PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

MONDAY, 27 FEBRUARY 2017

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1. Referral to Committee of papers tabled

(1) The following papers are referred to the **Portfolio Committee on Environmental Affairs**:

(a) Government Notice No 1555, published in Government Gazette No 40490, dated 12 December 2016: Notice of intention to require any person or category of persons who transport waste for gain to register with the department, in terms of the National Environmental Management: Waste Act, 2008 (Act No 59 of 2008).

(b) Government Notice No 1556, published in Government Gazette No 40490, dated 12 December 2016: Proposed amendments to the national waste information regulations, in terms of the National Environmental Management: Waste Act, 2008 (Act No 59 of 2008).

(c) Government Notice No 1440, published in Government Gazette No 40447, dated 25 November 2016: Proposed amendments to the regulations regarding the planning and management of residue stockpiles and residue deposits, 2015, in terms of the National Environmental Management: Waste Act, 2008 (Act No 59 of 2008).

(d) Government Notice No R.1493, published in Government Gazette No 40470, dated 2 December 2016: Amendments to the Waste Tyre Regulations, 2009, in terms of the National Environmental Management: Waste Act, 2008 (Act No 59 of 2008).

(e) Government Notice No 1483, published in Government Gazette No 40464, dated 2 December 2016: Biodiversity Management Plan for Cape Mountain Zebra (Equus zebra zebra), in terms of the National Environmental Management: Biodiversity Act, 2004 (Act No 10 of 2004).

TABLINGS

National Assembly and National Council of Provinces

1. The Minister of Environmental Affairs

(a) Government Notice No 1030 published in Government Gazette No 39343 dated 30 October 2015: Draft Amendment to Environmental Impact Assessment Regulations, 2014 and Listing Notices 1, 2 and 3 of 2014, submitted to Parliament on 24 February 2017, in terms of section 47(2) of the National Environmental Management Act, 1998 (Act No 107 of 1998).

National Assembly

1. The Speaker

(a) Report of the South African Human Rights Commission (SAHRC) into the impact of protest-related action on the right to a basic education in South Africa.

(b) Report of the South African Human Rights Commission (SAHRC) on Transformation at Public Universities in South Africa: 2016.

(c) Report of the South African Human Rights Commission (SAHRC) on Investigative Hearing into Safety and Security Challenges in Farming Communities in South Africa.

COMMITTEE REPORTS

National Assembly

1. FINAL REPORT OF THE AD HOC COMMITTEE ON THE SABC BOARD INQUIRY INTO THE FITNESS OF THE SABC BOARD, DATED 24 FEBRUARY 2017

The ad hoc Committee on the SABC Board Inquiry, having inquired into the fitness of the SABC Board as per the National Assembly resolution of 3 November 2016, reports as follows:

Part A

1. Introduction

1.1 The National Assembly (NA) established the ad hoc Committee on the SABC Board Inquiry (the Committee) to inquire *inter alia* into

the fitness of the SABC Board to discharge its duties as prescribed in the Broadcasting Act, No 4 of 1999 and any other applicable legislation.

1.2 This followed after widespread concern from the public about the SABC's ability to exercise its mandate as the public broadcaster. In addition, the Board could no longer convene quorate meetings as several non-executive Board members had been removed or had resigned.

1.3 There is *prima facie* evidence that the SABC's primary mandate as a national public broadcaster has been compromised by the lapse of governance and management within the SABC, which ultimately contributed to the Board's inability to discharge its fiduciary responsibilities.

1.4 The SABC has consequently deviated from its mandate as the public broadcaster, and from providing a platform and a voice to all South Africans to participate in the democratic dispensation of the Republic. The SABC has also failed to provide an important platform for community involvement, education and entertainment, reflecting the rich and diverse cultural heritage of South Africa.

1.5 Instead, there appears to have been flouting of governance rules, laws, codes and conventions, including disregard for decisions of the courts and the Independent Communications Authority of South Africa (ICASA), as well as the findings of the Public Protector of South Africa (Public Protector). This collective conduct:

- rendered the SABC potentially financially unsustainable due to mismanagement as a result of non-compliance with existing policies and irregular procurement;
- interference in as far as editorial independence which is in direct conflict with journalistic ethics; and

- saw the purging of highly qualified, experienced and skilled senior staff members in violation of recruitment/human resource policies and procedures; purged staff have in many instances been replaced without due consideration for, or compliance with established recruitment policies.

Part B: Background and Methodology

2. Background

2.1 Terms of reference

2.1.1 The inquiry was instituted on 3 November 2016 per a resolution of the NA.

2.1.2 In line with section 15A(1)(b) of the Broadcasting Act the Committee was charged with inquiring into the ability of the SABC Board to discharge its duties as prescribed in that Act. Its terms of reference were limited to considering the:

- SABC's financial status and sustainability;
- SABC's response to *Public Protector Report No 23 of 2013/14: When Governance and Ethics Fail;*
- SABC's response to recent court judgements affecting it;
- SABC's response to ICASA's June 2016 ruling against the decision of the broadcaster to ban coverage of violent protests;
- current Board's ability to take legally-binding decisions following the resignation of a number of its non-executive Board members;
- Board's adherence to the Broadcasting Charter;
- Board's ability to carry out its duties as contemplated in section 13(11) of the Broadcasting Act (No 4 of 1999);

- human resource-related matters such as governance structures, appointments of executives; and the terminations of services of the affected executives; and
- decision-making processes of the Board.

2.1.3 In terms of the resolution the Committee must complete its business, and report to the NA by 28 February 2017.

2.2 Membership

2.2.1 The membership of the multi-party Committee comprised eleven members in total—the African National Congress (six members), the Democratic Alliance (two members); the Economic Freedom Fighters (one member); and other parties (two members).

2.2.2. The following members were selected to serve on the Committee[1]: Hon. HP Chauke, MP (ANC); Hon. MB Khoza, MP (ANC); Hon. JD Kilian, MP (ANC); Hon. FS Loliwe, MP (ANC); Hon. JL Mahlangu, MP (ANC); Hon. VG Smith, MP (ANC); Hon. P van Damme, MP (DA); Hon. M Waters, MP (DA); Hon. MQ Ndlozi, MP (EFF); Hon. LG Mokoena*,MP (EFF); Hon. N Singh, MP (IFP); Hon. NM Khubisa, MP (NFP); Hon. S Swart*, MP (ACDP); and Hon. NL Kwankwa*, MP (UDM).

2.3 Process

2.3.1 The Committee unanimously elected Hon VG Smith, MP as its chairperson on 15 November 2016, and adopted the approach and the process that the inquiry would follow.

2.3.2 The Committee committed to conduct its hearings in compliance with the requirements of fairness and strict adherence to sections 56, 58 and specifically section 59 of the Constitution and the relevant rules of the NA. To this end, it agreed to adopt an inquisitorial approach, with evidence being gathered from the relevant state institutions, interest groups and other relevant witnesses (including the Shareholder Representative), and from relevant information/documentation. The inquisitorial approach allowed for a process where members were actively involved in determining facts and deciding the outcome in the matter.

2.3.3 The Committee conducted its processes in an open and transparent manner in line with NA Rule 184(1) pursuant to section 59(1)(b) of the Constitution of the Republic of South Africa (the Constitution). Section 59(1)(b) of the Constitution provides that the NA must conduct its business in an open manner, and hold its sittings and those of its committees in public, but that reasonable measures may be taken to regulate public access, including access to the media. NA

[1] The asterisks denote alternate members

Rule 253(5) as envisaged in section 57(1)(a) and (b) of the Constitution further informed the Committee's processes.

2.3.4 Section 56 of the Constitution, read with the provisions of sections 14, 15 and 16 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No 4 of 2004 (the Privileges Act) was followed in relation to the swearing in and summoning of witnesses.

2.3.5 Adv. Nthuthuzelo Vanara had conducted a series of interviews with potential witnesses in anticipation of an inquiry that would have been conducted by the Portfolio Committee on Communications (the Portfolio Committee). The Committee therefore agreed to appoint him as its Evidence Leader.

2.4 Witnesses

2.4.1 The Committee invited briefings from certain Chapter 9 institutions and evidence from former and current Board members and chairpersons, former and current SABC employees, the Minister of Communications (the Minister), as well as civil society organisations. The hearings took place from 7 to 15 December 2016 and on 13 January 2017.

2.4.2 The Committee received briefings from the following Chapter 9 institutions:

- Auditor-General of South Africa (Auditor-General), on the SABC's financial performance and audit outcomes for the period 1 April 2013 and 31 March 2016;
- ICASA, on the Complaints and Compliance Committee's 3 July 2016 decision in relation to the Media Monitoring Project Benefit Trust, SOS Support Public Broadcasting Coalition and the Freedom of Expression Institute's complaint regarding the SABC's decision not to cover violent protests, and the SABC's response to the decision; and
- Public Protector, on *Public Protector Report No 23 of 2013/14: When Governance and Ethics Fail*, and the SABC's response to the remedial actions contained in it.

2.4.3 The following former Board members were invited to give evidence relating to their tenure:

- Prof. Bongani Khumalo;
- Mr Tembinkosi Bonakele;
- Ms Rachel Kalidass;
- Ms Nomvula Mhlakaza;

- Mr Ronny Lubisi;
- Mr Vusi Mavuso;
- Dr Aaron Tshidzumba; and
- Mr Krish Naidoo.

2.4.4 Dr Tshidzumba, Ms Mhlakaza and Mr Bonakele declined to participate for various reasons: Dr Tshidzumba was unavailable on the dates on which the hearings were scheduled owing to prior commitments; Ms Mhlakaza declined to participate as she did not wish to testify against a Board she had served on since September 2013; and Mr Bonakele declined to participate as he had resigned from the Board in October 2014 when he was appointed as a commissioner on the Competition Commission.

2.4.5 The following eight journalists who have become known as the "SABC 8" gave written and oral evidence:

- Ms Thandeka Gqubule-Mbeki;
- Mr Vuyo Mvoko;
- Mr Lukhanyo Calata;
- Ms Krivani Pillay;
- Ms Suna Venter;
- Ms Busisiwe Ntuli;
- Mr Foeta Krige; and
- Mr Jaques Steenkamp.

Ms Gqubule-Mbeki, Mr Mvoko, Ms Pillay and Mr Calata represented them at the hearing. Their evidence related, in the main, to the SABC's editorial policy and the victimisation and intimidation of journalists in particular.

2.4.6 Ms Sophie Mokoena (acting SABC Political Editor) would have appeared as a witness but later decided against doing so following consultations with the Evidence Leader. Mr Vuyani Green had initially declined to participate as he did not wish to given evidence against his employer. When he subsequently expressed interest in doing so, the Committee was no longer able to accommodate oral evidence in its programme.

2.4.7 The following former SABC employees were invited to give evidence on the SABC's human resource management and compliance with the Public Finance Management Act, No 1 of 1999 (PFMA) with regard to financial and supply chain management:

- Mr Phil Molefe (former acting Group CEO, July 2011 to January 2012);

- Ms Lulama Mokhobo (former Group CEO, January 2012 to February 2014);
- Mr Itani Tseisi (former Group Executive: Risk and Governance, 2013 to 2016);
- Mr Jabulani Mabaso (former Group Executive: Human Resources, June 2013 to June 2016);
- Ms Madiwe Nkosi (former General Manager: Labour Relations, July 2011 to September 2016);
- Mr Sipho Masinga (Former Group Executive: Technology);
- Mr Madoda Shushu (Former Head of Procurement, April 2013 to October 2016); and
- Mr Jimi Matthews (former Head of News and Group CEO).

2.4.8 Mr Matthews originally declined to participate, and could not be accommodated when he indicated willingness to give oral evidence later in the proceedings.

2.4.9 The Group Executive: Governance and Assurance, Ms Theresa Geldenhuys, was invited to give evidence related to her tenure as Company Secretary, from May 2012 to September 2016.

2.4.10 Prof. Mbulaheni Maguvhe was invited to give evidence in his capacity as Chairperson of the Board. In addition, he was requested to furnish the Committee with certain documents relevant to the inquiry. After several delaying tactics including an application to interdict the inquiry, which was later dismissed, Prof. Maguvhe was summoned to provide evidence and to produce the documents referred to above. He resigned subsequent to his appearance before the Committee.

2.4.11 The Minister of Communications, Hon. Faith Muthambi, MP gave evidence related to her role as Shareholder Representative. The Committee was specifically interested in her interpretation of the applicability of the Broadcasting Act and the Companies Act, No 71 of 2008 in respect of the appointment and termination procedures of Board members.

2.4.12 The following civil society organisations gave evidence, in the main related to the SABC's legal mandate and role as a public broadcaster:

- Media Monitoring Africa;

- Right2Know Campaign; and
- SOS Support Public Broadcasting Coalition.

2.4.13 In the course of the hearings allegations were made relating to the governance failures of previous boards chaired by Dr Ben Ngubane (January 2010 to March 2013) and Ms Ellen Tshabalala (2013 to December 2015), some of which had affected subsequent boards too. Both were therefore invited to give evidence related to their tenures.

2.5 Documentation

2.5.1 The Committee requested the documents listed below from the SABC Board, in preparation for the inquiry:

- Delegation of Authority Framework (DAF);
- minutes and transcripts of sub-committee and Board meetings, if any, at which decisions to procure services from *SekelaXabiso*, *PriceWaterhouse-Coopers* and *Vision View* were taken;
- minutes and transcripts of the sub-committee and Board meetings related to the consideration and approval of:
    - presentation documents to the relevant parliamentary committees,
    - the *MultiChoice* agreement,
    - the Implementation Plan responding to the above-mentioned Public Protector's report,
    - the 90/10 per cent local content for radio and 80/20 per cent local content for television plan/strategy,
    - the removal of Mr R Lubisi, Ms R Kalidass and the late Ms H Zinde as Board members,
    - the permanent appointment of Mr Hlaudi Motsoeneng as Chief Operating Officer,

- Mr Motsoeneng's appointment as Group Executive: Corporate Affairs,
- the bonuses and salary increases paid to Mr Motsoeneng,
- the amended Editorial Policy of 2016, and board decisions taken through a round robin process;

- Articles of Association prior to September 2014;
- Board's quarterly reports to the Minister of Communications;
- Governance Review Report prepared by *Sizwe Ntsaluba-Gobodo Auditors;*
- Recruitment Policy of the SABC;
- management report in response to the Auditor-General's findings;
- Chief Audit Executive reports submitted to the Audit Committee and Board; and
- SABC Skills Audit report conducted by *PriceWaterhouseCoopers*.

2.5.2 The Committee was severely constrained by the SABC Board's failure to comply with the request for information. The documentation was expected to reach the Committee by 21 November 2016 but this deadline was not met. A summons had to be issued for the Chairperson of the SABC Board and the former Company Secretary to produce the documents. Section 56(a) of the Constitution read with section 14 of the Privileges Act makes provision for summoning a person to produce documents and to appear before the NA or its committees. The summons to produce documents was challenged before the Western Cape High Court on 2 December 2016. Judge Desai ordered that the application be dismissed with costs.

2.5.3 At this stage there was partial compliance with the summons for the delivery of documentation. A second summons was issued which sought to compel the Chairperson of the SABC Board to appear as a

witness before the inquiry and to produce the documents which were not delivered in terms of the first summons. It should be noted the Chairperson of the SABC Board through his legal representative informed the Committee that certain documents could not be delivered because they were commercially sensitive. The SABC eventually, on the weekend after the hearings had commenced (9th and 10th December 2016), submitted in excess of 500 electronic documents purporting to be the documents that had been requested. These documents were not indexed and were very voluminous to sort and reconcile. This, in the Committee's view amounted to malicious compliance aimed at frustrating the Committee's progress.

2.5.4 It should be noted that the Committee does not consider any of the documents it has received as being commercially sensitive as Prof. Maguvhe has alleged.

2.5.5 In addition to the documentation referred to in paragraph 2.5.1 the Committee received written input from several witnesses and interested/affected parties. The transcripts of proceedings are available upon request.

3. Interim Report

3.1 The ad hoc Committee on the SABC Board Inquiry adopted its interim report on 27 January 2017. The Committee agreed that the report would be published on Parliament's website and sent to all witnesses who had appeared before the Committee as soon as was practicable.

3.2 The report was sent to the SABC Board on 27 January 2017 and to all witnesses who had appeared before the Committee on 30 January and 1 February 2017. All affected parties were requested to submit their comment/responses by 17h00 on 16 February 2017.

