



Attention: Acting Director-General

Mr Collin Mashile
Department of Communications
Email: pbs@doc.gov.za

31 August 2018

Dear Mr Mashile

**WRITTEN SUBMISSIONS ON THE REVIEW OF PUBLIC BROADCASTING BY THE
SOS: SUPPORT PUBLIC BROADCASTING COALITION, MEDIA MONITORING
AFRICA AND THE SOUTH AFRICAN NATIONAL EDITORS' FORUM**

1. INTRODUCTION

1.1. In Notice 358 published in Notice Number 41738 dated 29 June 2018 (the Notice) the Minister in the Department of Communications (DOC) issued an invitation to the public to make written proposals in response to a list of issues for consideration as part of its Review of Public Broadcasting (the Review). The date for such proposals was extended by Notice 423 published in Notice Number 41803 dated 27 July 2018 to 31 August 2018.

1.2. These submissions are made by the SOS: Support Public Broadcasting Coalition (SOS), Media Monitoring Africa (MMA) and the South African National Editors Forum (SANEF) (collectively, the Group) a grouping of civil society organisations with different focus areas but all involved in preserving media freedom and working to improve the media landscape in South Africa and promote freedom of expression and access to information in South Africa, often with a public broadcasting focus.

1.3. The SOS Support Public Broadcasting Coalition (SOS) is a civil society coalition that advocates for the presence of robust public broadcasting in the public interest to deepen our constitutional democracy. The coalition represents trade unions, non-governmental organisations (NGOs), community-based organisations (CBOs), community media, independent film and TV production sector organisations; academics, freedom of expression activists and concerned individuals.

1.3.1. SOS campaigns for an independent and effective public broadcaster. We engage with policy makers, regulators, and law makers to secure changes to promote citizen-friendly policy, legislative and regulatory changes to broadcasting.

1.3.2. As part of its lobbying work the Coalition writes submissions, commissions research, engages the media, organises public meetings and where appropriate pickets and protests. Our contributions in advocating for a public-interest-focused public broadcaster have been recognised by the broadcasting sector, the media, the courts, and Parliament as being immensely valuable.

1.4. MMA is Media Monitoring Africa is an NGO that has been monitoring the media since 1993. MMA aims to promote the development of a free, fair, ethical and critical media culture in South Africa and the rest of the continent. The three key areas that MMA seeks to address through a human rights-based approach are, media ethics, media quality and media freedom.

1.4.1. MMA's vision is a just and fair society empowered by a free, responsible and quality media.

1.4.2. MMA has made submissions relating to Public Broadcasting, as well as numerous presentations to Parliaments Portfolio Committee on Communication as well as the National Council of Provinces. In addition, MMA has made submissions to broadcasters, the Press Council, the South African Human Rights Commission and the Independent Communications Authority of South Africa (ICASA). MMA also actively seeks to encourage

ordinary citizens to engage in the process of holding media accountable through the various means available – all of which can be found on MMA’s website. (www.mediamonitoringafrica.org)

1.5. The South African Editors’ Forum (SANEF) is one of the most influential groupings in South Africa. It consists of title editors and senior editorial executives operating in print, broadcasting and digital mainstream and certain regional and community media, as well as media trainers from major journalism training institutions in the country. SANEF’s vision is to reflect the diversity of South Africa, and to champion freedom of expression.

1.6. The Group thanks the DOC for the opportunity of making these written proposals and formally requests an opportunity to make oral submissions thereon should the DOC hold public hearings into the Review.

2. THE PROCESS

2.1. The Group feels it incumbent on it to express its concern at the back and forth that has characterised policy developments (or, frankly, the lack thereof) in regard to public broadcasting.

2.2. We think it instructive to give our understanding of the various processes that have unfolded in the past decade or so, to properly contextualise this latest call for written proposals for the Review contained in the Notice.

2.3. In 2009, the then DOC issued a Public Service Broadcasting Discussion Paper followed shortly thereafter by a Draft Public Service Broadcasting Bill.

