



# HANDBOOK

**PUBLIC BROADCASTING  
AND THE SABC CRISIS**

**SOS** SUPPORT PUBLIC  
BROADCASTING  
JULY 2017



***A project supported by:  
Friedrich-Ebert-Stiftung (FES) and the The RAITH Foundation***

***Copyright © SOS Coalition, 2017, Johannesburg, South Africa  
Cover illustrations by [www.pixabay.com](http://www.pixabay.com) • Written by Kate Skinner and  
Jayshree Pather Design and layout by Rizelle Hartmeier,  
[studio26@telkomsa.net](mailto:studio26@telkomsa.net)***

# TABLE OF CONTENTS

<b>SECTION 1: INTRODUCTION – WHY YOU NEED THIS HANDBOOK ON PUBLIC BROADCASTING AND THE SABC</b>	<b>5</b>	<b>SECTION 5: CHALLENGES WITH THE SABC'S LEGAL STRUCTURE – WHAT IS TO BE DONE?</b>	<b>17</b>
<b>SECTION 2: SOUTH AFRICA'S BROADCASTING LANDSCAPE – HOW WE GOT HERE</b>	<b>6</b>	5.1 Problems with the present legal structure – role of the Minister	17
2.1 A quick historical overview	6	5.2 The Companies Act of 2008	17
2.1.1 The development of radio	6	5.3 The Broadcasting Amendment Bill of 2015	17
2.1.2 The introduction of television	6	5.4 The dividing of the SABC into public and public-commercial divisions	18
2.1.3 The post-apartheid three tier broadcasting system	6	5.5 Creating a Chapter 9 institution to protect the SABC from all vested interests?	18
2.1.4 The introduction of digital terrestrial television (DTT)	7		
2.2 The South African broadcasting landscape: an overview	7	<b>SECTION 6: OVERSIGHT AND GOVERNANCE OF THE SABC – WHAT IS TO BE DONE?</b>	<b>19</b>
2.2.1 Television	7	6.1 External structures	19
2.2.2 Radio	9	6.1.1. The general public	19
2.2.3 Radio versus television audiences	9	6.1.2 Parliament	20
		6.1.3 ICASA: the regulator	20
<b>SECTION 3: PUBLIC BROADCASTING IN THE SPOTLIGHT – SABC SERVICES AND AUDIENCES</b>	<b>10</b>	6.1.4 The Minister of Communications	21
3.1 SABC radio	10	6.2 Governance structures to ensure accountability within the SABC	22
3.2 SABC television	10	6.2.1 The Board	22
3.3 SABC on-line	10	6.2 Executive management	24
		<b>SECTION 7: THE SABC'S FUNDING MODEL – WHAT IS TO BE DONE?</b>	<b>25</b>
<b>SECTION 4: THE SABC'S PROGRAMMING UNDER THE SPOTLIGHT</b>	<b>11</b>	7.1 International background issues	25
4.1 International public broadcasting principles	11	7.2 National background issues: the SABC in crisis	25
4.2 Essential differences between state, public and commercial broadcasters	11	7.3 The SABC's present financial model	25
4.3 A public broadcasting charter	12	7.4 Considerations for the development of a new funding model	25
4.4 Licence conditions	14		
4.5 SABC editorial policies	14	<b>SECTION 8: HOW DO WE GET THE SABC WE WANT?</b>	<b>27</b>
4.6 South African content quotas	15		

## SECTION 1: INTRODUCTION

### Why you need this handbook on public broadcasting and the SABC

The media – especially broadcast media (radio and TV) – is crucial for our everyday lives as we constantly rely on information. As a consequence, the South African Broadcasting Corporation (SABC) is one of our most important media organisations. It has the greatest number of listeners and viewers. Further, in some areas, the SABC is the only source of news and information. It reaches the poorest and most marginalised in society.

The SABC, as our public broadcaster, plays a pivotal role in our democracy. It gives effect to the right to freedom of expression in section 16 of South Africa's Constitution.

The Constitutional Court has stated that freedom of expression and information lies at the heart of our democracy. Further, the Court stated that the ability of each citizen to be a responsible and effective member of society depends on the manner in which the media carry out their constitutional mandate. The media thus rely on freedom of expression and must foster it. Therefore, the media's role is protected by the right to freedom of expression, ensuring that it fulfills its function as a "key facilitator and guarantor" of that right.

All media must ensure citizens have access to information, education and entertainment. However, the SABC, as our public broadcaster has a particularly important role to ensure this because of its public interest mandate. By this we mean the SABC needs to:

- Broadcast in all 11 official languages.
- Broadcast local programming made by local producers.
- Ensure accurate, fair and balanced news and current affairs programming that carries a diversity of views, perspectives and worldviews.
- Ensure all citizens have access to information, education and entertainment.