3.3 The Committee received comments/responses from the 18 individuals/organisations/interest groups in the table below:

Name	Description
SABC	• Comprehensive response to report in its entirety.
Dr B Ngubane	• Response to aspects of the report dealing with: o Dr Ngubane's term of office; o the Committee's mandate; o supply chain management and in particular Ms N Dlamini's evidence; o the Board's response to the Public Protector's report; and o Suspicious transactions.

Ms E Tshabalala	• No substantive comment, other than that the evidence that was presented during the hearing had not been adequately 'ventilated', and that an affidavit of the written submission provided after the hearing would not be submitted.
Ms R Kalidass	• No substantive comment – agreement with the contents of the report.
Shareholder Representative (Ms F Muthambi)	• Comprehensive response focussing on: o the amendment of the MOI; o the amendment of the Broadcasting Act; o the removal of non-executive Board members; o the appointment of Mr H Motsoeneng as Chief Operating Officer (COO); o the alleged breaches of the law, the Executive Code of Ethics, and Constitution; and o the *MultiChoice* agreement.
Mr P Molefe	• Response contradicting Dr B Ngubane's evidence, in particular claims that Mr Molefe had approved the TNA Business Breakfast-arrangement and the New Age Newspaper-subscription, and that he was involved in the attempts to rebrand the SABC; and that the SABC did not bear any costs associated with the breakfasts.
"SABC 8"	• "Black Paper on the SABC" (proposals for how public broadcasting may be strengthened); • Evidence in support of Mvoko-evidence regarding the SABC's financial involvement in the TNA Business Breakfasts; and • Suna Venter-submission.
Mr S Masinga	• Board minutes: 29 January 2015 re: the amendment of the MOI and the reservations that the Board had raised; and • email communication regarding the 2013 plans to re-brand the SABC (including the proposed contract for the proposed news channel).

Mr I Tseisi	• No substantive response - agreement with the content, and proposed recommendations.
Mr M Shushu	• Substantial proposals with regards to the sections dealing with supply chain management.
Auditor General of South Africa	• Proposes the following: o that paragraph 5.3.2 be replaced; o that paragraph 5.6.1 be amended (and offers amendment); and o that the table on p19 be replaced.
SOS Coalition	• Proposes recommendations regarding: o the dissolution of the Board; o urgent actions to be taken by the Interim Board; o the *MultiChoice* agreement; o human resource-management including the "SABC 8"; o procurement including the *MultiChoice*, *Vision View* and *New Age Media* agreements; o editorial policies and censorship; o legislative amendments; o amendments to the Constitution; and o accountability, political interference and parliamentary oversight.
Right2Know	• Proposes recommendations relating to: o the interim Board; o financial management; o the shareholder representative; o governance; o intimidation of journalists; o State Security Agency (SSA) activity; o *MultiChoice* and *New Age Business Breakfasts* contracts; o legislative amendments; and o local content quotas.

Media Monitoring Africa	• Proposes recommendations relating to: o the "SABC 8"; o editorial independence and censorship; o *MultiChoice* agreement; and o legislative amendments.
Mr D Mateza	• Input related to the TNA Business Breakfasts, and supporting the evidence that the SABC bore costs associated with them; • input regarding an Insurance Policy for SABC Executives and Board Members covering them in case of litigation [The Committee received the Directors and Officers Liability Insurance-document via the Portfolio Committee]
Mr D Foxton	• Correction: a request that evidence contained in the report be "corrected" [The Committee received the Foxton-SABC contract from the SABC]
TNA Media	• Response from Mr N Howa, former CEO of TNA plus the most recent statistics regarding subscriptions and advertising procured by the SABC; • Mr Howa's response commenting on the following paragraphs in particular: 6.3.5; and 7.2.1 to7.2.4.
Mr H Motsoeneng	• Submission highlighting concern that Mr Motsoeneng was not requested to give evidence before the Committee (no substantive comment on the report).

3.4 The Committee considered the responses in detail. The salient points of each response are summarised in paragraphs 13.1.1 to 21.3.5 below. It should be noted that this section does not reflect the Committee's views, or offer an evaluation of the responses.

4. Regulatory Framework

Both the Broadcasting Act and the Companies Act govern the affairs of the SABC. The extent and scope of the applicability of each piece of legislation was considered by the Committee, with particular regard to the issue of the removal of Board members.

4.1 Removal of Board members in terms of the Broadcasting Act

4.1.1 Section 15 of the Broadcasting Act deals with the issue of the removal of Board members and provides for two distinct processes in this regard.

4.1.2 The first process is in terms of section 15(1)(a) ("section 15(1)(a) removal process"). In terms of this process, the President may remove a member of the SABC Board on account of misconduct or inability to perform his or her duties efficiently after due inquiry and recommendation by the SABC Board. In terms of the section 15(1)(a) process the President has exclusive and discretionary powers and the role of the SABC Board is limited to conducting an enquiry and making a recommendation for the removal of a particular Board member.

4.1.3 The second process is outlined in section 15(1)(b) of the Broadcasting Act ("section 15(1)(b) removal process"). In terms of this section, the President must remove a member of the SABC Board from office after a recommendation for removal by a committee of the NA is adopted by a resolution of that House. In terms of the section 15(1)(b) removal process the President is obliged to remove a Board member on the recommendation of the NA and does not enjoy the discretionary powers provided for in the section 15(1)(a) process.

4.2 Removal of Directors in terms of the Companies Act

4.2.1 Section 71 of the Companies Act provides for the removal of directors subject to specific procedural requirements in subsection 71(2). The procedure is set out in the relevant memorandum of incorporation (MOI).

4.3 Resolving the apparent conflict between the Broadcasting Act and the Companies Act

4.3.1 It is clear that the Broadcasting Act and the Companies Act provide apparently conflicting requirements and processes for the removal of Board members. The question thus arises as to which piece of legislation must be applied.

4.3.2 The common law provides that where a conflict between legislation emanating from the same legislature occurs, the later and more specific act must prevail. In the past the Broadcasting Act prevailed over the 1973 Companies Act in so far as it was both the later act and the more specific act. However, the promulgation of the 2008 Companies Act altered this position as the Companies Act became the later legislation.

4.3.3 The Broadcasting Act makes specific reference to the applicability of the Companies Act. Section 8A(5) of the Broadcasting Act states that "With effect from the date of conversion the Companies Act applies to the Corporation as if it had been incorporated in terms of

the Companies Act on that date, save to the extent stipulated in this Act.". In other words, the Companies Act applies to the affairs of the SABC except in respect of the sections of the Companies Act which are specifically listed in the Broadcasting Act as not being applicable. The issue of the removal of directors is not listed as an exclusion.

4.3.4 Notwithstanding that the term "stipulated" as used in section 8A(5) lends itself to a limited interpretation in so far as it appears to only refer to the specific sections that are excluded in terms of section 8A(6), this interpretation would give rise to legal absurdities.

4.3.5 A more liberal interpretation is that the effect of section 8A(5) of the Broadcasting Act is that it provides for the applicability of the Companies Act to the extent that the Broadcasting Act makes no provision in respect of a specific matter that is otherwise generally dealt with in the Companies Act. In other words, if a matter is dealt with specifically in the Broadcasting Act then notwithstanding that such a matter is also dealt with generally in the Companies Act, the Broadcasting Act will apply.

4.3.6 This more liberal interpretation is supported by common law principles of legislative interpretation including legislative purpose. The common law provides that the starting point in reconciling two pieces of legislation is to avoid conflict where possible through a systematic interpretation. There are two maxims that find application in this regard:

- *Lex posterior derogat priori*: in terms of this maxim, a later law amends or repeals an earlier law to the extent of such conflict or inconsistency*; and*
- *Generalia specialibus non derogant*: in terms of this maxim later general law does not amend or repeal an earlier specific law except to the extent that such conflict or inconsistency allows for the earlier special law to operate as an exception to the later general law.

4.3.7 In terms of these principles the starting point is that where a conflict exists the later law will trump the earlier law. This general rule must however be applied with the proviso that unless the later law is the specific law, the earlier law must be applied. In the matter at hand the special or specific law is the Broadcasting Act and it therefore takes precedence over the general law being the Companies Act, notwithstanding that the Broadcasting Act is the earlier law. This is supported by the fact that the Broadcasting Act, on the question of the removal of Board members, is specific, more concrete and takes better account of the particular features of the context in which it is to be applied than the Companies Act.

4.3.8 The application of the special law does not extinguish the relevant general law. The general law will remain valid and applicable and will, in accordance with the principle of harmonisation, continue to give direction for the interpretation and application of the relevant special law and will become fully applicable in situations not provided for by the latter.

Part C: Summary of Evidence

5. Governance

5.1 Separation of Powers

Roles and Responsibilities of the Minister of Communications

5.1.1 The SABC has since 1994 become an important medium through which freedom of expression is realised as envisaged in the Constitution and the Charter of the Corporation contained in Chapter IV of the Broadcasting Act. The SABC plays an important role in contributing to democracy, the development of society, gender equality, nation-building, the provision of education and strengthening the spiritual and moral fibre of society by ensuring a plurality of news, views and information and providing a wide range of entertainment and education programmes. The SABC has over the last ten years however experienced a plethora of challenges resulting from a collapse of good governance.

5.1.2 The Minister's role, responsibilities and authority are derived from sections 91(2), 92(3)(b) and 96(2) of the Constitution, sections 2.1, 2.2 and 2.3 of the Executive Ethics Code, and sections 13(b), 17(1)(c)(i)(ii), 17(2)(e) and 17(3) of the Privileges Act.

5.1.3 Witnesses suggested that the Minister at times interfered in the Board's business under the guise of holding the SABC accountable to the Shareholder Representative, and in so doing disregarded the Board as the primary mechanism to promote accountability. This was most notable in the circumstances surrounding the permanent appointment of Mr Motsoeneng as COO soon after the Minister took office in July 2014.

5.1.4 Evidence from witnesses including the Minister, revealed that in many instances the Broadcasting Act was disregarded as the principal act governing the affairs of the public broadcaster. Notwithstanding section 8A(5) of the Broadcasting Act, provisions of the Companies Act were in some instances given preference. This was seemingly done to empower the Minister to become involved in the SABC's operational matters. Many witnesses also gave evidence to illustrate how the MOI had been used to trump the Broadcasting Act for the same purpose as mentioned above.

5.1.5 According to section 13 of the Broadcasting Act the appointment of the board chairperson and the deputy chairperson, as well as that of the executive and non-executive directors rests with the President on the recommendation of the NA. Section 15(1) of the Act empowers the President to remove a member from office on account of misconduct or inability to perform his or her duties. This section also empowers the President to remove Board members in the event that a committee of the NA makes an adverse finding and recommends that a member be removed from office. These provisions were disregarded in the dismissal of Ms Kalidass, Mr Lubisi and the late Ms Hope Zinde.

5.2 Broadcasting Amendment Bill [B39-2015]

5.2.1 The Broadcasting Amendment Bill (the Bill) was tabled in the NA on 4 December 2015, and is being processed.

Objects of the Bill

5.2.2 The main objective of the Bill is to amend the principal Act so as to:

- delete the definition of "appointing authority";
- amend the procedure for the appointment and removal of non-executive members of the Board;
- reduce the number of non-executive directors in the Board;
- provide for the appointment of a nomination committee to make recommendations to the Minister of Communications ("the Minister") for the appointment of non-executive members of the Board;
- reconstitute committee of the SABC;
- amend the procedure regarding the removal and resignation of non-executive members of the Board; and
- amend the procedure for the dissolution of the Board, and for the appointment of an interim Board.

New procedure for appointment of non-executive Board members

5.2.3 Clause 3 of the Bill seeks to amend section 13 of the Act by introducing a new procedure for the appointment of Board members. Should the amendments be passed, the Minister will take over the role the NA currently plays in the appointment of non-executive Board members.

5.2.4 The Bill proposes that a nomination committee be appointed to make recommendations to the Minister for the appointment of non-executive Board members. In appointing the members of the nomination committee, the Minister must ensure that the committee is broadly represented and that members have the necessary skills, knowledge, qualifications and experience to serve on the committee.

5.2.5 The Bill further provides for the re-appointment of non-executive Board members to maintain institutional stability and continuity. Non-executive members will be eligible for re-appointment to the Board for a further period not exceeding three years.

5.2.6 The change in the composition of the Board necessitates the proposed amendment of the quorum for decision-making purposes and for voting of the chairperson.

Dissolution of the Board and appointment of an interim Board

5.2.7 Clause 6 of the Bill seeks to substitute section 15A of the Act in order to provide a new procedure for the dissolution of the Board and the appointment of an interim Board. The proposed amendments provide that the President may, after due enquiry and on the recommendation of the panel contemplated in section 15(3), dissolve the Board if it fails to discharge its fiduciary duties, fails to adhere to the Charter referred to in section 6 or fails to carry out its duties contemplated in section 13(11).

5.2.8 The Bill further provides for a panel to investigate the grounds for the dissolution of the Board, compile a report of its findings and make recommendations to the President. Upon the dissolution of the Board, the President must appoint an interim Board, consisting of persons referred to in section 12(b) of the Act and five other persons to manage the affairs of the corporation for a period not exceeding six months. The President must designate one of the members of the interim Board as the chairperson and the other as the deputy chairperson, both of whom must be non-executive members of the interim Board. A quorum for any meeting of the interim Board is seven members.

5.3 Fiduciary duties

5.3.1 The mission of the SABC Board is to fulfil the requirements of the SABC Charter in accordance with the strategic objectives of the Government and the requirements of the Broadcasting Act, whilst achieving its commercial and public mandate.

5.3.2 The Board is ultimately accountable and responsible to the Shareholder for the performance and affairs of the SABC. The Board must therefore retain full and effective control of the SABC and must give strategic direction to the SABC's management. It is responsible for ensuring that the SABC complies with all relevant laws, regulations and codes of business practice.

5.3.3 In addition, the Board has a responsibility to the broader stakeholders, which include the present and potential beneficiaries of its products and services, clients, lenders and employees. The Board therefore constitutes the fundamental base of corporate governance in the SABC.

5.3.4 Individual directors and the Board as a whole, both executive and non-executive, carry full fiduciary responsibility in terms of:

- sections 77, 214 and 215 of the Companies Act;
- sections 10(4) and 25 of the Broadcasting Act; and
- sections 49, 50, 51, 83, 84, 85 and 86 of the PFMA.

5.3.5 The common law principle, *lex specialis derogate legi generalis* is applicable with the Broadcasting Act being the applicable and specific law over the Companies Act which is the general law.

5.3.6 The current MOI cannot be used as basis for interpretation as it is under dispute. Accepting the MOI would be tantamount to giving it the status of having repealed provisions of the Broadcasting Act. Moreover, during evidence gathering, the Committee received three MOIs: one undated and unsigned; a second, dated 20 September 2013 and signed by the Minister; and a third, dated 20 September 2013 and signed by the Minister and Prof. Maguvhe.

5.3.7 The Broadcasting Act is undoubtedly specific to the SABC, and is therefore the primary law applicable to the public broadcaster.

5.3.8 The duties of the SABC board are generally covered in several sections of the Broadcasting Act. Section 13(11) in particular, states that "…the board controls the affairs of the Corporation and must protect matters referred to in section 6(2) of this Act." Section 6(2) relates to the enforcement of the SABC Charter.

5.3.9 The Broadcasting Act is silent on the detail of the fiduciary duties of the board, and what action must be taken should a board not fulfil such duties. Sections 50 and 51 of the PFMA however details the fiduciary duties of boards (accounting authorities) of public entities such as the SABC. Sections 83 to 86 detail what action must be taken against a board that fails to discharge its duties. Sections 76, 77, 214, 215, 216 and 217 of the Companies Act are also applicable.

5.3.10 Evidence during the inquiry confirmed and in some instances revealed that the challenges faced by the Board which included instability, dysfunction and political interference, had impeded the Board's ability to hold the SABC executives accountable. Coupled with this, instability at senior management level has had a significant impact on the SABC's ability to fully execute its mandate.

5.3.11 Evidence heard from all former Board members of the most recent Board, including former group chief executive officers, revealed that the Board was often divided along two lines.

5.3.12 Evidence by most former Board members who gave evidence suggested that the Minister was at the centre of the appointment and removal of Board members, and curtailed the functions and responsibilities of the Board through amendments of the MOI which in turn impacted on the roles and responsibilities as outlined in the DAF, and in so doing contravened the Broadcasting Act.

6. Report of the Auditor-General of South Africa

6.1 Audit Findings

The following audit outcomes spanning the last three financial years—2013/14, 2014/15 and 2015/16—were highlighted by the Auditor-General.

6.1.1 The SABC received qualified outcomes with findings for the 2013/14, 2014/15 and 2015/16 financial years. A qualified opinion refers to an outcome where the entity failed to produce credible and reliable financial statements, and had material misstatements on specific areas in their financial statements which could not be corrected before the financial statements were published.

