capable of performing (Refer to response to Question 35).

**35. If not, how should this model be revised to meet the objectives of section 13?**

MMA endorses SOS's view that, the appointments process in respect of the SABC Board has insufficiently protected the public from political interference. Consequently, transparency and the accountability of public representatives involved in the appointment process must be improved. In our view, the appointments process of the Board, which is essentially appointment by the President on the advice of Parliament, must be improved by providing specifically for:

- names and CVs of nominees to be published, including electronically;
- shortlists of candidates to be published, including electronically;
- making interviews of shortlisted candidates open to the public and publicising these widely, including on SABC radio and television;  
and
- written evaluations of the shortlisted candidates to be published widely, including electronically.

Besides improving the actual appointments process, 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, free of expression, the right of the public to be informed, and openness and accountability;
- (d) have qualifications and/or experience in at least the following areas: corporate governance, finance, journalism and broadcasting, and the application of new technologies; and
- (e) Broadly represent the following key constituencies 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.

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. Consequently we think that these should be bolstered to protect against political and/or commercial conflicts of interest too.

MMA endorses SOS's proposed disqualification criteria. Please refer to SOS's submission, Annexure B that includes the proposed disqualification criteria.

## **Performance Management System of the Board**

### **36. Should there be a performance management system and how should it be implemented?**

MMA supports SOS's view that:

There ought to be a performance management system for both Directors and Executive Management.

Parliament should be responsible for developing a performance management system for Board members based primarily on whether or not the SABC is achieving the public mandate laid down in its Charter in accordance with sound financial management.

The Board should be responsible for developing a performance management system for executive management based on key performance indicators arising out of the Strategic Plan for the SABC in respect of the SABC's services. This performance management system must include financial management (both of advertising and public funding revenues) and Charter, licence condition, and legislative adherence.

**37. Taking into account the appointment procedures outlined in s13, and the need to guarantee the 'administrative independence' of the corporation as envisaged in the Act on one hand, and ensuring that the organization runs efficiently with timeous decision making process, who should be responsible for such management system?**

Refer to Question 36 above.

### **Capacity of the Board**

**38. Is the number of Board members sufficient or superfluous, thus having a bearing on the speedy decision making environment?**

Without any insider knowledge of the board processes, MMA believes that the number of board members is sufficient; however, there is a problem in terms of representation. In particular, there was a lack of journalists on the previous board. For more discussion, see Question 39 below.

**39. Given the diverse profile of the Board, what sort of capacity mechanisms should be put in place to assist in decision- making? Can ad hoc advisory body comprising members of the public who have proven expertise in the fields of broadcasting and technology, broadcasting regulation, media law, business practice and finance to mention a few, who would then advise the Board be considered in this regard to assist?**

MMA supports SOS's view that:

While diversity is a critically important requirement of the SABC Board as a whole, the Board must be made up of public representatives that have the capacity to provide the required strategic leadership for the SABC. The SOS believes that establishing another body to "advise" the Board would be a recipe for internal wrangling.

We do however, believe that the Board ought to promote accountability to the public through the establishment of regional public stakeholder committees to gauge public responses to SABC programming and ensuring that the needs of all South Africans are being met.

**40. *How can such a body be managed if introduced?***

MMA endorses SOS's suggestion that:

Regional public stakeholder committees be established in each province and be made up of representatives of: trade unions, youth organisations, women's organisations, business organisations, civil society media organisations, disabled people's organisations as well as ordinary viewers and listeners. We suggest that the SABC's Public Editor be mandated to establish these committees and the SABC Board ought to report back on the functioning of these committees to Parliament.

## **The Role of the Minister**

**41. Taking into account the provisions of the PFMA and understanding FXI's submission, what should the Minister's role in the public broadcaster be?**

MMA supports SOS's respectful view that:

The office of the Minister has played a role that is far in excess of the appropriate executive role vis a vis an independent public broadcaster. In our view the role of the Minister with regard to the SABC is to ensure that Government has developed appropriate policy to inform, inter alia:

- law-making by Parliament;
- the SABC Board in contextualising the SABC's Charter obligations; and
- Regulation-making by ICASA.

Before looking at the current role of the Minister, it must be said that the new Minister bears no responsibility for the mistakes made by his predecessor. Nevertheless, it is important that these mistakes be addressed in order to resolve the current crises at the SABC.

The last White Paper (ie policy statement) on Broadcasting, including Public Broadcasting was published over 11 years ago. Since then significant changes have occurred in the broadcasting legislative environment (eg the passage of the ECA and the ICASA Act and amendment Acts) without any formal written policy.

The Minister must ensure that a transparent, consultative, open and thorough policy development process on the SABC takes place. This must include both a Green and White Paper processes. The SOS assumes that the Discussion Paper is to play the role of the Green Paper and looks forward to seeing a formal White Paper setting out Government's Policy on Public Broadcasting being produced in due course.

It is trite that the Broadcasting Act is fundamentally flawed – a new one must be developed but only after a complete overhaul of the policy underlying public broadcasting which fearlessly recognises current mistakes and develops ways of addressing these.

The Minister must play no role in the functioning of the SABC in order to protect its independence from vested interests. In this regard:

- the Minister must not be involved in the appointment/removal of senior SABC management, as has been the case recently according to affidavits in the litigation between the SABC board and its previous CEO; and
- the Minister ought not to be involved in developing instruments such as the SABC's Memorandum and Articles of Association and the Shareholders' Compact (which in any event in our view will no longer be necessary given that the SABC ought to be a Chapter 9 institution under the Constitution and ought not to be a public company because of the danger of executive interference and emphasis on commercial imperatives).