However, the SABC has been in state of constant crisis for the last 10 years, and has not been able to effectively play its constitutional role of promoting freedom of expression.

This Handbook has been developed to assist activists to understand the importance of public broadcasting and to support advocacy campaigns to ensure that the SABC plays its critical programming and content role in terms of its public interest mandate.

## SECTION 2: SOUTH AFRICA'S BROADCASTING LANDSCAPE

### How we got here

Before we look at what we can do to strengthen our SABC, we need to look at the history of the SABC and the overall broadcasting landscape in South Africa.

#### 2.1 A quick historical overview

During apartheid the SABC was a state broadcaster and tightly controlled by the National Party. It functioned as a propaganda organisation that promoted the racist interests of the apartheid government. The SABC's purpose, at the time, was to mislead South Africans (and the world) about the true nature and violence of apartheid. The people of South Africa fought a long and hard battle to free themselves of this distorted and destructive state broadcaster and to transform the SABC into a public broadcaster focused on all citizens.

South Africa's broadcasting history can be divided into four broad timeframes, as noted below.

##### 2.1.1 The development of radio

The first radio station was established in 1924. At this point in time licensing was in private hands. Government then intervened to form the SABC in 1936. Initially broadcasting was largely in English and to a smaller extent in Afrikaans. In later years, around 1952, African languages were gradually introduced. As with everything under apartheid, the African stations were managed by white managers and content was controlled to ensure that it represented views of the government.

SAFM was born in this period and was known then as Radio South Africa whilst current RSG (Radio Sonder Grense) was known as Radio Suid Afrikaans. Springbok radio was established as the frontrunner of commercial radio stations in 1950 – it eventually closed down in 1985 due to loss of revenue.

##### 2.1.2 The introduction of television

For a long time the apartheid government was very opposed to the introduction of television. Prime Minister Hendrik Verwoerd compared television to atom bombs! He argued that they might be modern things but they were not necessarily desirable! The apartheid government feared foreign programming would promote “communism and immorality”. South Africa was one of the last countries to introduce television in 1976.



### 2.1.3 The post-apartheid three tier broadcasting system

In 1993 South Africa's first independent broadcast regulator was established. Prior to this, broadcasting was regulated by the Department of Home Affairs. The Independent Broadcasting Authority (IBA) introduced a completely new and independent licensing regime. For the first time new players could apply for licences. Up until then the SABC had overwhelmingly dominated the airwaves. The three tier broadcasting system is made up of public, community and commercial stations. The purpose of having three tiers of broadcasting was to ensure pluralism and diversity.

Pluralism refers to the number of broadcasters.

Diversity refers to the different voices they represent such as women, the disabled, rural communities etc. Also, diversity refers to ensuring there are different ideas, perspectives and worldviews on our airwaves.

This post-apartheid phase of development has seen an explosion of new radio and television stations. However, there has been an increase in pluralism but not necessarily of diversity.

### 2.1.4 The introduction of digital terrestrial television (DTT)

Internationally a number of television technologies have been introduced including terrestrial, cable and satellite. Over time these technologies have developed from less efficient analogue technologies to more efficient digital technologies. Digital technologies allow for more channels, better picture quality and sound. More recently, content is being delivered over the Internet. Further, internationally there have been

digital technology developments on the radio front including digital audio broadcasting (DAB), DAB+ and Digital Radio Mondiale (DRM) allowing for the possibilities for thousands more radio channels/stations and also better quality sound.

South Africa was an early adopter of digital satellite technology for television. Subscription broadcaster MultiChoice launched DStv in 1995. However, South Africa has been less successful in migrating to DTT. The South African government has been planning to migrate since 2002. The television stations effected include a commercial television station (eTV), a number of community television stations, the subscription broadcaster (M-Net) and the SABC. In February 2016 the digital signal was switched on to start the digital migration. The delays in launching DTT have negatively affected the SABC and all free to air broadcasters. (Free to air broadcasters are broadcasters that are available to everyone. You do not have to pay a fee to watch.)

The original vision for DTT was to create a joint free to air multi-channel platform with the SABC, eTV and all the community broadcasters. The plan was for this platform to robustly compete with MultiChoice's pay DStv channels. The delays in launching DTT have left this vision in tatters. Many viewers that can pay for subscription television have shifted to DStv.