6.1.2 In 2015/16 the areas of qualification had been reduced but irregular, fruitless and wasteful expenditure—which had escalated considerably—remains an area requiring urgent intervention.

6.2 Irregular Expenditure

6.2.1 Irregular expenditure refers to expenditure incurred owing to non-compliance with applicable legislation and is incurred when proper processes are not followed[2]. Such expenditure does not necessarily imply that money was wasted or that fraud had been committed, but is rather an indication that legislation and prescribed processes were not followed. This legislative requirement is aimed at ensuring that procurement processes are competitive and fair.

6.2.2 Irregular expenditure was misstated as follows: -

- The SABC Group incurred expenditure in contravention with supply chain management (SCM) requirements for both the current and prior years that were not included in irregular expenditure note. The understatement amounted to R35,1 million. This contravened section 55 (2)(b)(i) of the PFMA which states that the annual report and financial statements must include the particulars of any material losses

[2] PFMA, Act No 1 of 1999.

through criminal conduct and any irregular, fruitless and wasteful expenditure that occurred during the financial year;

- The SABC did not have supporting documents in place to identify irregular expenditure. Supporting documents to verify the disclosed irregular expenditure of R141,4 million to test these for compliance with SCM regulations were not provided for audit purposes. Irregular expenditure incurred in previous periods which was not disclosed was also reconsidered. In 2015, supporting documents to the value of R23,9 million to test compliance against SCM regulations were not provided for audit purposes. This was in contravention with section 55(1)(a) of the PFMA which states that the accounting authority must keep full and proper records of the financial affairs of the public entity. Section 28(1)(a) of the Companies Act states that a company must keep accurate and complete accounting records in one of the official languages of the Republic;

- The table below shows irregular expenditure incurred in 2014, 2015 and 2016. In 2014, the SABC incurred irregular expenditure to the amount of R990,7 million; R2,4 billion was incurred in previous years but discovered in 2014, resulting to a cumulative figure of R3,4 billion. An amount of R441,2 million was incurred in 2016. In addition to this, R322,3 million was incurred in previous periods but only identified in 2016, resulting in the escalation of irregular expenditure to R5,1 billion.

	2014 (R'000)	**2015 (R'000)**	**2016 (R'000)**
Opening balance	1 231	3 376 809	4 385 138
Add: Irregular expenditure identified in the current year relating to prior years	2 399 775	1 732 127	322 282
Expenditure previously disclosed as irregular re-verified in the current year		(1 113 081)	
As restated		3 995 855	4 707 420
Add: Irregular expenditure-current year	990 694	389 283	441 223
Irregular expenditure not condoned		4 385 138	5 148 643
Less: Amounts recoverable	(14 891)		(117)
Irregular expenditure awaiting condonation	**3 376 809**	**4 385 138**	**4 148 526**

Irregular expenditure for the SABC Group

6.2.3 The SABC incurred the following types of irregular expenditure:

- no original tax clearance on the date of the award;
- payments without contracts;
- split orders (which relate to instances where procurement of goods and services was deliberately split into parts or items of lesser value to avoid complying with SCM policy and regulations);
- inadequate contract management;
- over invoiced contracts (which relates to instances where payments made exceeds the approved contract amount);
- procurement process not followed/inadequate deviation from the SCM policy and
- deviation from the DAF.

6.2.4 R25,7 million of the irregular expenditure incurred in the current financial year was incurred as a result of contraventions of SCM legislation. The Auditor-General further noted that the SABC has not fully implemented its SCM policy.

6.2.5 The Auditor-General reported findings on awards to persons in the service of the state and their close family members. Although these

are not prohibited, compliance with the legislation and policies was tested to ensure that conflicts of interest did not result in contracts being unfairly awarded or unfavourable price quotations being accepted. The findings were as follows:

- two awards to the value of R716,690 were made to officials who did not submit declarations of interest;
- 71 awards to the value of R150,7 million were made to close family members, partners and associates of the SABC; and
- two awards to the value of R3,5 million were made to persons in the service of other state institutions.

6.2.6 The Auditor-General found that 15 awards to the value of R6,9 million were procured without inviting at least the minimum prescribed number of written price quotations from prospective suppliers, and the deviation was not approved by a properly delegated official. Contracts to the value of R2,1 million were procured without inviting competitive bids - the deviations were approved even though it would have been practical to invite competitive bids.

6.3 Fruitless and wasteful expenditure

6.3.1 Fruitless and wasteful expenditure is expenditure that was made in vain and that would have been avoided had reasonable care been taken[3]. The table below shows fruitless and wasteful expenditure for the SABC for 2014, 2015 and 2016. An amount of R34,7 million in fruitless and wasteful expenditure was incurred in 2016 and a total of R92,5 million in fruitless and wasteful expenditure awaits condonation.

	2014 (R'000)	**2015 (R'000)**	**2016 (R'000)**
Opening balance		42 000	58 299
Add: Fruitless and wasteful expenditure - current year	54 600	16 154	34 678
Add: Fruitless and wasteful expenditure - prior years		1 014	
Fruitless and wasteful expenditure not condoned		58 168	92 977
Less: Amounts recoverable	(12 600)	(869)	(516)
Fruitless and wasteful expenditure awaiting condonation	**42 000**	**58 299**	**92 461**

Fruitless and wasteful expenditure for the SABC Group

6.3.2 The fruitless and wasteful expenditure incurred relates to settlement amounts paid as a result of the cancellation of employment contracts; salaries paid to employees while they were on suspension with no evidence to confirm that investigations were conducted; and salaries paid to employees whilst they were on suspension but the

[3] Ibid

investigations were not conducted as soon as the suspension came into effect.

6.4 Compliance with laws and regulations

6.4.1 The SABC failed to comply with the applicable laws and regulations in its financial management. The Auditor-General noted instances of non-compliance with laws and regulations. The following instances were identified:

- Financial statements submitted for auditing were not prepared in accordance with International Financial Reporting Standards (IFRS) as required by section 55(1)(b) of the PFMA and section 29(1)(a) of the Companies Act. Material misstatements identified by auditors were subsequently corrected, but the uncorrected material misstatements and supporting documents that could not be provided resulted in the financial statements receiving the qualified opinion.

- Goods, works or services were not procured through a procurement process which is fair, equitable, transparent and competitive as required by section 51(1)(a)(iii) of the PFMA Sufficient appropriate audit evidence could not be obtained that the procurement systems or processes complied with the requirements of a fair SCM system as envisaged in section 51 (1)(a)(iii) of the PFMA.

- Section 51(1)(b)(ii) of the PFMA requires that effective steps are taken to prevent irregular, fruitless and wasteful expenditure;

- Proper control systems to safeguard assets were not implemented as required by section 50(1)(a) of the PFMA which states that the accounting authority must exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity.

- Disciplinary steps were not taken against officials who made and permitted irregular, fruitless and wasteful expenditure as required by section 51(1)(e)(iii) of the PFMA.

6.4.2 Adequate performance management systems were not in place to ensure that the performance of all staff was measured regularly. The following shortfalls were identified in the recruitment policy:

- competency assessments were not conducted;
- criminal record checks were not conducted for every employee; and

- verification of citizenship was not conducted for every employee.

6.4.3 An assessment of Human Resource management revealed the following deficiencies:

- increase in vacancy rate from 3.1 per cent to 7.4 per cent in 2015/16;
- senior management vacancy rate increased from 8 per cent in 2014/15 to 14,7 per cent in 2015/16; and
- vacancy rate in 2015/16 at finance division was 5.07 per cent, and internal audit 4 per cent.

6.4.4 An assessment of human resource management identified that:

- appointments were made in posts that had not been advertised; and
- new appointees did not have the required qualification and experience for posts.

6.5 Consequence management

6.5.1 The Auditor-General noted the lack of consequence management at the SABC. Forty-four alleged cases of fraud and corruption were reported through internal mechanisms in previous years, and thirteen in the current year. Nineteen cases resulted in disciplinary action in previous year, and nine in the current financial year. Only three cases from the previous year, and one in the current financial year were referred to law enforcement agencies.

6.6 Going concern

6.6.1 During the audit of financial statements for the year ended 31 March 2016, the following matters were noted regarding the entity's going concern assumption:

- The cash reserves of the SABC have been deteriorating in the last two years. In 2014, cash and cash equivalents amounted to R1,4 billion. This decreased to R1 billion in 2015 and R874,7 million in the current financial year. Revenues need to increase significantly in order for the SABC to return to profitability. The cash balances after year-end have deteriorated. The bank balance moved from R874,7 million at the end of March 2016 to R837,8 million at the end of April 2016. This represents a 4.2 per cent decrease in one month. The balance decreased further in May to R703, 8 million which is a 16 per cent decrease. The balance after May also showed a significant decrease in cash reserves to R548,7

million (per SAP general ledger) which is a 22 per cent decrease. This is a decrease of 37 per cent in cash in just four months. Incorporated in the cash reserves at year-end is the Government Grant restricted cash of R167,4 million which is for conditional migration, and not for the operational use of the entity.

- Revenue increased slightly with operational expenditure increasing faster than revenue which casts doubt on the budgeted net profit of R3,4 million for the 2016/17 financial year.

- The SABC reported recurring losses for the past financial years. Losses were driven by employee costs, broadcasting costs and signal and distribution costs. Professional and consulting fees increased significantly, by 45 per cent.

6.7 The role of the Board in relation to financial management

6.7.1 The Board failed in discharging the following of its duties with regard to the SABC's financial management, and sustainability:

- Investigating all irregular, fruitless and wasteful expenditure to establish misconduct, fraud or losses that should be recovered and, where deemed necessary, to recover these expenditures as required by section 50(1) of the PFMA which highlights the fiduciary duties of accounting authorities and section 51(1)(b)(ii) which lists the responsibilities of accounting authorities of public entities and which includes taking effective and appropriate steps to prevent irregular, fruitless and wasteful expenditure as well as losses resulting from criminal conduct. Section 51(1)(e) states that accounting authorities must take effective and appropriate disciplinary steps against any employee who:

    - contravenes the PFMA;
    - commits an act which undermines the financial management and internal control system; and
    - makes or permits irregular, fruitless and wasteful expenditure.

- The Board failed to discharge its duties as contemplated in the PFMA and failed to take

effective and appropriate steps to prevent irregular, fruitless and wasteful expenditure as well as failed to act against employees who incurred these expenditures.

- The Board failed to ensure that an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective was in place as required by section 51(1)(a)(iii) of the PFMA.

- According to section 51(1)(c) of the PFMA the Board had a responsibility to ensure that all assets are safeguarded. The Auditor-General highlighted that proper control systems to safeguard assets were not implemented as required by section 50(1)(a) of the PFMA.

- The Board failed to ensure that the SABC had, and maintained, an effective and transparent system of financial and risk management, and internal control as required by section 51(1)(a)(i) of the PFMA. The internal control environment was weak which allowed employees to commit irregular expenditure.

- The Board failed to submit the necessary documents to the Auditor-General which limited the scope of the audit into irregular expenditure. Section 54(1) of the PFMA obligates the accounting authority to submit to the Treasury or the Auditor-General documents, explanations and motivations as may be prescribed or as the Auditor-General may require.

6.7.2 According to section 86(2) of the PFMA "an accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section 50, 51 or 55".

7. Supply Chain Management

7.1 Background

The SABC's supply chain management was marred by contraventions of supply chain policies and regulations, as well as the purging of officials such as Ms Nompilo Dlamini, the former Supply Chain Manager (August 2008 to January 2015) and other staff members. Other officials, including Mr Shushu, resigned as their ability to discharge their duties efficiently was severely constrained.

7.2 Mr M Shushu - oral evidence

7.2.1 Mr Shushu's evidence pointed to the following contraventions:

- The circumvention of supply chain processes and regulations in relation to, for example, the *SekelaXabiso* company which was appointed to supply audit services and assist with resolving irregular expenditure; and the *Vision View* contract for the acquisition of a studio valued at of R43 million.

- Payments were made without contractual obligations having been fulfilled, and in some instances where no valid contracts were in place.

- Irregular payments were made to certain service providers such as Talent Africa which was irregularly appointed to recruit a Group CEO and chief financial officer (CFO); a legitimate process was initially undertaken by the Group Executive: Human Resource and the Head: Supply Chain Management but this process was halted by the Board sub-committee on Governance and Ethics i.e. the Board interfered in operational SCM matters and excluded the SCM unit.

- Supply chain management-deviations were approved for transactions which did not warrant the use of an emergency clause e.g. the *Lorna Vision* contract which was sourced to collect TV licence fees. This contract did not meet the requirements of a deviation: for a deviation to apply, it must be proven beyond reasonable doubt that it is a sole source situation or that it would have been impractical to source the goods through other means. Tests are done to verify impracticality or sole source situations. This did not apply to this contract.

- There were transactions where payments were escalated, and the payments made to suppliers were more than the contract amount. Mr Aguma had done an unauthorised transaction when he was the CFO. Initially, the contract was for R8,2 million but it escalated by 17 per cent to R10 million when invoicing was done.

- There was an amendment of the DAF, which gave executive directors the authority to approve up to R10 million, while the Head: SCM could only approve up to R5 million. This may have been done to allow executive directors to appoint preferred bidders. A

substantial number of transactions with irregularities were reported after the approval of the DAF.

- There was abuse of power by executives by changing reporting lines to render the SABC's governance structures weak. Mr Shushu highlighted instances where executives such as Mr Aguma, who was the CFO at the time and the COO at the time, Mr Motsoeneng, abused their power and committed the organisation to millions of rands.

- Assurance providers had collapsed: the Internal Audit unit, the Audit Committee and the Board were ineffective and did not ensure that supply chain processes were adhered to.

7.3 Ms N Dlamini - affidavit

7.3.1 In her written evidence, Ms Dlamini highlighted certain supply chain irregularities including the involvement of Board members in operational issues.

7.3.2 The SCM reporting lines were changed from the CFO to COO which meant that procurement decisions could be taken by the COO or his office through Ms Sully Motsweni. These decisions were not supported by Ms Dlamini as they contravened supply chain processes.

7.3.3 Functions were duplicated as external service providers were appointed even though the same services were already available internally. Mr Motsoeneng requested her to appoint a company to recover VAT from SARS over a period of 10 years at a management fee of 35 per cent, yet the SABC had its own internal unit responsible for this function. Dick Foxton, a public relations firm, was appointed to be the spokesperson and publicist of the Group CEO despite the fact that the SABC had its own internal spokesperson. The company was paid a R350 000.00 per month retainer plus additional fees.

7.3.4 The VAT contract was estimated to be between R250 million and R500 million but the DAF did not provide any individual at the SABC, or even the Board the authority to approve such an amount.

7.3.5 Supply chain specialists were compromised and severely constrained because suppliers concluded contracts directly with the then COO, Mr Motsoeneng. Mr Nazeem Howa, a New Age Media Group representative had instructed Ms Dlamini to issue an appointment letter for the New Age Newspaper–subscription, but she would not cooperate.

7.3.6 The issue of interference by the Board and unclear demarcation of roles between the Board and executives was mentioned by Ms

Dlamini again as Dr Ngubane had unexpectedly attended a Bid Committee meeting where he informed her she could not tell the Board to whom it should award tenders to.

7.4 Mr I Tseisi - oral evidence

7.4.1 Mr Tseisi alluded to contracts which were awarded irregularly and with little regard for SCM regulations. These concerns were raised with the Board as identified risks, and included the *SekelaXabiso* and *PriceWaterhouseCoopers* contracts.

7.5 Organisation Undoing Tax Abuse – written submission

7.5.1 According to documents submitted to motivate for the deviation from normal procedures in the acquisition of the multi-purpose set, the SABC claimed that the insurance claim process had not yielded any positive results, thereby creating a false impression in order to have the deviation approved.

7.5.2 There was no evidence that the construction and architectural design were approved by the Construction Industry Development Board (CIDB) as is required by section 13 of the SABC's Supply Chain Management Policy First Review.

7.5.3 An emergency clause applies to urgent cases where early delivery is of critical importance and the invitation of competitive bids is either impossible or impractical. Lack of proper planning does not constitute an urgent case. The SABC had sufficient time and knowledge of the 2015 Rugby World Cup and the state of studios 1 and 2 prior to the deviation request, therefore the urgency claim was not valid.

7.5.4 The Head of Sport misrepresented the facts when he stated that studios 1 and 2 were destroyed in the Henley fire. Only studios 5 and 6 were affected.