#### **42. In view of this, what should be the role of Parliament?**

MMA supports SOS's view that:

Parliament, as a multi-party body of publicly-elected representatives, plays a number of important roles with regard to the SABC.

First Parliament enacts the laws which not only establish the institution but set out how it will operate, including through legal instruments such as its Charter.

Second, Parliament is in fact responsible for the calibre of men and women appointed to the Board. Although the President makes the ultimate appointment, he or she cannot appoint anyone not recommended by Parliament.

Third Parliament is responsible for the quality of the appointments process through the calling for nominations, short-listing of candidates and conducting the public interview process.

Fourth, Parliament is responsible for oversight of the SABC. This is a critical function, particularly, when the SABC is in the midst of financial and other crises.

In the SOS's respectful view, Parliament has recently failed to perform its functions properly. In this regard:

- it allowed the ruling party, for example, to dictate certain SABC Board appointments, leading directly to the crisis of legitimacy faced by the last Board;
- with regard to the appointment of the Interim Board, the Portfolio Committee undertook to ensure a process based on consensus but this failed to materialise; and
- during the recent Broadcasting Amendment Act process, Parliament repeatedly refused to make necessary amendments, essentially ignoring a number of comments made during the public hearings, weakening the final product and exacerbating tensions between management and the Board by refusing, for example, to deal with the lacunae in the Broadcasting Act on the issue of the appointment of senior management personnel; and
- during critical hearings held last year Parliament did not pick up on the looming financial and governance crises developing at the SABC.

## **Role of the regulator**

### **43. Is the role of the regulator in respect of the public broadcaster adequate?**

No. In MMA's respectful view, ICASA's regulation seems to be characterised by a lack of proactive regulation of several areas that it has mandate over. The areas in which ICASA has been silent when it should have acted include the SABC's problematic commercial funding model which undermines its public service role, when in fact ICASA is required to protect the integrity and viability of public broadcasting services in terms of Section 2 of the Electronic Communications Act. The same can be said for the suspensions of the SABC's two Executive members and calls for the SABC Board to step down, which in our view was a threat to the viability and sustainability of the SABC.

In addition, the "blacklisting saga" and other controversial practices like withdrawing programmes undermined its editorial and programming independence, this was a violation of the SABC Charter (specifically Section 6 (3)), which ICASA is required to monitor and enforce compliance with.

MMA is of the view that ICASA has failed to protect the "viability and integrity" our public broadcaster as they are mandated to do, and to 'flex its muscles' at crucial times and when the SABC was most in disarray. Although we acknowledge legislative difficulties in this regard, discussed in answer to Question 44 below.

### **44. What additional or special roles should be accorded to the regulator to ensure that the public broadcaster is regulated in the public interest?**

In MMA's view, the policy and legislation regarding ICASA's regulation of the SABC ought to be made clearer and appropriately developed, so that ICASA can move beyond its current regulatory practice that has limited its role to monitoring the quantitative fulfilment of the license conditions and that has resulted in "silent" regulatory practices. Thus MMA's proposes an extensive review process of ICASA's regulation of the SABC, both legislatively and in terms of the regulatory practices it employs.

### **45. Has this delegated function of ICASA to an industry body further diluted its role as the regulator?**

We respectfully concur with SOS's submission that:

The Discussion Paper's concerns in this regard are misplaced as it is only adherence to the NAB's Code of Conduct that is overseen by the Broadcasting Complaints Commission of South Africa. Further, the BCCSA is widely recognised as being functional.

## **Public Participation**

### **46. Are the Editorial Policies reflective of the SABC's mandate and values enshrined in the Constitution?**

MMA supports SOS's view that:

The current policies are good. However, as is clear from the Blacklisting saga, the SABC does not follow its own editorial policies and this issue is one that the new Board will have to deliberate upon and improve the SABC's practice in this regard.

### **47. Is the process of developing the editorial policies responsive to the needs of the public? How can this process be improved?**

MMA supports SOS's view that, "the process is good and does not need to be improved upon although again, we note that the policies are not adhered to."

### **48. How often should the editorial policy be changed?**

MMA is of the view that the editorial policy be changed in line with the amending of the Charter that is every five years.

### **49. What other public accountability measures should be put in place to ensure effective and efficient public participation?**

MMA supports SOS is its view that:

We reiterate that the Board ought to promote accountability to the public through the establishment of regional public stakeholder committees to gauge public responses to SABC programming and ensuring that the needs of all South Africans are being met and suggest that these regional public stakeholder committees be established in each province and be made up of representatives of: trade unions, youth organisations, women's organisations, business organisations, civil society media organisations, disabled people's organisations as well as ordinary viewers and listeners. We suggest that the SABC's Public Editor be mandated to establish these committees and the SABC Board ought to report back on the functioning of these committees to Parliament.

## 5. Conclusion

MMA thanks the Department of Communications (DOC) for the opportunity to make this submission.

Please do not hesitate to contact me at the numbers below should there be any queries over our submission, or if we can be of assistance in developing any of the recommendations further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'W Bird', written over a horizontal line. The signature is stylized and cursive.

William Bird

Director

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