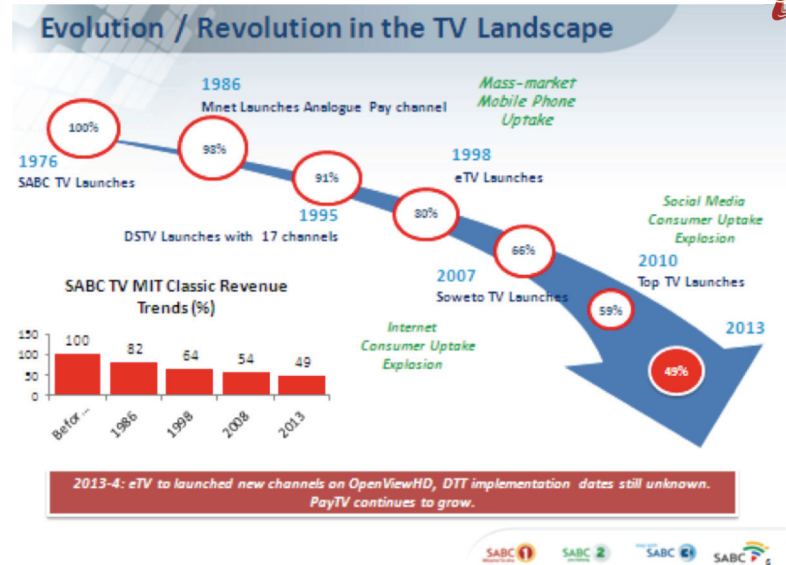
**Go digital is the government's failed DTT campaign**

## 2.2 The South African broadcasting landscape: an overview

### 2.2.1 Television

Post-apartheid the SABC's three television channels were rebranded and re-launched. For many years the SABC lobbied National Treasury to launch a fourth channel, a 24-hour news channel. However, for a number of reasons National Treasury refused to make the money available. The SABC then made a deal with MultiChoice. The deal was to launch two new channels – Encore (using SABC archive material) and a 24-hour news channel. The understanding was that these channels would later be launched as new DTT channels when the digital migration started. Now that the migration has started the SABC has launched its three original channels – SABC1, SABC2 and SABC3 – and its new 24-hour news channel on DTT. It is important to note, however, that Encore remains a restricted pay channel on MultiChoice's digital satellite DStv platform.

In 1998, a new free-to-air commercial television stations (eTV) was launched. The owners of eTV then launched the first South African 24-hour news channel – eNCA (eNews Channel Africa) in 2008. However, this was on the restricted DStv platform. The owners of e-TV then launched OpenView HD, South Africa's first free HD satellite service with over 20 radio and television channels in 2013. There are no subscription fees but initial start up costs. In 2016 eTV launched five channels on the DTT platform.



Source: <http://teeveetee.blogspot.co.za/2015/04/>

In terms of subscription television, MultiChoice dominates the broadcasting environment. MultiChoice owns DStv, a digital satellite TV company, and M-Net, a terrestrial company. It owns 98% of the subscription market. StarSat (originally TopTV which was launched in 2010) owns about 2%.

There are five community television stations operating. The community television stations have restricted regional access but are also carried on DStv. In fact, community television station Bay TV has lost its licence but still broadcasts on DStv. The DStv carriage gives them national coverage.

### 2.2.2 Radio

In terms of radio a number of SABC radio stations were sold off and some new commercial stations were established. The sale of the original SABC stations led to the launch of a number of popular radio stations including Highveld Stereo, Jacaranda FM, OFM, East Coast, Algoa and KFM. Further, a number of new commercial stations were licenced including Kaya FM, YFM, P4, Cape Talk, Punt FM and Classic FM. These were called the Greenfields licences.

In 2007 ICASA moved to grant Secondary towns' licences. These included Capricorn FM (Limpopo), Radio North West and M-Power (Mpumalanga). Since then, licences have also been granted and new stations opened in Gauteng, KwaZulu-Natal and Western Cape. Even though these are referred to as secondary town licences, all these stations have a regional reach. These include Power FM in Gauteng.

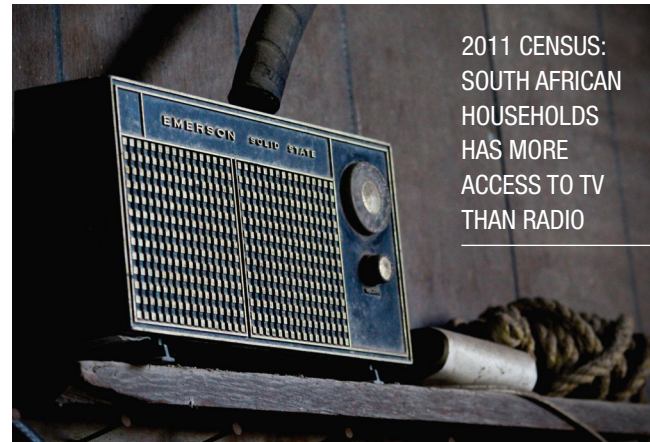
Post-apartheid a whole new tier of broadcasting was created – community broadcasting. There are two categories of community broadcasting stations: geographical stations and community of interest stations e.g. religious stations. As early as August 1998, 89 new stations were on air. Today approximately 200 stations have community licences.