7.5.5 Mr Motsoeneng, as chair of the Operations Committee approved the *Vision View* contract and unlawfully cancelled the tender the Bid Adjudications Committee had approved and recommended to the Group EXCO. This resulted in an irregular and unauthorised deviation process.

8. Questionable transactions

8.1 *MultiChoice* agreement

8.1.1 The agreement between pay-TV channel *MultiChoice* and the SABC has been surrounded by controversy since its inception. Three main issues sparked the controversy: the lack of transparency in the processing of the agreement; the "sale" of SABC archives which would result in the establishment of an entertainment channel SABC ENCORE; and the fact that the "sale" renders the two channels that broadcast SABC content inaccessible to the majority of South African citizens who do not have access to pay-tv.

8.1.2 From the information that was available to the Committee it is evident that the *MultiChoice* agreement was well underway by the time the 2013 Board was appointed. Evidence by a former Board member indicates that upon their appointment to the interim Board, they were presented with numerous documents for Board members' information. These included the commercial and master channel distribution agreement between the SABC and *MultiChoice*. Minutes provided to the Committee by Ms Kalidass indicate that the interim Board had granted provisional approval of the proposal/agreement on 12 June 2013.

8.1.3 Some Board members raised concerns around the legal aspects of the contract between the SABC and *MultiChoice*, drawing attention to section 8 read with section 2 of the Broadcasting Act which related to the powers, objectives and parameters within which the SABC could operate, in particular. Based on these provisions it was suggested that the deal was unlawful.

8.1.4 Mr Naidoo, a practising attorney testified that he had assessed the legality of the agreement and had, towards the end of 2013, advised the Board that the contract was unlawful. His evidence was corroborated by other former Board members. In light of the above, the then Chairperson of the Board proposed that a second opinion, which ultimately contradicted Mr Naidoo's, be sought.

8.1.5 According to evidence, the terms of the agreement include that *MultiChoice* would use the SABC's archived material on condition that a particular position on set-up control be adopted. Furthermore, the person who had signed the agreement on behalf of the SABC was not authorised to do so.

8.1.6 ICASA first dealt with the *MultiChoice* matter in July 2013, when it became concerned that it would stifle competition in the industry. They referred the matter to the Competition Commission. In about October 2013, after various engagements between ICASA and the affected parties, ICASA's legal department furnished the Council with a legal opinion which concluded that the Authority's integrity and credibility would be compromised if it lodged a complaint against one party involved in the debate around whether set-top boxes should be encrypted. ICASA accordingly withdrew its referral. Caxton and CTP Publishers and Printers and others, as interested parties, then referred the complaint to the Competition Commission. The application was dismissed by the Competition Tribunal on 11 February 2016. Having noted the Committee's concerns about whether the sale of the SABC archives was in violation of section 8(j) of the Broadcasting Act, ICASA sought a legal opinion responding specifically to this concern. The opinion, which ICASA is still to consider, found that the SABC had indeed violated section 8(j) although not on grounds queried by the Committee.

8.1.7 A recurring theme in the inquiry was the apparent connection between *MultiChoice* and the SABC's agreement, and the SABC's policy on Digital Terrestrial Television (DTT), in particular set-top box (STB) encryption. Evidence suggests that the SABC, along with the Government, had supported encryption. In 2007 the SABC developed a strategy for encryption, which Cabinet later adopted as the official government policy. Evidence from a variety of witnesses revealed that the *MultiChoice* agreement required that the SABC rejects its original position in support of set-top box encryption. By 2014, the SABC had begun to advocate for non-encryption in spite of the significant benefits set-top box encryption would have for free-to-air broadcasters, including itself. Encryption would have given the SABC a competitive edge over its biggest rival, *MultiChoice's* DSTV.

8.2. Relationship with the New Age Media Group

8.2.1 Mr Masinga gave evidence about an unscheduled meeting with Mr Howa, representing the New Age Media Group, the parent company of ANN7, which had been convened by Mr Motsoeneng. At the meeting he was presented with a three-page bid to rebrand SABC News using SABC resources including its reporters, while The New Age (TNA) would retain the advertising revenue. Despite attempts to do so, the agreement was never signed.

8.2.2 The Committee heard conflicting evidence regarding the SABC's involvement in the TNA Business Breakfasts. Mr Molefe testified that Mr Motsoeneng had initiated meetings with Mr Tony Gupta in July 2011 to discuss a possible business agreement between the SABC and the TNA Media Group. In the main, discussions centred around entering into a memorandum of understanding (MOU) in terms of which the SABC would allow TNA to air live broadcasts of its Business Breakfasts on Morning Live; a "huge" subscription to the New Age, for newspapers to be distributed in the SABC's national and provincial offices; for a stake in the SABC's news channel which was still in the pipelines at that time. Mr Molefe testified that he had not agreed to any of the proposals.

8.2.3 Dr Ngubane contradicted Mr Molefe's claims, and indicated that Mr Molefe himself had approved *The New Age*-subscription, and that he had initiated the talks with the TNA Media Group which had resulted in the TNA Business Breakfasts being aired during Morning Live.

8.2.4 Mr Mvoko gave evidence that SABC resources were diverted to fund ANN7, a rival news channel. He indicated that *Morning Live* resources were diverted to pay for the production costs associated with the TNA Business Breakfasts. The SABC did not generate any revenue from the briefings. This contradicted evidence from Dr Ngubane who insisted that the TNA arrangement made good business sense and that there was no cost to the SABC.

8.3 Vision View

8.3.1 Mr Shushu in his evidence stated that a flood of irregular transactions were introduced after the amendment of the DAF. These included the above-mentioned *Vision View* contract which was approved by the Board via round robin on 31 July 2015. He confirmed that the Board's approval came after the agreement had already been signed. The office responsible for SCM was not consulted or involved in the process.

9. Human Resource-related matters

9.1 Executive Appointments

9.1.1 The SOS Support Public Broadcasting Coalition submitted that different interpretations of who should appoint the SABC's CEO, CFO and COO have arisen because the Act was not explicit as far as who the appointing authority should be. The organisation is of the firm view, however, that in light of the SABC's mandate as an independent public broadcaster its executive directors should not be appointed by a political authority. The organisation gave evidence that the MOI was amended irregularly to compensate for a lacuna in the Broadcasting Act around who should appoint these top senior managers.

9.1.2 During her evidence the Minister insisted that amendments to the MOI were effected in accordance with both the Broadcasting Act and the Companies Act. She stated that although legislation did not require her to do so, the Ministry had consulted the Board on the amendments as a courtesy before they were submitted to Companies and Intellectual Property Commission (CIPC). She had also briefed the Portfolio Committee on the MOI in June 2015. According to the Minister, neither the Board nor the Portfolio Committee had raised any reservations about the impact of the amendments or the manner in which they were processed.

9.2 Appointment of Mr H Motsoeneng as COO

9.2.1 Some former Board members testified that the process to appoint Mr Motsoeneng permanently in the position of COO was done hastily, in a manner which had highlighted the above-mentioned division among Board members. Many witnesses expressed disbelief that despite the Public Protector's damning findings against the then acting COO, the majority of the members voted in favour of his permanent appointment. Mr Mabaso's evidence confirmed that he, as the Chief Executive: Human Resources, had not been included in discussions around this appointment.

9.2.2 Evidence presented suggested that this appointment was done in contravention of the SABC's recruitment policies and procedures. Many witnesses further alluded to the Minister having exercised undue pressure to ensure Mr Motsoeneng's permanent appointment.

9.2.3 The Minister, in her own evidence, explained that she had emphasised the urgency with which the long-vacant senior management posts had to be filled. She could however not allay suspicions that the Board was pressurised to make the appointment, and that in so doing the Board had failed to uphold its fiduciary duties. Evidence was presented that despite recruitment policies and procedures, and despite the Public Protector's findings that Mr Motsoeneng was not qualified for that position, the Minister had nonetheless endorsed the Board's decision to appoint him, within hours of having received the recommendation.

9.2.4 Ms Tshabalala, who was the Board chairperson at the time, explained that in addition to the Board's uncertainty with regard to the implementation of the Public Protector's recommendations, the Board had been swayed by a legal opinion from Mr Motsoeneng's attorneys which suggested that because he had been acting for a long period of time, the SABC would face some legal risk if it did not appoint him permanently. According to Ms Tshabalala, the Board nevertheless considered more than one candidate and came to the conclusion that Mr Motsoeneng would be most suitable.

9.2.5 Ms Tshabalala pointed out that the Board had also been under pressure from the Portfolio Committee to fill all executive positions. Although the Portfolio Committee had by no means advised that policies and procedures be flouted, the Board had understood that immediate action was expected.

9.2.6 The evidence suggests that the Board was deeply divided on this matter, not least because some were of the view that Public Protector's findings and remedial action had to be accepted and implemented.

9.3 Purging, suspensions and dismissals

9.3.1 Evidence heard corroborated the Public Protector's findings that the SABC had for several years been losing highly skilled, highly experienced and highly qualified staff as a result of the abuse of power and systematic governance failures involving irregular termination of employment of several senior employees at the SABC. The Public Protector's report detailed how the systematic purging of senior staff members had resulted in huge financial losses which were paid out in settlement agreements where contracts had been terminated irregularly.

9.3.2 Ms Nkosi's evidence indicated that labour relations specialists' advice would be ignored, and that those senior employees who refused to cooperate would be dismissed with no regard for the applicable employment policies, procedures or labour laws. These matters were seldom tabled before the Board for consideration and approval.

9.3.3 While the Committee does not have an exhaustive list of those who had been purged, most former senior managers who have appeared before the Committee had parted with the SABC for reasons one way or the other related to their refusal to cooperate when policies and procedures were being flouted. If the Board was aware of the 'purges' it did not speak out against the self-inflicted brain drain. Some of the dismissals would be challenged at the Commission for Conciliation, Mediation and Arbitration (CCMA), and others would be settled out of court with the SABC still paying enormous amounts in settlements.

9.3.4 Many witnesses linked the unlawful dismissals to the new MOI which conferred the Board's powers to the executives, thereby reducing the Board to an instrument that merely ratifies the decisions taken by the executive.

9.3.5 These unprocedural dismissals were not restricted to the administration, but also extended to the newsroom. The most recent dismissals took place in July 2016 when eight experienced and skilled journalists—the "SABC 8"—were suspended and then summarily dismissed because they had disagreed with an editorial decision to not broadcast images of violent protests which involved the destruction of public property, and which in their opinion amounted to self-censorship. Although the SABC reinstated seven of the eight with no explanation, Mr Mvoko has not had his contract with the SABC renewed.

9.4 Performance Management

9.4.1 Mr Mabaso testified that the SABC did not have a proper performance management system in place, and that performance agreements had not been entered into with its senior management and other employees. This is corroborated in the Auditor-General's findings. Notwithstanding that, millions of rands in "performance" bonuses have been paid to senior and junior employees. In the case of senior managers, bonuses were often paid without seeking the Board's approval.

9.4.2 In addition, witnesses also reported that the management had announced that cash bonuses would be awarded to some employees and freelancers. This was done haphazardly, without due process being followed or budgetary provision for such awards having been made.

10. Editorial Independence

10.1 Editorial Policies

10.1.1 Editorial independence is central to quality journalism. Editorial interference undermines the prescripts of the Broadcasting Act, inhibiting citizens from making informed judgments on topical issues. Editorial independence and institutional autonomy are absolutely essential components of public broadcasting, and

therefore the safeguards in place to ensure ethical and quality journalism should not be compromised.

10.1.2 Subsections 6(8)(d), (e) and (f) of the Broadcasting Act state that the corporation must develop a code of practice that ensures that the services and personnel comply with the rights of all South Africans to receive and impart information and ideas; the mandate to provide for a wide range of audience interest, beliefs and perspectives; and a high standard of accuracy, fairness and impartiality in news and programmes that deal with matters of public interest.

10.1.3 The Committee heard evidence of the disregard of journalistic values and ethics. Evidence from the "SABC 8" gave an account of how the announcement in 2013 that the SABC would henceforth report "70 per cent positive news and 30 per cent negative news" had affected unbiased reporting and contravened the most basic of journalistic ethics. This policy undermined core principles of truth and was one of the many attempts by senior management to undermine quality journalism in favour of content that would yield positive spin-offs.

10.1.4 According to the "SABC 8", the crisis as far as providing independent and credible news and current affairs programmes to the vast majority of citizens and residents has been a concern for a long period. It was particularly pronounced through the month of July 2016 which preceded South Africa's local government elections. During this time an editorial decision by the SABC was announced banning the airing of violent footage. Journalists were suspended and summarily dismissed for challenging editorial directives which in effect required journalists to self-censor. Although seven of the eight journalists were reinstated shortly after their dismissal, they informed ICASA that the editorial interference was continuing unabatedly.

10.1.5 Evidence was also heard from the "SABC 8" that journalists and editors were discouraged from covering the election campaigns of opposition parties. In some cases journalists were informally requested to give certain individuals within the governing party more positive coverage.

10.1.6 The Minister denied that she had interfered in the editorial policy or the newsroom, as the "SABC 8" had indicated. She also dismissed their recommendation that an internal ombud be established.

10.2 Editorial Review process

10.2.1 When the SABC last reviewed its editorial policy in 2004, a draft editorial policy was released for public consultation. When the policy was reviewed in 2015, the same level of intensive public consultation did not occur, despite what the Broadcasting Act requires. This matter is currently under investigation by ICASA.

10.2.2 The revised editorial policy is problematic for several reasons– it gives the COO control of the SABC's content and programming, making him or her the Editor-in-Chief. Another problematic inclusion in the revised policy is that it makes the principle of "upward referral" mandatory and the COO's decision on all editorial issues final. Editors and journalists are threatened with severe consequences should they not refer "contentious" matters to their superiors and Mr Motsoeneng. This is a complete about-turn from the old policy, where it was made clear that it is not management's role to make day-to-day programming and newsroom decisions and although not ideal, upward referral was largely voluntary. It is a basic principle in many news organisations worldwide that editorial decisions should to be made by news editors, and not management, in order to insulate news decisions from any commercial or political considerations.

10.2.3 The Minister denied that the review of the editorial policy had been irregular. In her evidence she emphasised that section 5A of the Broadcasting Act had been complied with. The proposed amendments were translated into all eleven official languages and placed on the SABC's website. The SABC had consulted in 2013 and early 2014 when the initial review was conducted. In her view the Board had ensured that sufficient public comment was sought in the development of the policy. More than 30 organisations participated in stakeholder engagements held across the country, and in the 17 public hearings which were held across all nine provinces. In addition, the SABC had considered 216 written submissions from individuals and organisations. The Board had approved the policy for implementation, and ICASA was duly informed.

10.3 Regulatory compliance

10.3.1 Section 4(3)(d) of the ICASA Act states that the Authority must develop and enforce licence conditions consistent with the objects of this Act and the underlying statutes for different categories of licenses. The Act in section 17E(2) of the Act empowers the Complaints Compliance Committee (CCC) to direct the licensee to desist from any contraventions; to direct the licensee to take such remedial or other steps in conflict with the Act or underlying statutes as may be recommended by the CCC as per section 17E(2)(b)(c).

11. Public Protector Report No 23 of 2013/14: *When Governance and Ethics Fail*

11.1 Board's response to the report

11.1.1 Mr Naidoo gave evidence, which was corroborated by other former Board members, that the Public Protector's interim report which Ms Tshabalala, had received in December 2013, was never tabled in the Board or any of its sub-committees. When the matter was raised in a meeting of the Board in February 2014 shortly after members became aware—through the media—of the release of the final report, Ms Tshabalala confirmed that she had received the interim

report but had thought that, as it was addressed to her, it was not for the entire Board's consideration.

11.1.2 Further evidence indicated that after the Board became aware of the final report, Ms Tshabalala had ruled that each of the Board sub-committees would consider the findings and recommendations relevant to them, and make recommendations to the Board as to how to respond. Consensus could not be reached on how to respond to the remedial action contained in the report: some Board members thought that the remedial action should be implemented, while others disagreed. This uncertainty was further fuelled by the public debate at that time about the binding nature of the Public Protector's remedial action.

11.1.3 The Human Resource sub-committee had recommended that disciplinary proceedings be instituted against the then acting COO as most of the Human Resource-related findings related to him. With regard to the finance-related remedial action, the former Chairperson of the Audit sub-committee, confirmed that that sub-committee had agreed that further investigations be undertaken before disciplinary action could be instituted.

11.1.4 According to some Board members, Ms Tshabalala had unbeknown to them, appointed Mchunu Attorneys to draft an opinion on the report. Although former Board members confirmed that the Board had at the time agreed to request a legal opinion as to whether the recommendations were binding, the Board had not agreed that the legal opinion—which in reality was not a response, but countered all the Public Protector's findings—be submitted as the SABC's formal response.