2.4. In 2010, following engagement with civil society, including members of the Group, the Draft Public Service Broadcasting Bill is withdrawn and the then Minister of Communications promises the launch of a broadcasting policy review process.

- 2.5. In 2012 the then DOC announces it will embark on an ICT Policy Review Process.
- 2.6. In early 2014 the then DOC publishes an Integrated ICT Policy Review Process Green Paper.
- 2.7. In late 2014 the then DOC publishes an Integrated ICT Policy Review Process Discussion Paper Paper (the Discussion Paper). This Discussion Paper contains a number of excellent proposals for future-proofing the audio and audio-visual content sector in South Africa.
- 2.8. But also in late 2014, the then Minister of Communications issues a one page document calling for written proposals on a broadcasting policy review. The issues are substantially the same as those contained in this Review. The process never develops further.
- 2.9. In March 2015 a much shorter and condensed National Integrated ICT Policy Review Process Report (the Report) is published and this called for a specific public broadcasting policy review process with tight deadlines overseen by an independent body such as ICASA. This is the last “converged” policy document issued in the process – doubtless a function of the separation of the then DOC into two new departments, the DOC and the Department of Telecommunications and Postal Services (DTPS).
- 2.10. In November 2015 the Minister of Communications (this is obviously post the split into the DOC and DTPS) introduces a Broadcasting Amendment Bill into Parliament. This is never withdrawn.
- 2.11. In 2016 the DTPS issues the National Integrated ICT White Paper (the White Paper). It does not deal with broadcasting or audio and audio-visual content services at all.

- 2.12. In 2017 the DTSP introduces an Electronic Communications Act Amendment Bill. It does not deal with broadcasting or audio and audio-visual content services at all.
- 2.13. In 2018 the DOC issues the Notice announcing the Review. As part of the Review, the DOC publishes a Discussion Paper which simply summarises the Discussion Paper and Report but engages in no new policy issues and expresses no views on the matters in issue.
- 2.14. Frankly, the Group is simply appalled that a decade of policy development appears to have gone nowhere as regards public broadcasting and we are, currently, in a situation where the public broadcaster, the SABC is, again, in a financial crisis, seeking government guarantees and is unable to pay its commissioned content providers.
- 2.15. The Group is of the view that technological convergence is no longer a matter of policy but rather is a reality that characterises communications sectors globally. We are not aware of a single converged department internationally that has been “unconverged” as it were. This is simply unworkable and is, as we have experienced, a recipe for delay, confusion and no forward movement.
- 2.16. We therefore call on the DOC to initiate Cabinet discussions with a view to undoing the separation between the DOC and the DTSP (which appears to have been done for political as opposed to coherent technological reasons) in the interests of policy coherence, and, ultimately, economic development.
- 2.17. We therefore call on the DOC to urgently liaise with the DTSP to reissue a National Integrated ICT Policy Review White Paper which properly considers the public submissions made on the Discussion Paper and formulates appropriate policy thereon, policy that looks at the needs of public broadcasting within a coherent policy framework for audio and audio-

visual content services, taking into account the reality of convergence and the emergence of Over The Top (OTT Services) such as Netflix, Showmax, Google Movies and the like.

3. RESPONSES TO THE ISSUES RAISED IN THE NOTICE

3.1. Notwithstanding the contents of paragraph 2 above, the Group is of the view that the matters raised in the Notice are important (as we have stipulated in respect of each and every policy process iteration outlines above.

3.2. Consequently, the Group puts forward its written proposals on these issues below.

3.3. Ad: the Mandate of the Public Broadcaster

3.3.1. As the DOC must be aware, the actual mandate of the SABC is very difficult to find. The Broadcasting Act, 1999, (the Broadcasting Act) purports to contain a Charter of the SABC in Chapter IV but this Charter is not a clear statement of the SABC's public mandate and the extent of the application of the Charter is extremely confusing. In this regard, section 6(1) provides that the SABC "must comply with the Charter as outlined in this part" but in fact the heading "Charter of the Corporation" is only found immediately prior to Part 2 of Chapter IV and it is not clear where the Charter ends. We are of the view that elements of the SABC's public mandate can be found in sections 2, 3, 6, 8, 10 and 11.