### 2.2.3 Radio versus television audiences

More than three quarters (about 80%) of households have access to TV. It is estimated that 13 million South African households own television sets of which almost 60% rely on free to air TV.<sup>1</sup>

According to 2011 census statistics, South African households had more access to TV than radio:

- In 2001, 67.5% of South Africans had radios and 74.5% had access to TV.
- In 2011, 67.9% of South Africans had radios and 83.4% had access to TV.



2011 CENSUS:  
SOUTH AFRICAN  
HOUSEHOLDS  
HAS MORE  
ACCESS TO TV  
THAN RADIO

<sup>1</sup><http://www.gov.za/sites/www.gov.za/files/bdm-fact-sheet.pdf>.



## SECTION 3: PUBLIC BROADCASTING IN THE SPOTLIGHT

### SABC services and audiences

For many South Africans the SABC is a primary source of news and information. The SABC is not merely a corporate entity like any other commercial or even state-owned company. It plays a critical role in the life of the nation. The SABC owns a number of radio stations and television channels, and has a strong online presence (websites and a YouTube channel).



#### 3.1 SABC radio

The SABC has 18 radio stations in 11 languages. Statistics show that SABC stations reached 41.6 million adult listeners daily in 2015.<sup>2</sup>

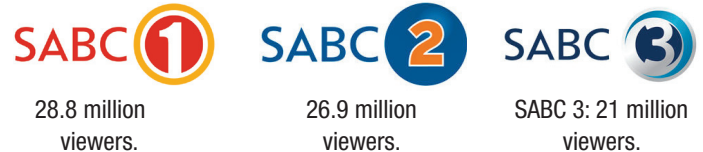
The SABC runs public, public-commercial and community services:

- SABC public service stations: SAFM, Ukhozi, Lesedi, Motsweding, Umhlobo, iKwekwezi, Phalaphala, Thobela, Munghana, Lotus, 2000, Ligwalagwala and RSG.
- SABC public commercial stations: Metro, Good Hope and 5FM.
- SABC community services: XK FM (2 San languages) and Tru FM.

#### 3.2 SABC television

The SABC also dominates television viewership although it has started to lose audiences.

According to the SABC 2015 / 2016 Annual Report SABC television has the following number of viewers per week:



As noted previously, the SABC has its original three channels and the two new channels on the DStv pay platform.

#### 3.3 SABC on-line

The SABC has a number of websites. SABC television can be accessed through its YouTube channel, and all its radio stations are live streamed.



<sup>2</sup><https://mybroadband.co.za/news/broadcasting/139500-multichoice-vs-sabc-most-watched-tv-channels-in-south-africa.html>.

## SECTION 4: THE SABC'S PROGRAMMING UNDER THE SPOTLIGHT

As a public broadcaster the role of the SABC is to inform, educate and entertain the nation. In doing this it needs to follow a number of important international public broadcasting principles. Further, it needs to abide by a number of local policies and regulations. These include:

- A charter.
- Licence conditions.
- Editorial policies.
- South African content quotas.

### 4.1 International public broadcasting principles

A number of international public broadcasting principles have developed over time. These include:<sup>3</sup>

- Universality. A public broadcaster's service should be universally available, and programming should cater for the entire population in terms of language and other social characteristics.
- Diversity. Programming should cater for a diversity of audiences and should reflect a diversity of voices, perspectives, ideas and worldviews. Programming should serve educational, information

and entertainment purposes.

- Promote national identity. The public broadcaster should aim for the bulk of its programmed to be locally produced to prevent the dominance of foreign content.
- Public financing. The public broadcaster should derive the bulk of its funds from public funding rather than commercial sources. These funds may be through a levy on electricity or electronic equipment, a tax on advertising, a dedicated licence fee, or through a parliamentary appropriation.
- Independence and impartiality. The public broadcaster should serve the public interest, and not the interests of the government, the ruling party, a faction of the ruling party, or commercial interests. Independent public broadcasters should account to an independent regulator, or it should be self-regulating, or a combination of both.
- Distinctiveness. Programming and content offered by the public broadcaster must be distinguishable from that offered by other broadcasters / content providers.