11.2 Disciplinary action against the then acting COO

11.2.1 Many of the findings related directly to the actions of the then acting COO, and the Board agreed that disciplinary charges would be instituted against him. The appointment of a chairperson and an evidence leader to preside over the disciplinary hearing was done via round robin. The members of the disciplinary committee were also changed about three times before the hearing commenced. The evidence file that the Public Protector had compiled to support the disciplinary proceedings, and which the SABC had requested, was never collected from that office or referred to during the proceedings.

12 Contradictory Evidence

In many instances the evidence provided by witnesses was contradictory. The Evidence Leader has been requested to analyse the contradictory testimonies, and on conclusion of this exercise, Parliament's Legal Services Office will make appropriate recommendations.

Part D: Summary of responses to the Interim Report

13. Former Board Chairpersons

13.1 Dr B Ngubane

13.1.1 In his submission, Dr Ngubane comments on the process of the inquiry, the treatment he had received as a witness as well as on specific sections of the report.

13.1.2 On the process, Dr Ngubane notes that the Committee had relied heavily on oral evidence, and that one could not ascertain whether any of the documents requested from the SABC had ever been provided. One could also not ascertain whether the Committee had taken into account any of the written evidence, including those he had submitted, in arriving at its findings.

13.1.3 Dr Ngubane also points out that none of the documents, in particular those which implicated him, were made available to him for purposes of preparing for his hearing. Although he had to answer questions related to Ms Dlamini's affidavit, the affidavit was not made available to him. It is also not clear whether the affidavit included annexures corroborating the claims Ms Dlamini made. In Dr Ngubane's view, the fact that documents pertaining to the inquiry had not been made available to him, pointed to a lack of transparency on the part of the Committee.

13.1.4 He questions Ms Dlamini's credibility as a witness amidst various allegations that she had contravened procurement processes between 2010 and 2012 while she was employed at the SABC, and included supporting documentation in this regard.

13.1.5 An arbitration award from the CCMA awarded on 15 January 2015 states that Ms Dlamini was found guilty of gross misconduct on one charge relating to Impala, although there was no evidence to prove that she had enriched herself. It was recommended that the employer terminate her contract of employment.

13.1.6 Dr Ngubane raises concern that the manner in which the inquiry was conducted and the information sought extended beyond the Committee's mandate, which was aimed at inquiring into the fitness of the SABC Board that was chaired by Prof. Maguvhe. He points out that, bearing in mind the provisions of section 15A(1)(b) of the Broadcasting Act, the mandate of the Committee appears to have been "overtaken by events".

13.1.7 Dr Ngubane questions the appropriateness of prioritising the inquiry when in fact an Interim Board should have been appointed as a matter of urgency. He emphasises that it was not in the best interest of the SABC and/or any of its stakeholders for it to have been left to operate without a Board. This drew into question the Committee's commitment to the SABC's sustainability.

13.1.8 With regard to section 7 of the Interim Report, Dr Ngubane questioned the extent to which the Committee could have considered the *MultiChoice* and *the* TNA Media Group contracts without having had sight of the actual agreements. In relation **to** the SABC's relationship with the TNA Media Group, Dr Ngubane reiterates that Mr Molefe's "allegations" in that regard had been unfounded.

13.1.9 In his concluding comments Dr Ngubane emphasised that the Committee could only reach a "meaningful conclusion" if it inquired further in order to obtain relevant information in instances where witnesses provided conflicting information. To this end, a more thorough investigation may still be required. In his view, the only reasonable recommendation the Committee could arrive at would be that an Interim Board be appointed, and that that body assists with a more in-depth investigation.

13.2 Ms E Tshabalala

13.2.1 Ms Tshabalala points out that the evidence she had given was not reflected adequately in the Interim Report, but does not elaborate on the aspects that she would have wanted to see reflected in greater detail.

13.2.2 During her hearings Ms Tshabalala indicated that there had been "gross" political interference in the Board she had chaired, particularly in relation to the SABC's policy on Digital Terrestrial Television (DTT) and specifically set-top box encryption. The Committee had requested that detailed information be provided in an affidavit. Ms Tshabalala refused to provide an affidavit because, in her view, both her oral *and* subsequent written submission were provided under oath.

14. Former Board Members

14.1 Ms R Kalidass

14.1.1 Ms Kalidass was in agreement with the contents of the interim report, and did not propose any substantive amendments.

15 Shareholder Representative

The Minister's submission responds to the findings contained in the Interim Report and identifies five areas in which the Minister is implicated. The specific findings are:

- that the MOI was irregularly amended to empower the Minister to remove Board Directors in line with the Companies Act;
- that the proposed amendments to the Broadcasting Act were aimed at concentrating power in the Ministry;
- that the Minister had been involved in the removal of non-executive Board members;

- that the Minister unduly pressurised certain Board members to resign; and
- that the Minister had possibly pressurised the Board to appoint Mr Motsoeneng permanently as COO.

15.1 Amendments to the MOI

15.1.1 The Minister in her submission states that a copy of the MOI was registered with CIPC on 14 May 2014. The Minister contends that it is factually incorrect that she had irregularly amended the MOI to concentrate power within the Ministry. She also states that when she was appointed on 25 May 2014, the MOI had already provided (in clause 14.4) for non-executive directors to be removed using section 71(3) of the Companies Act. The Interim Report incorrectly in stated that the MOI transferred the Board's powers to the Minister.

15.1.2 The Minister also reaffirms points made in her initial evidence, particularly in relation to the validity of removing Board members using section 71(3) of the Companies Act. She further states that she had sought independent legal advice on the matter, and that the matter had been put to the Portfolio Committee too.

15.1.3 The Minister further questions Mr Masinga's credibility as a witness, particularly with regard to his decision to contest the amendment of the MOI (see SM Masinga v The Minister of Communications and three other respondents, Case Number 10721/2015).

15.1.4 The Minister further submits that the "agreement in question" has been amended three times since 2013 but despite those amendments the Committee "heavily relied" on the initial agreement signed in 2013 as the basis upon which it has made its findings.

15.2 Amendments to the Broadcasting Act

15.2.1 The Minister argues that the matters addressed in paragraph 4.2 of the Interim Report which deals with the amendment bill, as well as paragraphs 12.1.3 and 13.1.2, are irrelevant to the inquiry. The Minister nevertheless voiced concern that the Committee failed to acknowledge that the bill had been certified constitutionally compliant by the Office of the Chief State Law Advisor and independent counsel. The bill was approved by Cabinet and presented to the Portfolio Committee. She further states that the claim that the bill represented an attempt to centralise power was without merit.

15.2.2 Finally, the Minister also cautions against the Legislature interpreting law and urges that the principle of separation of powers be maintained. The submission emphasises that section 5 of the Companies Act makes reference to legislation that took precedence

over that Act, and that the Broadcasting Act was not included among those listed.

15.3 Removal of non-executive Board members

15.3.1 The Minister denies that she had exercised undue influence on the Board to remove former non-executive members Mr Lubisi, Ms Zinde and Ms Kalidass from their positions. The Board had acted in line with section 71(3) of the Companies Act which empowered it to remove the Board members.

15.3.2 The Minister also denies that she had at any point pressurised Board members to resign.

15.4 Pressurising the Board to appoint Mr Motsoeneng

15.4.1 The Broadcasting Act empowered the Board to appoint or recommend persons to be appointed as executive members. The Minister states that she had been invited to attend a Board meeting scheduled for 7 July 2014 at which Mr Motsoeneng's permanent appointment as COO would be discussed. She had declined to attend the Board meeting, but waited at the SABC's premises. The Minister eventually joined the meeting when deliberations had been concluded, and she was informed of the decision. She requested the Board to provide her with a written recommendation for Mr Motsoeneng's appointment. She emphasised that the decision was made after full consideration had been given to the facts, and after consultation with Mchunu Attorneys who had been mandated to provide a report on the Public Protector's report, which had included findings against Mr Motsoeneng.

15.4.2 With regard to concerns about the COO post not having been advertised externally, the Minister indicates that she had considered this as well as the Board's motivation for why he should be appointed. She confirms that she was satisfied with the explanation that Mr Motsoeneng had done "a sterling job" as acting COO and that it therefore "made sense" to appoint him permanently "without advertising the position".

15.5 Alleged breaches of law

15.5.1 The Minster raises the issue of process and natural justice with reference to the Committee's findings that she acted in conflict with various statutes. The Minister found the Interim Report's findings in relation to breaches vague. She pointed out that she was not afforded sufficient notice of the allegations against her in order for her to assess what aspects of her conduct were in contravention or breach of her legal obligations. She does not waiver her right to be properly informed of the allegations against her, and to be afforded sufficient time to consider them.

15.6 Breach of the Constitution Act 108 of 1996

15.6.1 Paragraph 13.2.3 of the Interim Report states that the Minister may have contravened section 96(b) and (c) of the Constitution, section 15(1) of the Broadcasting Act, section 2.1(b) and (d) of the Executive Code of Ethics, and section 17(e) of the Privileges Act in the removal of Board members and in Mr Motsoeneng's permanent appointment as COO, for instance. The Minister points out that the applicable provisions of the Constitution are in fact section 96(2)(b) and (c) and not section 96(b) and (c) as reflected in the report. The Minister noted the Committee's use of "such as" and contends that this indicated uncertainty in relation to this finding. The Minister argues that there was no evidence that she exposed herself to any situation involving the risk of conflict between her official responsibilities and her private interests. The Committee's finding is therefore, factually incorrect.

15.7 *MultiChoice* transaction

15.7.1 The Minister pointed out that *Caxton and CTP Publishers and Printers* who was one of the complainants in the Competition Commission matter between the SABC and *MultiChoice* has lodged an appeal in the Competition Appeal Court on the grounds that not all documents pertaining to the transaction had been made available as per the order to the SABC and *MultiChoice*. The appeal was heard in December 2016 and a decision was being awaited. In light of the above, the Minister argued that the matter should be regarded as *sub judice*.

15.7.2 The Minister also disagreed with the assertion that the SABC had sold its archives to *MultiChoice* and that in so doing section 8(j) of the Broadcasting Act had possibly been contravened. She points out that the SABC only packaged content for the SABC ENCORE channel which is then licensed to *MultiChoice* for broadcast.

15.7.3 The Minister confirmed that the SABC maintained libraries and archives at their premises and that these were available for inspection by the public as required by the Broadcasting Act. She further stated that once the migration to digital has been completed all television-owning households would have access to the SABC ENCORE channel which would then be available on the SABC's DTT platform.

16. SABC

16.1 General

16.1.1 The SABC states that despite the fact that it was "battling to accept the Inquiry as objective and fair" it would provide responses to the issues raised in the course of the Inquiry. In its response to the Interim Report, the SABC asserts that:

- the Committee had "*displayed specific bias and did not take any reasonable steps to ensure that it*

received balanced information during the inquiry as the majority of the witnesses who testified were mainly ex-SABC employees and Board members, and civil society groups who have always viewed the SABC in the negative light,' and that this had led to a pre-determined outcome;

- the decision not to afford Mr Motsoeneng an opportunity to appear before the Committee was in contradiction of the *audi alteram partem* rule;
- the use of information that the Evidence Leader had collected on behalf of the Portfolio Committee had not been appropriate in light of the fact that the SABC had contested that committee's objectivity;
- the inquiry was accusatorial rather than inquisitorial; and
- additional submissions made had not been shared with the SABC to allow the opportunity to comment and respond.

16.2 Introduction of the Interim Report

16.2.1 The SABC submitted comment that refuted statements made in the "Introduction". In the main the SABC states that:

- Board members had started resigning as early as December 2015 but that the Portfolio Committee had failed in its duties to appoint new members;
- the removal of Ms Zinde, Ms Kalidass and Mr Lubisi was as a result of their transgressions, and in line with the SABC's *'efforts to correct its governance processes in accordance with the undertaking given to the Shareholder, the PCC, SCOPA and to correct findings of the AGSA and the SIU reports';*
- a quorate Board meeting comprises nine members, which the Board had had up until October 2016;
- except for October 2014, all the SABC's services had been receivable on air; and
- no former employees were purged or forcefully removed, providing a detailed account of the circumstances surrounding certain witnesses' departure from the SABC.

16.3 Witnesses

16.3.1 In its response the SABC provides information attempting to prove that several of the witnesses who had appeared before the Committee were, for various reasons, not credible or trustworthy.

16.4 Regulatory Framework

16.4.1 The SABC provides a lengthy argument on the applicability of the Broadcasting Act and the Companies Act. In the SABC's view any reference to the Companies Act in the Broadcasting Act of 1999 refers to the Companies Act of 1973 and not that of 2008. The SABC claims that the fact that the Broadcasting Act of 1999 has not been amended to align it with the Companies Act of 2008 was the real challenge.

16.5 Governance

16.5.1 The SABC makes several statements in response to paragraphs 4.1.1 to 4.1.5 of the Interim Report. Amongst others the SABC maintains that:

- the Companies Act was supreme as far as the SABC's governance, and therefore the Board should be liable under that Act;
- the statement that the MOI was used to trump the Broadcasting Act was incorrect;
- the implementation of sections 85 and 86 of the PFMA was the responsibility of the Minister of Finance, and not that of the Board;
- the revision of the MOI was done in accordance with the Companies Act of 2008 and has not been disputed in a court of law; none of the annexures provided supported this claim; and
- the process to be followed to appoint Executive Directors was not altered when the Articles of Association was converted to the MOI.

16.6 Broadcasting Bill

16.6.1 In relation to paragraphs 4.2.1 to 4.2.8 the SABC registered its confusion as to the inclusion of the Bill in the inquiry. They also point out that the main objectives were more detailed than those reflected in the Interim Report.

16.7 Fiduciary Duties

16.7.1 In response to paragraphs 4.3.1 to 4.3.12 the SABC argues that the Companies Act did not distinguish between non-executive and executive directors and *all* directors had fiduciary duties. For this reason the Committee should have invited executive directors to give evidence too. The SABC further states that there was no MOI dated 20 September 2013. The response includes a lengthy legal argument pertaining to the provisions of the MOI, PFMA, and Companies Act in relation to the fiduciary duties of directors as well as the appointment, removal and disciplining of directors.

16.8 SABC finances

16.8.1 In its response, the SABC listed "salient features" of its finances over the last eight years. Amongst others, they maintain that:

- "Revenue and other income 2016 grew by 98% to R8.09bn from R4,71m in 2009. Revenues grew by 12% (R920m) from R7,17bn to R8,09bn when the current Board was appointed in 2013/14 to 2015/16;
- net assets have increased by 73% from R1,55bn in 2008 to R2,69bn. Net assets grew by 15% (R350m) from R2,34bn to R2,69bn when the current Board was appointed in 2013/14 to 2015/16".

16.9 Report of the Auditor-General of South Africa (paragraphs 5.1.1 to 5.7.2)

16.9.1 On its financial management, the SABC highlighted that it has succeeded in reducing the number of material matters which had in the past led to audit qualification from nine in 2012/13 to one in 2016. The 2016 audit outcome is ascribed to lack of skills in its supply chain management division, and inadequate record keeping.

16.9.2 The SABC points out that the reduction on the "material, reportable concerns" in the audit report signified a "drastic improvement" in the corporation's financial and operational management "under the guidance of the Board and the Shareholder". The SABC insists that the majority of challenges which had resulted in the irregular, fruitless and wasteful expenditure referred to in paragraphs 5.2.1 to 5.3.2, was due to poor implementation of internal controls in preceding years.

16.9.3 The SABC refutes the Auditor-General's findings that it had failed to produce credible and reliable financial statements and had material misstatements on specific areas (as reflected in paragraph 5.1.1). It insists that its financial statements present fairly the financial position and financial performance of the entity.

16.9.4 In response to paragraphs 5.3.1 to 5.3.2, the SABC states that the bulk of its fruitless and wasteful expenditure was due to the impairment of foreign and sports content which was acquired in a batch.

16.10 Supply Chain Management

16.10.1 With regards to the flouting of supply chain management processes, the SABC alleges that Mr Matlala and Mr Shushu had delayed the timeous appointment of service providers, and that their reasons for delaying the processes were not valid.

16.10.2 In its response, the SABC provides reasons for the use of consultant services from *PriceWaterhouseCoopers*, *Asante Sana*, *SekelaXabiso* and *Lorna Vision*. These include the fact that the SABC's finance department was inadequately resourced and the urgency presented by the SABC's history of irregular expenditure.