3.3.2. All of the members of the Group have seen and are in support of SOS's Vision Document with regards to a new coherent and simplified public mandate of the SABC.

3.3.3. The Group reiterates its vision of a new SABC Charter – that commits the broadcaster to the broadcasting of cutting edge, citizen-orientated

programming. It must be developed through a consultative process between Parliament and the public. It should be reviewed and updated regularly.

3.3.4. The Group is of the view that 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:

3.3.4.1. Promoting the values and goals of the Constitution.

3.3.4.2. Providing the public with programming of the highest quality.

3.3.4.3. Contributing to the development of the country's culture, languages and local cultural industries.

3.3.5. In terms of the above, the SOS Coalition has crafted a proposed new Charter for the SABC which the Group, as members of the SOS Coalition, has endorsed.

3.3.6. 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.

3.3.7. Amendments to the Charter must be presented to Parliament for adoption (for example, through an amendment process which must allow for additional public comment and participation). The Charter must be included in a new SABC Act that SOS hopes will ultimately replace the present Broadcasting Act.

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

3.3.9. The full text of SOS's proposed SABC Charter is contained in **Appendix 1: Proposed Charter for the SABC.**

3.4. Ad: The Size and Scope of the Public Broadcaster

3.4.1. The Group notes that the Discussion Paper queried whether or not the public commercial divisions of the SABC ought to be privatised, that is, SABC 3, the SABC news channel carried on DStv and a number of sound broadcasting stations. This was echoed in the Report.

3.4.2. The Group has not taken a formal position on the privatization issue but we are of the view that the majority of the SABCs funding must be used for programming which is the single most important priority for the SABC. In this regard we are of the view that all of the channels (television and radio) of the SABC ought to be characterised as “public”, and ought to be obliged to comply with the SABC’s public service mandates.

3.4.3. In this regard, we are concerned at the fact that the SABC is beholden to advertisements for 80% or so of its operational budget. We are of the view that this is dangerously imbalanced from a public mandate perspective and renders the SABC susceptible to capture by both political and commercial interests.

3.4.4. The Group is *at idem* that the old public/public commercial “divisionalisation” of the SABC provided for in section 9(1) of the Broadcasting Act and which has been in place for nearly a decade must be done away with. In this regard, we note that the divisions have never been separately administered in practice as is required in terms of the provisions of section 9(2) of Broadcasting Act.

3.4.5. The Group recognises the critical importance of meeting the language mandate of the SABC, that is to provide programming in all 11 official languages recognised in the Constitution (with sign language also being recommended to be adopted as the 12th) – section 10(1)(a) of the

Broadcasting Act which requires a substantial number of services in order to make this feasible.

3.4.6. Nevertheless, we would not be averse to a rationalization of the SABC's public commercial channels to ensure that the proper public mandate is met by the SABC. We note that this would only be an option provided that it is part of a revised funding model for the SABC, and that this could only happen after a full public process where various research based have been considered and debated. However, we note that the previous round of privatization of SABC's commercial stations which took place in 1995 or so resulted in zero economic benefit to the SABC as the sale proceeds thereof went straight to the fiscus and not into the coffers of the public broadcaster.

3.4.7. The Group therefore recommends that any proposed privatisation must be done in order to better meet the public mandate of the SABC and, as part of a considered approach and revised funding model for the SABC. We stress that we are opposed to the privatisation of the SABC and reiterate our support for the SABC to be a chapter 9 body.

3.5. Ad: Appropriate Funding Model for Public Mandate Including Sports of National Interest

3.5.1. The Group is of the view that the funding model for any public broadcaster has to be tailored to its structure and its mandate.

3.5.2. The Group notes that the Discussion Paper contained a number of different options for consideration, including:

3.5.2.1. a dedicated SABC fund;

3.5.2.2. a contestable fund for public interest programming to which all broadcasters could apply;

- 3.5.2.3. providing earmarked funds for specific costs such as transmission costs or particular programming costs, for example, children's programming, educational programming etc;
 - 3.5.2.4. different funding mechanisms, including SARS collecting the licence fee, Adrian relies public broadcasting fee (instead of the traditional TV licence fee) and a once-off tax on all broadcasting receiver devices, including smart phones;
 - 3.5.2.5. taxing commercial broadcasters to fund the SABC if no advertisements were allowed to be flighted on the SABC;
- 3.5.3. The Group is of the view that Parliament must ensure that the SABC has sufficient public funding to fulfil its public mandate and to safeguard its editorial independence from political and commercial interests.
- 3.5.4. The Group is of the view that this will require a detailed and comprehensive economic modelling exercise. We understand that National Treasury did engage in a mandate-costing exercise for the SABC but that it was never made public. If it exists we ask? for it to be released urgently so that it can be subject to public scrutiny and engagement.
- 3.5.5. In principle, the Group supports a mixed funding model for the SABC, that is, advertising, licence fees or a public broadcasting fee, access to a local content fund and Parliamentary appropriations delineated in the national budget.
- 3.5.6. We are also of the view that the television sector needs to be made more competitive. However that is within the purview of the regulator, ICASA. In this regard, SOS and MMA have made detailed submissions in respect of ICASA's Subscription Broadcasting Review Process to guard against the monopoly

subscription operator, DStv, unfairly and duly skewing the free to air television sector in general and the SABC's operations in particular.

3.6. Ad: Governance Framework

3.6.1. While the Discussion Paper put forward a number of options regarding the governance of the SABC, the Report was entirely silent on this issue.

3.6.2. As the DOC is aware, the SOS and MMA have been engaged in a series of public interest law suits (many of them involving the DOC and the Minister of Communications) on precisely these governance issues. The High Court has held, as a matter of law, that the non-executive members of the SABC Board are solely responsible for the appointment of the three executive members of the Board and must engage in such appointments without any executive involvement of the Minister of Communications or the DOC.

3.6.3. We are aware that the High Court has instructed the Minister of Communications to develop a new Memorandum of Incorporation (MOI) for the SABC in terms of section 8A(3) of the Broadcasting Act and in this regard we would urge the Minister of Communications to ensure that the MOI evidences the High Court's insistence that the SABC plays a *sui generis* role as the nation's public broadcaster and that it cannot be treated as yet another State-Owned Entity (SOE). In this regard, the Group is of the view that:

3.6.3.1. the new MOI must reflect that the state, as sole shareholder in terms of section 8A(2) of the Broadcasting Act, represents the public and not the government of the day;

3.6.3.2. an up-to-date copy of the MOI must be publicly available on the DOC's and SABC's websites; and

3.6.3.3. the MOI must stipulate that the Board of the SABC is entirely responsible for the appointment of the executive directors of the SABC and that such appointments must happen without any executive involvement.

3.6.4. The Group is of the view that the recent history of the SABC has not been edifying and that it is time to provide proper safeguards for the independence of the national public broadcaster. The group therefore supports the recommendation by SOS that the SABC be transformed into a Chapter 9 body under the Constitution, that is, that it becomes a State Institution that Supports Constitutional Democracy.

3.6.5. In terms of the above, SOS has crafted a series of proposed amendments to Chapter 9 of the Constitution which includes amendments to strengthen the independence of ICASA too, which the Group, as members of SOS, has endorsed.

3.6.6. The full text of SOS's proposed amendments to Chapter 9 of the Constitution is contained in **Appendix 2: Proposed Amendments to Chapter 9 of the Constitution.**

3.7. Accountability Measures

3.7.1. The Group is very pleased that this issue is contained in the Notice as neither the Discussion Paper nor the Report deals with this in any detail.