16.10.3 The SABC disputes that individuals were purged as indicated in paragraph 6.1 and insists that their dismissal was in terms of section 85 and 86(2) of the PFMA. The SABC argues that Mr Shushu did not resign but was suspended for failure to action audit reports and payments to suppliers.

16.10.4 In response to paragraph 6.2.1, the SABC states that both Mr Shushu and Mr Tseisi had approved the deviations from SCM policies in relation to the *SekelaXabiso* contract in a Bid Adjudication Committee meeting on 18 November 2014.

16.10.5 The SABC refutes Ms Dlamini's evidence in paragraph 6.3.3 that Foxton Communicating was paid R350 000 per month. They confirm that the firm was paid R85 000 per month as indicated in the documentation provided to the Committee.

16.10.6 In its response, the SABC states that it does not have any VAT recovery contracts.

16.10.7 In response to paragraph 6.3.5, the SABC pointed out that the TNA Media Group provided the SABC with 200 copies of it The New Age newspaper at no charge from December 2010 (after the newspaper was launched) and for a limited period. The SABC has since April 2011 subscribed to 180 copies of the newspaper per day for its head office and provincial offices. The TNA-subscription accounted for only 8 per cent of SABC's newspaper costs.

16.11 *MultiChoice* Agreement

16.11.1 In relation to paragraphs 7.1.1 to 7.1.7, the SABC claims that the *MultiChoice* agreement was '*initiated by the former Minister Ms Dinah Pule under pressure from the then PCC (Chaired by the Hon Kholwane) to implement the 24 Hours News Channel.'* Despite this pressure, the SABC did not have the funds to launch the channel. Mr Motsoeneng was therefore requested to raise the necessary funds.

16.11.2 The SABC observes that despite the fact that DSTV Channel 404 which flights parliamentary proceedings was carried on the same platform as the 24 Hours News Channel and SABC ENCORE, the Committee had only "painted" the 24-hour news channel and SABC ENCORE as "elitist".

16.11.3 In relation to the *MultiChoice* transaction, the SABC points out that the five-year agreement was already in its fourth year. The SABC emphasised that should the agreement be terminated over 100 jobs would be lost, and broadcasting operations of the 24 Hour News Channel and ENCORE would "suffer closure".

16.11.4 The SABC refutes claims that the *MultiChoice* agreement involved the sale of the SABC archives or the SABC's intellectual property, and that it was at all "relevant" times compliant with section 8(j) of the Broadcasting Act. In relation to the ENCORE channel, the agreement comprises "a license agreement between the SABC and *MultiChoice* of only 1% of the SABC archive material".

16.11.5 The SABC also clarified that the 2014 amendment of the original agreement provides that content broadcast on the *MultiChoice* ENCORE platform could be broadcast by the SABC 60 days after it had been broadcast by *MutliChoice*. Furthermore, the channels would revert to the SABC platform once the DTT process has been completed. The SABC also points out that the broadcast of its two channels on the *MultiChoice* platform was a direct result of the shortage of bandwidth.

16.11.6 The SABC rejected claims that its stance on STB encryption was influenced by the *MultiChoice* transaction. The decision was purely based on sound and valid cost concerns. The SABC points out that Section 2(k) of the Broadcasting Act provides that the SABC could engage in commercial transactions (such as licensing agreements) to generate income in order for it to be competitive commercially.

16.12 New Age Media arrangement

16.12.1 In relation to paragraphs 7.2.1 to 7.2.4 the SABC denies that Mr Masinga had been tasked with rebranding SABC News, or that the SABC paid the TNA Media Group for the TNA Business Breakfasts

16.13 Vision View

16.13.1 The SABC denies (and provides documents supporting its claim) that the *Vision View* contract was approved on 31 July 2015 as stated in paragraph 7.3.1 of the Interim Report, or that it was approved via Round Robin. The SABC states that although the Round Robin decision was taken on 31 July 2015, that decision was "further" ratified in an EXCO meeting on 18 September 2015.

16.14 Human resource-related matters

16.14.1 The SABC provides several response to paragraphs 8.1.1 to 8.4.2 of the Interim Report. With regard to executive appointments the SABC indicates that the MOI approved in May 2014 reflected the process to be followed to appoint executive directors, while the Broadcasting Act only referred to the appointment of non-executive directors. The MOI was therefore not amended to provide for the appointment of executive directors but to appoint managers—an operational matter falling outside of the fiduciary duties of the Board—and therefore the Board was party to the amendments of the MOI as stated by the Minister in her evidence, and as confirmed in the AGM minutes of 4 September 2015, and the Board minutes of 29 June 2016 and 18 August 2016 which the SABC included in its submission.

16.14.2 The SABC further stated that Mr Motsoeneng was not appointed as Group Executive: Corporate Affairs after the Court had reviewed and set aside his appointment as COO: he was not appointed, but merely "restored" to the position he had occupied prior to his promotion.

16.14.3 The SABC also stated that most witnesses cited in the Public Protector's report either denied participating in the investigation, or being interviewed by the Public Protector.

16.14.4 In response to the claims that staff had been purged, the SABC highlights that the Board was not required to ratify decisions to appoint or dismiss employees since this was an operational matter. There were valid reasons and merits for each removal and dismissal.

16.14.5 The SABC refuted Mr Mabaso's claims that he had introduced the performance management system. According to the SABC, he merely revised a policy which was approved prior to his appointment in June 2013.

16.15 Editorial policies

16.15.1 In response to paragraphs 9.1.1 to 9.3.1 of the Interim Report, the SABC points out that its editorial independence rested with the Corporation and not individual journalists or staff members. The SABC made editorial decisions based on news value, editorial policy, balance, credible source confirmation and the deliberations of the editorial team as a collective. It further elaborates on its editorial policies, the election processes and complaints about biased coverage of political parties.

16.16 Public Protector Report

16.16.1 The SABC confirms that up until the time the Constitutional Court pronounced on the status of the Public Protector's remedial actions in the matter between *Economic Freedom Fights and Others v. The President of the Republic of South Africa*, there was

"uncertainty on the binding nature of the Public Protector's remedial action".

16.16.2 In response to paragraphs 10.1.1 to 10.2.1, the SABC submits that Mr Lubisi had failed to submit the required report to the Committee of Chairs, which had resulted in an independent external review of the report not being 'appointed'.

16.16.3 With regard to the non-collection of the evidence file the Public Protector had compiled to assist in Mr Motsoeneng's disciplinary hearing, the SABC indicates that Mr Ledwaba had not responded to communication, and that a further prosecutor was appointed.

17. Former SABC employees

17.1 Mr P Molefe

17.1.1 Mr Molefe states that Dr Ngubane had "lied and deliberately misled" the Committee during his hearing. He denies Dr Ngubane's claim that he had signed the TNA subscription contract.

17.1.2 Mr Molefe further emphasises that he had been against the "carte blanche" proposal for the TNA Business Breakfasts which would have amounted to a takeover of SABC Morning Live programme by TNA. The contract was signed after he had resigned from the SABC.

17.1.3 Mr Molefe corroborated evidence that the SABC bore costs associated with the Business Breakfasts. In his submission he indicates that the shows came at a huge cost to the SABC. Technical equipment for one production could cost R1 million or more. In addition, the SABC had to cover the flights, accommodation and subsistence of its production staff when the briefings took place outside of Johannesburg. Mr Molefe confirms that while the SABC carried the production costs, the TNA Media Group earned the revenue exclusively.

17.1.4 Mr Molefe indicates that he was aware that a business case for the contract which set out the responsibilities of each of the parties as well as costs, and "specifically a 50:50 revenue sharing arrangement" was presented to the Group Executive. He later learned that the contract which was eventually signed excluded any reference to the revenue sharing arrangement.

17.1.5 In his evidence Dr Ngubane had alluded to the fact that Mr Molefe's visit to India while he was the acting GCEO had been linked to the controversial Gupta family. Mr Molefe indicates however that the visits he had undertaken were motivated for and approved, and were aimed at exploring possible content and skills partnerships with other national broadcasters, and part of benchmarking exercises in anticipation of the launch of a free-to-air 24-hour news service. The trip to India had been part of Board-approved international strategy to pursue partnerships with, amongst others the BBC in the United Kingdom, CCTV in China and Prasar Bharati in India.

17.1.6 In his evidence Dr Ngubane had denied the claim that he had attempted to force Mr Molefe to approve a R 500 000 salary increase for Mr Motsoeneng. In his response Mr Molefe insisted that the SABC's record would reflect that Mr Motsoeneng's salary had been increased by that amount, and later more.

17.2 Mr S Masinga

17.2.1 In relation to the amendment of the MOI, Mr Masinga provided proof that contradicted the Minister's evidence as reflected in paragraph 8.1.2 in the Interim Report. Board minutes of a meeting that took place on 29 January 2015 indicated that Board members had raised concerns that the Minister had changed and registered the MOI without having consulted the Board. Members had raised concerns that the amendments may have resulted in the Board being stripped of its powers, but the proposal that an opinion on the legality of the amendment be sought was not pursued as it may have had implications for the relationship between the Shareholder Representative and the Board. Instead, it was agreed that the Minister would be invited to clarify the issue in a Board meeting.

17.2.2 Mr Masinga provided correspondence and a proposed agreement between the SABC and an entity called Applewood Trading 2006 (Pty) Ltd which supported the evidence referred to in paragraph 7.2.1 of the Interim Report. The agreement was for the distribution of a 24-hour, seven-day commercial news channel for delivery to SABC audiences (in South Africa and other countries in sub-Saharan Africa which fall in the footprint of the SABC's Analogue Terrestrial and Digital platforms) via the SABC platform. In addition the SABC would "allow the use of its archives for News, Current Affairs and other content as and when sought by the Channel Provider". In line with the agreement the SABC would carry the costs of the proposed news channel, but whether the SABC would have benefitted financially from the agreement is unclear.

17.3 Mr I Tseisi

17.3.1 Mr Tseisi was in agreement with the contents of the Interim Report, and did not propose any amendments.

17.4 Mr M Shushu

17.4.1 In his response Mr Shushu proposed a number of detailed additions relating to services the SABC had procured from *SekelaXabiso*, *Vision View*, *Lezaf*, *Lorna Vision*, *PriceWaterhouseCoopers*, Ms Ayanda Mkhize (a procurement consultant), Mott MacDonald, and *Asante Sana*. He also provides additional information related to the RFP Book for content acquisition process, and the SABC's human capital recruitment services.

18. "SABC 8"

18.1 TNA Business Breakfasts

18.1.1 Ms Gqubule-Mbeki provided email correspondence which supported Mr Mvoko's evidence that the SABC bore significant costs associated with the TNA Business Breakfasts. The emails further confirmed that the briefings were continuing despite the concerns that had been raised in the course of the inquiry.

18.2 "Black Paper on the SABC: For Public Broadcasting in South Africa"

18.2.1 Six of the journalists who have become known as the "SABC 8" submitted recommendations to the public aimed at saving the public broadcaster. The *"Black Paper on the SABC: For Public Broadcasting in South Africa"* calls for:

- the scrapping of the 2016 editorial policy, the 70 per cent good news policy, and the protest ban;
- a return to quality broadcasting through "massive and targeted" training;
- the reversal of the recent "unlawful" dismissal, and termination of the contracts of, in particular, Mr Mvoko and Mr Kgaogelo Mogelego; as well as the decision to 'can' programmes including "The Editors" and the "Newspaper".
- a review of unprocedural appointments to the executive and the news room;
- a stop to gross violations of labour rights;
- the termination of the SABC's relationship with the New Age Media Group;
- the establishment of an editorial ombudsman;
- migration from analogue to digital;
- a forensic investigation of the *MultiChoice* deal as well as the *SekelaXabiso*, *Foxton Communicating* and *Vision View* transactions;
- increased public funding for the SABC; and
- a multi-stakeholder Board.

18.3 Suna Venter

18.3.1 Ms Venter submitted a response in her individual capacity, supported by Mr Foeta Krige, her senior and executive producer within the RSG Current Affairs.

18.3.2 In her response she calls for, amongst others:

- a separate inquiry into the SABC's news division to uncover information related to the culture of fear and

uncertainty that continues, as well as continued political interference in newsroom activities;
- an investigation into the continued involvement of Mr Motsoeneng through the 'enforcers' he had appointed;
- the setting aside of the 2016 editorial policy;
- a direct finding relating to the failure of the Speaker of the National Assembly and the Chairperson of the Portfolio Committee to fulfil their constitutional obligations;
- an apology from the Minister and the SABC executive who had before the Portfolio Committee implied that the "SABC 8" were dishonest, unethical and racist; and
- strict instructions to the interim and new Boards, which includes the establishment of an internal forum for news staff.

18.3.3 Ms Venter does not support the establishment of an internal ombud which she believes would be unnecessary once a stable management has been appointed, and provided sound broadcasting guidelines are adhered to.

19. Chapter 9 institutions

19.1 AGSA

19.1.1 The AGSA proposed certain technical amendments, but did not propose any substantive changes.

20. Civil Society Organisations

20.1 SOS Coalition

20.1.1 The SOS Coalition did not comment on the contents of the Interim Report but proposed a number of recommendations for the Committee's consideration. These include the dissolution of the Board, and urgent actions to be taken by the Interim Board in relation to corporate governance failures; human resource management; and supply chain management (in particular the *MultiChoice, Vision View and New Age Media* agreements/transactions); and the editorial policy and censorship.

20.1.2 The submission also argues for amendments to the Broadcasting Act, the Companies Act, the MOI and the Constitution in order to establish the SABC as a Chapter 9 institution.

20.1.3 The submission is supported by MMA.

20.2 Right2Know

20.2.1 Right2Know's submission calls for:
- the inclusion of the TNA Business Breakfasts among those reported on under "Suspicious Transactions";
- public involvement in the appointment of the Interim Board;

- action to be taken against shareholder representatives who have breached the Broadcasting Act and the Companies Act;
- Dr Ngubane's removal as Chairperson of the Eskom Board;
- the review of the SABC's policies on the protection of electronic communication and the development of whistle-blower policy in order to protect journalists;
- a thorough investigation of the SSA's activities at the SABC;
- the recovery of the SABC's archive, and the prosecution of the individuals who had authorised the *MultiChoice* and *The New Age* transactions.
- public consultation on the local content quotas and the editorial policy;
- the filling of senior management posts through a public process;
- the summoning of those witnesses who had refused to participate in the inquiry;
- findings against attempts to give the Minister more executive and unchecked powers to interfere with the SABC; and
- a thorough investigation of all irregular and wasteful expenditure extending to before 2013/14, and that monies be recouped where necessary.

20.3 Media Monitoring Africa

20.3.1 MMA draws attention to two matters they believed ought to have been included in the Interim Report i.e. comment on the SABC's bias in the coverage of elections; and the SABC's failure to adhere to ICASA's ruling in relation to the decision not to cover violent protests.

20.3.2 MMA proposes a series of recommendations in relation to, amongst others:

- an investigation of the threats made against journalists, including the "SABC 8", and that the Interim Board expresses itself on the matter of intimidation and threats and ensures that measures are put in place to protect journalists;
- broad public consultation on the amendment of the editorial policy;
- an investigation of the newsroom, in particular irregular appointments and editorial interference; and
- a legal and forensic audit of the *MultiChoice* agreement which led to material from the SABC's archives only being available on a pay-to-view channel.

21. Unsolicited responses

21.1 Mr D Foxton

21.1.1 Mr Foxton's affidavit was submitted in response to paragraph 6.3.3 of the Interim Report. The affidavit clarifies that *Foxton Communicating (Pty) Ltd* is a political and current affairs consultancy and not a public relations firm. He further denies that the company was paid R350 000 per month for the services provided to the SABC. According to the affidavit the company was paid R75 000 per month excluding VAT. At present they are paid R85 000 excluding VAT.

21.1.2 *Foxton Communicating* offers a unique national and international service, providing effective communication between individuals at the highest levels in business, politics and media. The SABC entered into the agreement with *Foxton Communicating* in November 2013. The contracts were for 12-month periods at a time, with three month-notice of termination available to either side at the end of each 12-month period. The documentation provided by the SABC confirms that *Foxton Communicating* was paid a monthly fee of R75 000 plus VAT calculated at R10 500.00. Annexure A of the SABC's submission in this regard states that the fee was fixed and that other than expenses specifically agreed to, no additional charges would be levied.

21.1.3 *Foxton Communicating* would, amongst others assist the then GCEO, Ms Mokhobo, and the SABC to develop and improve their public image and reputation through:

- identifying the CEO's immediate communication challenges and imperatives;
- structuring a programme of meetings with media and important business leaders according to which *Foxton Communicating* would, for example, arrange for the GCEO to annually host or participate in a minimum four meetings with prominent newspaper editors and three groups of business leaders during the year with aim of disseminating key messages to important audiences;
- facilitating opportunities for the GCEO to produce thought pieces or conduct interviews for selected media; and
- providing a crisis communications advisory service.