3.7.2. The Group is of the view that there are a number of bodies to whom the SABC must be accountable. Perhaps the most important grouping that the SABC needs to be accountable to is its audience, that is, the people of the Republic of South Africa, the public.

3.7.3. While the public is not a “structure” in the same way that Parliament, ICASA or the DOC is, the SABC, as the public’s broadcaster, needs to be accountable to the public in the first instance.

3.7.4. The Group 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 debate the SABC’s editorial policies.

3.7.5. The Group is of the view that 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.

3.7.6. SOS has made proposals around a Public Editor for the SABC which the Group, as members of the SOS Coalition, has endorsed. In this regard, the SOS therefore proposes, in addition to existing opportunities, a Public Editor/Office of the Public Editor who would:

3.7.6.1. Be an experienced journalist who has held a senior editorial position for at least five years in the print or broadcast media.

3.7.6.2. Be appointed by the Board and is accountable to the Board.

3.7.6.3. Be consulted on all editorial-related complaints involving the SABC that are laid with the Broadcasting Complaints Commission of South Africa (BCCSA).

3.7.6.4. Adjudicate complaints regarding editorial content or conduct of the SABC that are laid with the SABC directly.

3.7.6.5. Be required to be consulted by the Editor-in-Chief of the SABC on a regular basis regarding the SABC’s editorial policy and direction.

3.7.6.6. Ensure that the SABC's editorial policies and practices uphold the BCCSA's Broadcasting Code of Conduct and SABC Charter, and promote the values of high quality programming and ethical standards of journalism.

3.7.6.7. Be required to promote dialogue between the public broadcaster and its audience(s), including through

- Consulting SABC audiences through the SABC's various channels and platforms (including digital ones).
- Publication of on-line opinions.
- Audience focus groups.

3.7.6.8. Submit an annual report to the Board, as well as to the audience participation forums, which report is to be included in the Annual Report of the SABC.

3.7.7. Another representative of the South African people is of course Parliament whose elected officials represent the voting public. Consequently the SABC must be accountable to Parliament too. This is in line with international best practice regarding oversight by a multi-party body. In this regard, the Group is of the view that:

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

3.7.7.2. It should, through a process of maximum public consultation, transparency and political consensus, appoint skilled Board members and/or other appropriate governance structures that are broadly representative of constituencies.

- 3.7.7.3. Parliament must focus on passing comprehensive, good practice broadcasting legislation in the public interest.
- 3.7.7.4. The capacity of Parliamentarians must be strengthened in order to hold the SABC to account in terms of its corporate plans and finances, through specific, targeted training of Parliamentarians.
- 3.7.8. A third institution to whom the SABC is accountable is the regulator, ICASA.
In this regard:
- 3.7.8.1. All broadcasting regulatory matters fall within the jurisdiction of ICASA, an organisation with an ambiguous constitutional position. An independent regulator is provided for in Chapter 9 of the Constitution that deals with state institutions supporting constitutional democracy. However, general provisions relating to Chapter 9 bodies (sections 181, 193 and 194) do not refer to ICASA. This creates uncertainty as to its status.
- 3.7.8.2. 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 license conditions and all relevant legislation and regulations. Beyond this, ICASA must continue to regulate the converged electronic communications sector and its constitutional mandate in section 192 ought to be broadened beyond broadcasting.
- 3.7.8.3. SOS believes there are a number of problems that require attention in order for the Regulator to fulfil its obligations. SOS believes that one of the primary problems is lack of appropriate human capacity and insufficient resources, particularly around policy development, monitoring and enforcement at ICASA.

- 3.7.8.4. Funding to the Regulator must be increased in order for it to monitor and regulate effectively, and to safeguard its independence. In this regard, the Regulator should retain its license and administrative fees.
- 3.7.8.5. The independent research capacity of the Regulator must be significantly strengthened so as to allow it to engage meaningfully in micro-policy development.
- 3.7.8.6. The Regulator should be re-constituted as a fully-fledged Chapter 9 institution regulating all aspects of communications. Its ambiguous position as a Chapter 9 institution must be rectified (through its specific inclusions in sections 181, 193 and 194), thereby better safeguarding its independence. In this regard see the Group's endorsement of SOS's proposed changes to Chapter 9 contained in **Appendix 2: Proposed Amendments to Chapter 9 of the Constitution.**
- 3.7.9. A fourth institution that is important to ensure accountability of the SABC is the DOC. In this regard, the Group is of the view that:
- 3.7.9.1. There needs to be a single Ministry for and Department of Communications, and that this Minister and Department should be responsible for drafting all high level (national) policy and legislation to ensure the integrity and sustainability of the broadcasting sector, including all three tiers of broadcasters, in the public interest i.e. the DOC and the DTSP should be reintegrated into a single Communications Department.

- 3.7.9.2. The DOC, along with Parliament and the SABC, should facilitate public participation processes such as the review of the SABC Charter, given their resources and governmental mandates.
- 3.7.9.3. Current involvement in the broadcasting sector at management and/or operational levels must be changed to enable ICASA and the SABC to operate with the requisite independence.
- 3.7.9.4. Owing to existing capacity, the DOC, along with Parliament, should facilitate public participation processes in policy development, the reviews of the SABC Charter and the like.
- 3.7.9.5. The Minister of Communications should be the Shareholder representative in respect of the SABC but, on the understanding that in doing so, s/he represents the public and not the government.

3.8. Ad: Carriage of Public Channels by Subscription Broadcasting Services (Must Carry Obligations)

- 3.8.1. The Group notes that the Discussion Paper put forward a number of very different options for the Must Carry regime, including that there be no Must Carry Rules at all. The Report endorsed the idea of “Must Carry” but did not specify if this was to be voluntary and whether or not subscription broadcasters were to pay for the channels carried as part of a Must Carry regime.
- 3.8.2. The Group is in support of a “Must Carry, Must Pay” regime in respect of the public broadcaster’s free to air television channels. In this regard, the Group is of the view that:
 - 3.8.2.1. DStv must carry SABC 1, 2 and 3.

3.8.2.2. DStv must pay commercial rates to the SABC for these channels.

3.8.2.3. These channels must appear as channels 1, 2 and 3 on DStv's Electronic Programme Guide (EPG) in order to give due prominence to public broadcasting channels on the EPG.

4. CONCLUSION

4.1. The Group thanks the DOC for this opportunity to submit written proposals in respect of the Review.

4.2. Please do not hesitate to contact us should you have any queries or require any further information.

Yours Faithfully

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Appendix 1: Proposed Charter for the SABC

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

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

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

- a. Contribute to democracy.
- b. Promote respect for freedom of expression.
- c. Offer a forum for democratic debate.
- d. Reflect a range of opinions and of social, political, philosophical, religious, scientific and artistic trends.
- e. Reflect regional diversity.
- f. Give a voice to the poor and marginalised.
- g. Contribute to the development of an equal society, where all reach their full potential regardless of race, social status, gender, ethnicity, age, culture, political belief, religion and sexual orientation.
- h. Safeguard, enrich and strengthen the cultural, political, social and economic fabric of the country.
- i. Reflect both the unity and diverse cultural, political, social and economic fabric of the country.
- j. Develop a strong and committed public broadcasting service that will service the needs of society.
- k. Ensure that public broadcasting services that meet the highest international technical standards are available to all.

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

- a. Set industry standards for innovation, excellence, and creativity.
- b. Provide, in its public broadcasting services, radio and television programming that informs, educates and entertains.
- c. Provide a plurality of news and public affairs programming that:
 - i. Meets the highest standards of journalism.
 - ii. Provides fair, unbiased and explanatory analysis that is independent of those wielding public power.
 - iii. Covers events in the country, Africa and the world.