21.2 Mr H Motsoeneng, former SABC COO

21.2.1 Mr Motsoeneng's legal representatives, *Majavu Inc*, submitted a response on his behalf. The response did not address the evidence or findings, but highlighted Mr Motsoeneng's concerns with regard to the Committee's process, and the decision not invite him to give evidence.

21.2.2 Mr Motsoeneng wished to place on record the prejudice he believes he has suffered because he was not afforded an opportunity to appear before the Committee to defend himself or to contextualise matters in which he was implicated. He believes that by not calling him to appear before it, the Committee had accepted as truth allegations made against him, including that he been responsible for staff purges, had flouted SCM policies, and that he did not have the requisite qualifications.

21.2.3 Although he was not specifically mentioned in it, the submission makes specific mention of paragraph 17.1.1 and states that Mr Motsoeneng had not been invited or summoned to Parliament, and had therefore not boycotted the inquiry.

21.3 TNA Media Group

21.3.1 The Committee received a submission from The New Age Media (TNA) Pty Ltd, responding to references in the Interim Report to the TNA Media Group.

21.3.2 In response to paragraph 6.3.3 of the Interim Report, TNA contends that the agreement between the SABC and TNA was the result of negotiations which were headed by Ms Lucille Jacobs and Mr Paul Nothnagel — both of whom were TNA representatives—which took place in 2011. TNA denies that any TNA representatives had given an instruction to the SABC to agree to subscribe to the TNA newspaper. The proposal was made after the SABC had requested that The New Age newspaper should form part of its newspaper bouquet. Mr Howa includes email correspondence dated 7 November 2011 from Ms Lucille Jacobs of The New Age to Ms Mmadiboka who was the SABC's Acting Head of Procurement at the time in which Ms Jacobs states that "The New Age is ideally placed to assist in the task of showing that 'the glass is half full'".

21.3.3 TNA corroborates evidence referred to in paragraph 7.2.1. The submission confirms that several proposals by the TNA Media team for cooperation between it and the SABC were declined by various line managers. TNA Media indicates that these proposals included an exploratory discussion document for certain news productions to be outsourced to TNA Media in order to narrow the urban-rural divide.

21.3.4 In response to paragraph 7.2.2 of the Interim Report TNA states that its executives started engaging the SABC on subscriptions and the Business Breakfasts in July 2011. The Business Breakfast-project

was launched without the SABC, and TNA managed the entire project using its own resources. The entire cost of hosting a Business Breakfast was borne by TNA Media but the SABC was responsible for the broadcast costs. This contradicted claims that the SABC bore none of the costs associated with the briefings. During the negotiations revenue-sharing with regards to the Business Breakfasts was discussed. Mr Howa provided email correspondence between the SABC and the TNA Media Group which confirmed that "an in principle commercial business partnership between The New Age and the SABC" had been reached according to which revenue would be split according to a 40:60 ratio, in the SABC's favour. The revenue-sharing aspect was eventually abandoned when the parties could not agree on the details.

21.3.5 The SABC nevertheless agreed to broadcast the event, in part because "the content generated by the breakfasts, content that would be required in any event on the basis of the SABC's mandate" was "of great interest" to the SABC.

Part E: Observations

22. Governance

22.1 Legislative Framework

22.1.1 The Committee is of the view that the SABC conveniently used the Companies Act to subvert the Broadcasting Act in order to justify decisions which appeared to be in pursuit of undermining both Parliament's and the President's roles in the appointment of non-executive directors.

22.2 Fiduciary Duties

22.2.1 At the commencement of the inquiry, the Board was dysfunctional as only three of its non-executive Board members still remained. In addition, all three of its executive directors were acting in their posts. The Board could not convene quorate meetings. The Committee also noted that some non-executive Board members who were removed from the Board were challenging their irregular removal through a legal process.

22.2.2 The Committee was presented with overwhelming evidence that the Board had failed to carry out its duties. Board leadership, most notably chairpersons, appear to have failed to provide leadership which had prevented the CFO, COO and CEO from carrying out their operational duties. This had rendered the work environment unbearable which in turn led to a costly skills exodus, ill-informed policy decisions, loss of competitiveness, the SABC's compromised fiscal position, reputational risk and a complete breakdown in governance. In short, the Board had failed to monitor and enforce compliance with the Charter of the Corporation or to act in the SABC's best interest, and in so doing had contributed to the SABC's administrative and financial instability.

22.2.3 Prior to the resignation of the last three non-executive members, the remaining members had continued to refer to themselves as Board, and despite the fact that they did not form a quorum, they had continued to take and implement decisions.

22.2.4 Some Board members had objected to the irregular amendment of the MOI, which effectively transferred their responsibilities to the executive directors of the Board, and was an attempt to centralise power in the Ministry. The lack of resistance by the majority of the Board members to the amendment demonstrated their flawed understanding of the Board's duties and responsibilities, and of the relationship between the Board, the Shareholder Representative, and the Administration.

22.2.5 In some instances no consultation was held with key stakeholders—including Parliament—and the broader public when SABC policies, such as the 90/10 local content, 70/30 good news, and editorial policies were amended. In addition, these policy decisions appear to have been implemented without having considered the impact on the SABC's finances.

22.2.6 The Committee is of the view that had the Board members been properly inducted into their new roles upon taking office, and received training with regard to their respective roles and responsibilities, many of the challenges may have been averted.

22.2.7 The Committee has noted that much of the decline at the SABC was the result of both executive and non-executive directors having tolerated the gradual erosion of good governance and sound financial management, until such time that it directly affected them. This failure to object to/resist had contributed to the widespread non-compliance with, for example, SCM and labour policies and procedures, and the disregard for the regulatory framework within which the SABC operated. The situation was further exacerbated by the rapid turn-over of executive and non-executive directors.

22.2.8 The Board failed to ratify operational decisions or to engage the shareholder representative on the implications of the amendments to the MOI and the delegation of authority framework, which impacted directly on the public broadcaster's mandate, its financial management and competitiveness.

22.2.9 Despite the Company Secretary having served in the position for a long period of time, and despite her having been highly-experienced and highly-qualified, the evidence suggested that she failed to provide adequate guidance to the Board. Former Board members gave evidence of an unusually large number of special meetings convened at short notice and without proper notification or adequate documentation, and frequent round-robin decision-making, albeit—according to the SABC—ratified at the next quorate meeting. This

modus operandi appears to point to deliberate attempts to stifle Board discussion and to manipulate the Board's decision-making, particularly in matters on which Board members may have had divergent views.

22.2.10 The Board had failed to ensure that the remedial actions of the Public Protector and ICASA rulings were fully implemented.

22.2.11 The Committee notes that at the adoption of this report the SABC was without a quorate Board. All the non-executive members had been dismissed or had resigned of their own accord. The Board only had three executive members, all in acting capacities.

22.3 Financial Management and Sustainability

22.3.1 The Committee noted with concern statements by some of the SABC's executive managers and Prof. Maguvhe, that the SABC was not accountable to Parliament as it only received a small percentage of its budget from the fiscus. This reflects their lack of understanding of their duties and responsibilities. Regardless of its commercial activities, the SABC remains a public entity, funded from the public purse, and is, in terms of the PFMA, accountable to Parliament.

22.3.2 In 2015/16 the Auditor-General reported fruitless and wasteful expenditure with a cumulative value of R92.8 million. The evidence before the Committee supports the Auditor-General's finding that the SABC Board had failed to discharge its duties as required by the PFMA in that it had failed to put in place effective measures to prevent irregular, unauthorised, and fruitless and wasteful expenditure. The Committee concurs with this finding.

22.3.3 The Committee notes with concern the evidence about the SABC's deteriorating financial management which has impacted negatively on its sustainability. There appears to be serious cash-flow challenges, given the significant deterioration in cash reserves. In addition, there is reference in the Auditor-General's management letter that points to material uncertainty on the going concern assumption. In this regard, the funding model is of concern, particularly in light of the SABC's mandate as a public broadcaster. The corporation may be at risk of becoming technically insolvent.

23. Role of the shareholder representative

23.1 Memorandum of Incorporation

23.1.1 The Committee is extremely concerned about March 2014 changes to the MOI which effectively erodes the powers and duties of the Board as per the Broadcasting Act.

23.1.2 The Committee received four "MOIs" in the course of the inquiry. An enquiry to the CIPC revealed that the last amendments to the MOI were registered in March 2014, when Mr Yunus Carrim was

the Minister of Communications. The CIPC had no record of any further amendments, other than changes in directorship which were filed in 2015. The CIPC-enquiry revealed the questionable appointment of Mr Motsoeneng and Ms Geldenhuys as directors in 2011 and 2012 respectively.

23.1.3 The "MOI" signed by Minister Muthambi in October 2014 empowers the Shareholder Representative to remove directors in line with the Companies Act. It also gives the Minister undue access to the SABC's administration thereby compromising the SABC's independence. It further concentrates certain Board powers in the hands of the executive management.

23.1.4 During her evidence the Minister stated that the amendments she had made were submitted to the CIPC. On further enquiry the SABC's acting GCEO provided the Committee with a document which suggests that the amendments were submitted to the CIPC in March 2015. The Committee has serious reservations about the authenticity of this document. The fact that the amendments which the Minister had signed in October 2014 have not been registered means that it has not taken effect in law.

23.1.5 Furthermore, the Minister stated that on presentation of the amendments to the Board, the Board members did not register any concerns. Board minutes provided to the Committee indicate otherwise.

23.1.6 The unregistered "MOI" appears to be at the core of the SABC's governance complications, most notably the amendments to the Delegation of Authority Framework which appear to be irregular.

23.1.7 The MOI signed in October 2014 as well as the proposed amendments to the Broadcasting Act, demonstrate efforts to concentrate power in the Ministry by curtailing and removing the powers of both the Board as the accounting authority, and Parliament's role in the appointment and removal of non-executive Board members. It also strips the Board of its role in the appointment of the executives.

23.2 Removal and appointment of Board members

23.2.1 The Minister's role in the removal of non-executive members, either through dismissal or resignation, is noted with concern.

23.2.2 The Committee also notes from Board minutes of a meeting that took place on 7 July 2014, that the Minister may have, directly or indirectly, pressurised the Board to appoint Mr Motsoeneng in the COO position.

23.2.3 In both instances the Minister may have contravened section 96(2)(b) and (c) of the Constitution, section 15(1) of the

Broadcasting Act, and the relevant sections of the Executive Members Ethics Act Code of Ethics, and section 17(e) of the Privileges Act, and possibly other applicable legislation.

24. Questionable transactions

24.1 *MultiChoice*

24.1.1 Section 8(j) of the Broadcasting Act requires the SABC to establish and maintain libraries and archives containing materials relevant to the objects of the Corporation and to make these available to the public with or without charge. The *MultiChoice* agreement therefore potentially contravenes the provisions of the Act too.

24.1.2 A significant section of the country's population does not have access to DSTV, and can therefore not view the archival material aired on *SABC ENCORE* and *SABC News*. This is particularly problematic in light of the SABC's public mandate to educate, entertain and inform.

24.1.3 Having taken into consideration all the evidence, including the SABC's responses to the Interim Report, the Committee could not establish with certainty whether the content of the archives of the public broadcaster remained in the SABC's possession, or the extent to which *MultiChoice* has access or pays for access to the archives. According to Ms Geldenhuys's evidence *MultiChoice* had purchased the right to air the material, but did not own the archives. This contradicts evidence by former executives and Board members.

24.1.4 The SABC's sudden about turn with regards to set-top box encryption appears to have been the result of conditions imposed by the *MultiChoice* agreement. It appears that the "purging" of the Group Executive: Technology was partly due to his implementation of the Board-approved strategy supporting encryption, which he had opposed.

24.1.5 The SABC archives are a public asset. There appears to be insufficient disclosure and transparency in the manner in which the *MultiChoice*-agreement was negotiated. The manner in which the contract was crafted appears to have serious legal implications in respect of access to public information.

24.1.6 At the time of reporting, the *MultiChoice* transaction was the subject of litigation.

24.2 *SekelaXabiso*

24.2.1 The SABC was well equipped to provide the services procured from *SekelaXabiso.* The Committee noted that the evidence suggests some irregularity in the company's appointment, and that procurement procedures may have been circumvented in awarding the contract.

24.3 *Vision View*

24.3.1 The Committee notes with concern possible irregularities around the manner in which the *Vision View* agreement, which cost the SABC R42 million, was awarded. The evidence suggests that plans to use internal capacity to "beef up" equipment had been abandoned in favour of the Vision View transaction.

24.4 Foxton Communicating

24.4.1 Ms Dlamini in her affidavit to the Committee made several claims in relation to the company owned by Mr Dick Foxton, and its relationship with the SABC. Following the release of the Interim Report for comment, Mr Foxton wrote to the Committee clarifying certain matters related to the company's relationship with the SABC. These comments were corroborated by the SABC and are contained in paragraphs 21.1.1 to 21.1.3 above.

24.5 Additional transactions

The Committee has noted information provided by Mr Shushu in his oral evidence and in his response to the Interim Report regarding other transactions that may also be of a questionable nature i.e. the SABC's contracts with *SekelaXabiso*, *Vison View*, *Lezaf*, *Lorna Vision*, *PriceWaterhouseCooper*, Ms Ayanda Mkhize (Procurement Consultant), Mott MacDdonald, *Asante Sana*, the RFP Book content acquisitions, *Talent Africa*, and *Human Capital Recruitment.*

25. Human Resource Management

25.1 Irregular appointments and dismissals

25.1.1 The Committee notes with concern evidence that pointed to a number of irregular appointments and dismissals within the SABC. It notes further that the SABC has a high staff turnover especially at the level of its Executive.

25.1.2 The Committee notes with concern that Mr Motsoeneng was appointed as COO—outside of the relevant employment processes—despite him having had adverse findings made against him by the court as well as the Public Protector. In addition he did not meet the most basic criteria, and was appointed without following the relevant employment processes. This points to the Board and/or its sub-committees' failure to exercise effective oversight of the administration specifically in relation to human resource management and finance-related matters. The evidence further suggests that the Board had allowed itself to be unduly influenced to approve this irregular appointment which has had far-reaching consequences. The Minister in her evidence indicated that in light of the advice she had received on the matter, she did not think it necessary for the relevant recruitment policies to be followed in this case.

25.1.4 The Committee notes with concern that some internal changes were effected to senior management positions and that the appointment of the current Company Secretary may have been irregular.

25.1.5 The Committee notes that despite the SABC's claims that many of the witnesses who had appeared before the Committee had been guilty of gross misconduct/wrong-doing, they were in most cases paid large settlement amounts after their contracts were terminated.

25.2 Vetting

25.2.1 Despite the fact that the SABC has been classified as a national key point, most of its executive directors and Board members were not given security clearance as is the requirement.

25.3 Victimisation and Intimidation

25.3.1 The SABC Board made no meaningful intervention to put a halt to the intimidation and threats the "SABC 8" were subjected to. Neither Prof. Maguvhe nor the Minister appeared to view the threats, which had been widely reported, and which were subject to police investigation, in a serious light. Prof. Maguvhe went to the extent of expressing ignorance of their labour dispute as well as of the threats. The physical attacks and acts of victimisation continued throughout most of the inquiry. The SABC's response that the corporation has offered wellness programmes to affected employees illustrated their lack of understanding of the seriousness of the situation.

25.3.2 Evidence that the SSA had been monitoring/intercepting communication between employees is noted with serious concern. This irregular use of state resources is a matter of concern.

26. Response to the Public Protector Report No 23 or 2013/14 And ICASA rulings

26.1 Compliance

26.1.1 As is apparent from the evidence by the Public Protector, the Board had gone to great lengths to avoid fully implementing the Public Protector's remedial action. They instead relied on a legal opinion by a firm of attorneys which sought to trump the remedial findings of the Public Protector. The Committee further notes that the SABC Board had on 19 April 2016, almost two years after the Public Protector's report was released the SABC decided to take the report on review.

26.1.2 In a similar vein the Board had failed to ensure that the SABC fully complied with ICASA's ruling with regard to the decision not to broadcast violent protests. This had resulted in ICASA laying criminal charges against the SABC.

27. Accountability

27.1 SABC's response to the inquiry

27.1.1 The SABC's had in several ways attempted to delay the inquiry. These efforts included:

- failure to submit documentation required in preparation for the inquiry timeously and in appropriate formats;

- the attempt to interdict the inquiry which delayed proceedings by over a week;
- frivolous claims that the Committee had violated its former Chairperson's rights as a person living with disabilities;
- walking out of Committee proceedings on the first day of hearings, and hosting a press conference at which the inquiry was referred to as a "kangaroo court";
- failure to cooperate with the inquiry, and having had to be summoned to appear before it; and finally
- the tone of the response provided to the Committee's Interim Report.

27.1.2 The refusal to provide Parliament with certain information, under the pretext that such disclosure to a parliamentary committee would compromise its commercial interests, further illustrates their resistance to parliamentary scrutiny and their refusal to account.

27.1.3 The Committee notes that the Executive of the SABC, Mr Aguma, submitted a lengthy written response to the Interim Report wherein serious aspersions were cast against the Committee's approach to the Inquiry. The SABC accused the Committee of, *inter alia*,"bias", "an adversarial tone", "Mr Hlaudi Motsoeneng-bashing" and disputing the Committee's statement about it deviating from its mandate as the public broadcaster "with the contempt it deserves". The Committee is of the view that the allegations are unfounded, and that they display further contempt for Parliament and the Inquiry.

27.1.4 While the SABC went to great lengths to discredit many of the witnesses who had appeared before the Committee, its response provided very little information that contradicted these witnesses evidence.

27.1.5 The response to the inquiry confirmed the former Chairperson and the SABC's disregard and rejection of Parliament's oversight authority which is enshrined in the Constitution, and showed little regard for the financial and reputational damage the SABC would suffer.

27.1.6 The Committee further notes with extreme concern the Minister's failure to take action in response to the former Board Chairperson and the SABC Executive's contempt for Parliament and the parliamentary process.

28. Editorial Independence and Journalistic Ethics

28.1 Compliance with the Broadcasting Charter

28.1.1 The Committee heard evidence which illustrated the extent to which journalistic ethics compliance at the SABC had been compromised. The gradual erosion of editorial independence and expectation of self-censorship stands in direct contradiction to the SABC's

obligation to report in a manner that is accurate, fair and responsible. The Board had therefore failed in its responsibility to ensure the SABC's compliance with the provisions of the Broadcasting Charter. In addition, the 90/10 editorial policy has undoubtedly contributed to the SABC's loss of revenue, and may have contributed to the decline in viewership and listenership.

29. Parliamentary oversight

29.1 Parliament's role in the SABC's decline

29.1.1 The Committee acknowledges that Parliament may have relinquished its constitutional duty to hold the Executive and consecutive SABC boards to account. This may have rendered Parliament complicit in the gradual decline of good governance, accountability and commitment to public broadcasting at the SABC.

Part F: Recommendations

Notwithstanding the fact that at the time of the commencement of the parliamentary Inquiry there was no functional Board as envisaged by the Broadcasting Act, the Committee is of the view that the Board has for some time prior to its collapse failed **to**:

- discharge its fiduciary duties;
- adhere to the Charter; and
- carry out its duties as contemplated in section 13(1) of the Act.

Paragraphs 30.1.1 to 42.1.5 contain the Committee's recommendations for implementation by the relevant authorities.

30. Governance

30.1 Formal dissolution of the Board and appointment of Interim Board

30.1.1 Noting the resignation of the majority of the non-executive directors, the Committee recommends the formal dissolution of the Board and the immediate appointment of an Interim Board in terms of section 15 A of the Broadcasting Act.

30.1.2 The Committee recommends that the appointment of the Interim Board should be through an expeditious process with due regard being given to appointing individuals who, in addition to meeting criteria set out in section 13 of the Broadcasting Act, also possess the skill set and experience to stabilise and regularise the SABC's governance and operations, with a view to limiting the corporation's exposure to risks.

30.2 Memorandum of Incorporation, Legislative Framework, and the Shareholder Compact

30.2.1 The Committee recommends that the Interim Board and the National Assembly investigate the validity of the MOI that was signed in October 2014.

30.2.2 The Committee recommends urgent amendments to the MOI in order to align it with the Broadcasting Act.

30.2.3 The Committee holds the view that the Broadcasting Act is the principal legislation that governs the affairs of the SABC. Only in instances where the Broadcasting Act is silent, should the provisions of the Companies Act be given preference. The Committee further recommends that Parliament should consider amending the Broadcasting Act and, if necessary, the Companies Act to create legal certainty in this regard.

30.2.4 If necessary, the Shareholder Compact should be amended to clarify the role of the Shareholder Representative in relation to the Administration of the Broadcaster, and the Board.

31. Appointment and Induction of new Board of Directors

31.1 Appointment of an Interim Board/New Board

31.1.1 The Committee recommends that the National Assembly should soon after the appointment of an Interim Board commence with the process to appoint a new SABC Board in terms of section 13 of the Broadcasting Act. The Committee further recommends that the appointment of the new Board should be a transparent and public process, and that all shortlisted candidates should be subjected to vetting by the SSA.

31.1.2 The Committee recommends that the Company Secretary should ensure that members of the Interim Board and all subsequent Boards are inducted within reasonable time, so as to ensure their full understanding of the Board's duties and responsibilities.

32. Risk-mitigation measures

32.1 Regularising previous decisions

32.1.1 In light of the overwhelming evidence of external interference and non-compliance with the Broadcasting Act, the Companies Act and other relevant legislation, the Committee recommends that the new Board takes reasonable steps to regularise previous decisions that may pose a financial or legal risk.

32.2 Sub-committees

32.2.1 The establishment of Board sub-committees should be in accordance with the Broadcasting Act, Companies Act, and any other applicable legislation.

33. Restoring good governance practices at the SABC

33.1 Financial management

33.1.1 The Committee recommends that the Interim Board, or, if necessary, the new Board should urgently engage the Auditor-General to address all its findings relating to irregular, fruitless and wasteful

expenditure, as well as to initiate disciplinary steps against any officials as required by section 51(1)(e)(iii) of the PFMA, who made and permitted irregular, fruitless and wasteful expenditure.

33.1.2 The Interim Board should institute an independent forensic investigation into questionable and irregularly-awarded contracts referred to in this report or any other matter which it deems necessary.

33.1.3 The Committee recommends that the Interim Board should evaluate the feasibility of the business case for entering into agreements with rival broadcasters (ANN 7 & DSTV) so as to ensure that the public broadcaster does not cross-subsidise its competitors. In instances where such contractual arrangements are in essence diverting resources from the SABC, such contracts must be renegotiated or terminated.

33.1.4 The Committee recommends that on conclusion of the forensic investigations into all financial irregularities (e.g. irregularly awarded contracts and performance bonuses, as well as suspicious transactions entered into) appropriate steps must be taken against any current and/or former employees and Board members who are found to have been complicit in the SABC incurring wasteful expenditure as a result of these irregular activities.

33.1.5 The Committee recommends that the Interim Board should ensure that a comprehensive progress report relating to all pending investigations, including those related to the SABC's financial sustainability, is compiled and submitted to Parliament. The findings, recommendations and remedial action of already-concluded investigations such as those of the Public Protector, ICASA, the Special Investigating Unit (SIU), National Treasury and the Auditor-General should be considered and implemented within the shortest possible timeframes.

33.1.6 The Committee recommends that Parliament, along with National Treasury should review the funding model of the SABC, which operates both as a public broadcaster and a commercial entity so as to ensure that it fulfils its mandate, while retaining its competitiveness as a commercial entity. This would ensure its long term financial sustainability.

33.2 Human Resource Management

Filling of senior management posts

33.2.1 The Committee recommends that the Interim/new Board must start the process of filling the top three executive positions (GCEO, COO and CFO) with suitably qualified and experienced professionals who are able to develop and put in place systems that will support the Board in its efforts to stabilise and regularise the administration and

governance of the SABC. The appointments should be made in line with the relevant human resource policies. The candidates should be vetted as is required for positions at that level, and once they have been appointed their performance reviewed in line with the approved performance management system.

33.2.2 The Committee also recommends that all other vacant executive positions be properly advertised and filled with suitably qualified people, and that human resource management-related policies, procedures and practices are adhered to during the appointment process.

33.2.3 The Committee recommends that all SABC employees who failed to enter into performance management contracts, should do so within 60 days from date of adoption of this report by the National Assembly and that new appointees should do so before they receive their first salary payment.

33.2.4 In light of past experience, the Committee recommends that the Interim Board should start the process of appointing a new Company Secretary. He or she should be a person who understands the public broadcaster's responsibility to account to Parliament and who meets all criteria set out in the Broadcasting Act, the Companies Act and the King Code of Good Governance.

33.2.5 The Committee recommends that in view of the SABC's status as a national key point, the Board should ensure that the State Security Agency conducts the vetting of all new senior management appointees and that the vetting of all other senior employees should be fast-tracked as an additional measure to regularise and stabilise the SABC.

33.2.6 The Committee recommends that the Board reviews the SABC's human resource policies to ensure that they comply with labour legislation and regulations.

34. Parliamentary oversight

34.1 Capacity

34.1.1 The inquiry has revealed how inadequate parliamentary oversight had contributed to the disintegration of governance and accountability at the SABC. The Committee therefore recommends that Members of Parliament should receive adequate training and support to enable them to exercise their oversight responsibility competently. Such capacity-building should include general training on legislative oversight and on ethics and corporate governance, and specific training to assist them in their respective portfolios.

34.2 Compliance monitoring

34.2.1 The Committee recommends that the National Assembly should conduct more regular and thorough oversight over the SABC and its

compliance with the Broadcasting Act, the PFMA, and other applicable legislation. The broadcaster's compliance with regulations regarding contract management, financial management and supply chain management should be thoroughly monitored. Similarly, the National Assembly should ensure that the Broadcaster adheres to effective human resource management.

34.2.2 The National Assembly should ensure that the Interim Board and all subsequent boards report to Parliament on a quarterly basis, and that such reports include detailed progress reports on the implementation of corrective measures in relation to financial management and compliance with human resource policy compliance.

34.3 Legislative amendments

34.3.1 Parliament should ensure that amendments to the Broadcasting Act and possibly the Companies Act, serve the purpose of strengthening the legislation governing the SABC, and the SABC, without weakening oversight and accountability, and in particular the National Assembly's role in the appointment and dismissal of non-executive Board members.

35. State Security Agency

35.1 Allegations of spying and intercepting of communication

35.1.1 The Committee recommends that the Interim Board should investigate the nature of the SSA's activities within the SABC.

35.1.2 The Committee further recommends that Parliament should refer allegations of the SSA spying on employees, and intercepting their communication to the Inspector-General of Intelligence for investigation so as to establish whether the SSA had in fact been involved in unlawful monitoring of SABC employees, and to report its findings to the Minister of Intelligence and Parliament. Disciplinary action should be taken where applicable.

36. Compliance with legislation and remedial action/recommendations by competent authorities

36.1 Compliance audit

36.1.1 The Committee has noted with concern the number of instances in which the SABC has failed to comply with the orders of courts and other competent authorities such as the Public Protector, ICASA and the Auditor General. The Committee therefore recommends that the Interim Board performs an audit of all remedial action, recommendations and orders that have been issued over the last three years to determine the SABC's compliance in this regard. Where matters are not subject to review, implementation plans should be developed and executed without delay.

36.2 Unilateral policy changes

36.2.1 The Committee recommends that the Interim Board should institute an investigation to evaluate the financial and legal implications of

unilateral changes to the policies as well as the alleged bonuses paid to certain categories of workers which were done without following due process. The Committee recommends that those responsible for the irregular changes to policies, which resulted in financial losses for the broadcaster should be held financially accountable for the financial losses and all consequential legal challenges as per the provisions of the PFMA and any other applicable legislation.

36.2.2 Upon conclusion of all the above investigations, those responsible for non-compliance with the PFMA and any other applicable legislation, should face appropriate disciplinary action and where appropriate, should be held liable for financial losses incurred by the SABC and/or face criminal charges.

37. Public Protector Report No 23: *"When Governance and Ethics Fail"*

37.1 Implementation

37.1.1 The Committee recommends that the Interim Board implements the Public Protector's remedial action outlined in the report titled *"When Governance and Ethics Fail"*.

38. South African Broadcast Production Advisory Body

38.1 Role

38.1.1 The Committee believes that the recently-established South African Broadcast Production Advisory Body must contribute positively towards ensuring greater compliance with the SABC's licencing requirements especially as it relates to local content, public participation and artists' royalties. This body must, in line with its mandate as outlined in the Broadcasting Act, play a more effective role in advising the Minister.

39. Role of the Shareholder Representative

39.1 Political Interference

39.1.1 The Committee found that the Minister displayed incompetence in carrying out her responsibilities as Shareholder Representative. Evidence suggested major shortcomings in the current Shareholder Representative's conduct particularly in relation to her apparent failure to lodge the October 2014 amendments to the MOI, and her role in Mr Motsoeneng's permanent appointment as COO. The Committee is of the view that the Minister interfered in some of the Board's decision-making and processes and had irregularly amended the MOI to further centralise power in the ministry. In light of this, all political interference in the SABC Board's operations must be condemned and must be reported to the Ethics Committee for processing in line with its mandate. In addition, Parliament must refer any violations of the Constitution, Privileges Act, the Executive Code of Ethics and/or the Broadcasting Act to the Ethics Committee and/or the Presidency for processing and—if there is sufficient proof—ordering appropriate corrective action which could include but is not limited to the institution of charges.

39.1.2 The President should seriously reconsider the desirability of this particular Minister retaining the Communications portfolio.

39.2 Remedies

39.2.1 The Shareholder Representative should assume a more pro-active role in ensuring good corporate governance and compliance with all relevant policies and legislation specific to the SABC.

39.2.2 The Shareholder Representative's involvement must be regulated so as to ensure that there is no undue encroachment in matters normally reserved for the SABC Board. The roles of the Board, the Shareholder Representative, the Executive, and Parliament should be clearly understood at all times. This relationship should at all times be regulated in accordance with King Code of Good Governance, the Broadcasting Act and, where applicable, the Companies Act.

40. Journalistic ethics and related matters

40.1. Editorial independence

40.1.1 As the public broadcaster established in terms of the Broadcasting Act, the SABC must in terms of the Broadcasting Charter at all times adhere to the highest standards of journalism with editorial independence being of uppermost importance.

40.2 Editorial policies

40.2.1 The SABC must restore public confidence in its reporting on current affairs, entertainment programmes and educational programmes, and seek to recover revenue lost as a result of inadequate editorial policies. The revised editorial policy should be withdrawn and thorough public consultation should be conducted. The Interim Board should ensure that this process is expedited. Although the policy does not require approval by Parliament, the Portfolio Committee should monitor the Interim Board's progress in this regard.

40.3 Victimisation and intimidation

40.3.1 The SABC Board should ensure that an environment free of fear and intimidation or abuse of power prevails at the SABC at all times. In light of the plethora of human resource-related challenges the SABC faces, every effort should be made to restore staff morale and a productive work environment. All incidents of intimidation and victimisation should be investigated, and those who have been implicated sanctioned appropriately.

40.3.2 Should there be any further death threats, intimidation or acts of violence committed against any staff member, relating to the situation at the SABC, the Accounting Authority must take immediate disciplinary action. In addition, all victims should be encouraged to report such incidents to the South African Police Service (SAPS) for criminal investigation.

40.4 Electoral coverage

40.4.1 The Electoral Commission and the SABC Board should ensure equitable coverage during election periods, as well as compliance with the Electoral Act and ICASA regulations.

41. Misleading Evidence/Perjury

41.1 Misleading/Contradictory evidence

41.1.1 Any witness who gave contradictory or misleading evidence must be investigated by Parliament for possible breaches of the Privileges Act.

41.1.2 Parliament's Legal Services Unit, with the assistance of the Evidence Leader, should within 60 days from the adoption of this report by the National Assembly, identify the persons who misled the inquiry or provided false information or false testimony with the aim of criminal charges being laid.

42. Additional legal steps

42.1 Court order in relation to the attempt to interdict the inquiry

42.1.1 Parliament should ensure that all legal costs incurred as a result of the court challenge by the previous SABC Board Chairperson in his personal capacity is recovered as per the court order.

42.1.2 The new Board in conjunction with the Minister should implement necessary disciplinary action against the acting GCEO for having defied Parliament.

42.1.3 In light of the former Company Secretary's role in obstructing the inquiry, the Interim Board should investigate her conduct, and if necessary she should be charged criminally in terms of section 17(2)(e) of the Privileges Act.

42.1.5 The attorneys who had advised and acted on behalf of the SABC Board chairperson and the Company Secretary in denying Parliament access to the documents requested in preparation for the inquiry should face all appropriate consequences, including being reported to the appropriate law society.

Report to be considered