- d. Ensure that public broadcasting services provide a reasonable, balanced opportunity for the public to receive a variety of points of view on matters of public concern, including through citizen-generated content.
- e. Cater for a broad range of programming, including drama and documentaries that cater specifically for the programming needs of children, women, the youth and the disabled.
- f. Include significant amounts of educational programming that contributes to a shared consciousness and identity. It must be both curriculum-based and informal. Topics from a wide range of social, political and economic issues must include, but not be limited to, human rights, health, early childhood development, agriculture, culture, justice and commerce.
- g. Include national sports' programming.
- h. Ensure programming is drawn from local, regional, national, continental and international sources.
- i. Ensure that public broadcasting services comply with the code of conduct for broadcasting.
- j. Be responsive to audience needs and account to the public on how to meet these needs.

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

- a. Encourage the development of original local programming content.
- b. Enrich the cultural heritage of the country by providing support for traditional and contemporary artistic expression.
- c. Ensure, 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.
- d. Encourage the development of local content production throughout the country, particularly in marginalised regions.
- e. Nurture the country's talent and carry out research and development for the benefit of audiences.

Appendix 2: SOS's proposed amendments to Chapter 9

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

1.1. Introduction:

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

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

Words underlined with a solid line indicate insertions in existing enactments

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

"Establishment and Governing Principles

181. Establishment and governing principles

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

- (a) The Public Protector.
- (b) The South African Human Rights Commission.
- (c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.
- (d) The Commission for Gender Equality.
- (e) The Auditor-General.

(f) The Electoral Commission.

(g) The Independent Authority to Regulate Communications.

(h) The Public Broadcaster.”

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

*“Independent Authority to Regulate **[Broadcasting]** Communications*

192. **[Broadcasting] Communications Authority**

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

- (1) to ensure fairness and a diversity of views broadly representing South African society with regard to broadcasting services; and
- (2) to promote convergence and the efficient use of communications infrastructure and services.”

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

“Public Broadcaster

192A. Public Broadcaster

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

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

“Appointments

193. Appointments

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

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

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

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

(4) The President, on the recommendation of the National Assembly, must appoint (a) the Public Protector, the Auditor-General and the members of

- (i) the South African Human Rights Commission;
- (ii) the Commission for Gender Equality; **[and]**
- (iii) the Electoral Commission[.]; and
- (iv) the Communications Authority; and

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

(5) The National Assembly must recommend persons

- (a) nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and
- (b) approved by the Assembly by a resolution adopted with a supporting vote
 - (i) of at least 60 per cent of the members of the Assembly, if the recommendation concerns the appointment of the Public Protector or the Auditor- General; or

(ii) of a majority of the members of the Assembly, if the recommendation concerns the appointment of a member of a Commission or of the Communications Authority or of a Non-Executive Board member of the Public Broadcaster.

(6) The involvement of civil society in the recommendation process may be provided for as envisaged in section 59(1)(a).”

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

“Removal from office

194. Removal from office

(1) The Public Protector, the Auditor-General, **[or]** a member of a Commission or of the Communications Authority, or a Non-Executive Board member of the Public Broadcaster established by this Chapter may be removed from office only on

(a) the ground of misconduct, incapacity or incompetence;

(b) a finding to that effect by a committee of the National Assembly; and

(c) the adoption by the Assembly of a resolution calling for that person’s removal from office.

(2) A resolution of the National Assembly concerning the removal from office of

(a) the Public Protector or the Auditor-General must be adopted with a supporting vote of at least two thirds of the members of the Assembly; or

(b) a member of a Commission or of the Communications Authority, or a Non-Executive Board member of the Public Broadcaster must be adopted with a supporting vote of a majority of the members of the Assembly.

(3) The President

(a) may suspend a person from office at any time after the start of the proceedings of a committee of the National Assembly for the removal of that person; and

(b) must remove a person from office upon adoption by the Assembly of the resolution calling for that person's removal."