<sup>3</sup>United Nations Development Programme Bureau for Development Policy.

## 4.2 Essential differences between state, public and commercial broadcasters

A public broadcaster should be distinct from a state or commercial broadcaster. Below are some essential differences between state, public and commercial broadcasters.

TYPE	STATE	PUBLIC SERVICE	COMMERCIAL
Description	State authorities directly supervise the media system and have full control over content and programming	The media system is defined through a carefully articulated legislative framework in which the media is in public hands but management and operations enjoy substantial programming autonomy	Private ownership usually accompanied by some degree of state regulation
Operating rationale	Programming driven by political interests	Programming driven by public interests	Programming driven by commercial interests
The audience	Citizens	Citizens	Consumers
Revenue source	Taxes	State funding Small amount of advertising	Subscription fees from viewers / listeners Advertising Private investment

*Source: United Nations Development Programme Bureau for Development Policy*

## 4.3 A public broadcasting charter

International best practice points to the need for public broadcasters to have their responsibilities spelt out in law, preferably in a charter. Also, preferably, this charter should be debated and reviewed periodically.

The SABC's present charter is scattered throughout the Broadcasting Act of 1999. (It is difficult to assess where the charter

starts and finishes.) This situation makes it difficult for the SABC to comply with its charter. Also, it makes it difficult for the regulator or Parliament to hold the SABC to account in terms of its charter. The SOS Coalition and others have therefore called for a new charter to be drafted for the SABC and for this to be included in new legislation. The SOS Coalition has a proposed charter that it has developed through many debates.

## The SOS proposed SABC charter

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

- contribute to democracy
- promote respect for freedom of expression
- offer a forum for democratic debate
- reflect a range of opinions and of social, political, philosophical, religious, scientific and artistic trends
- reflect regional diversity
- give a voice to the poor and marginalised
- contribute to the development of an equal society, where all reach their full potential regardless of: race, social status, gender, ethnicity, age, culture, political belief, religion or sexual orientation
- safeguard, enrich and strengthen the cultural, political, social and economic fabric of the country
- reflect both the unity and diverse cultural, political, social and economic fabric of the country
- develop a strong and committed public broadcasting service which will service the needs of society
- ensure that public broadcasting services that meet the highest international technical standards are available to all

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

- set industry standards for innovation, excellence, and creativity
- provide, in its public broadcasting services, radio and television

- programming that informs, educates and entertains
- provide a plurality of news and public affairs programming which:
  - o meets the highest standards of journalism
  - o provides fair, unbiased and explanatory analysis which is independent of those wielding public power
  - o covers events in the country, Africa and the world
- ensure that public broadcasting services provide a reasonable, balanced opportunity for the public to receive a variety of points of view on matters of public concern, including through citizen-generated content
- cater for a broad range of programming, including drama and documentaries that cater specifically for the programming needs of children, women, the youth and the disabled
- include significant amounts of educational programming, both curriculum based and informal educative topics from a wide range of social, political and economic issues, including, but not limited to, human rights, health, early childhood development, agriculture, culture, justice and commerce contributing to a shared consciousness and identity
- include national sports programming
- ensure programming is drawn from local, regional, national, continental and international sources
- ensure that public broadcasting services comply with the code of conduct for broadcasting
- be responsive to audience needs and account to the public on how to meet these needs

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

- encourage the development of original local programming content
- enrich the cultural heritage of the country by providing support for traditional and contemporary artistic expression
- ensure, as far as reasonably possible, that public broadcasting

services provide a range of high-quality programming in all of the country's official languages to all citizens

- encourage the development of local content production throughout the country, particularly in marginalised regions
- nurture the country's talent and carry out research and development for the benefit of audiences

#### 4.4 Licence conditions

Over and beyond its charter the SABC has to adhere to licence conditions. The SABC has a separate licence for each of its radio stations and each of its television channels.

Each SABC licence includes a set of standard conditions that look at issues such as the duration of the licence and the records that need to be kept for monitoring and evaluation purposes. Further to these general licence conditions each licensee has specific licence conditions. These are usually attached as a schedule.

These specific licence conditions include issues such as the following:

- The licence / coverage area.
- The programming format including the percentage of talk radio and music.
- The number of minutes that must be devoted to news bulletins and other public service programming.
- The percentage of South African content to be aired and the languages to be used.

- Any specific pledges made by the licensee during the application process.

ICASA is supposed to monitor licence conditions. However, the regulator has a very poor track record in this regard. It lacks people to do it and the necessary equipment. Improved funding for ICASA is one way to deal with this problem.



#### 4.5 SABC editorial policies

The SABC's first set of editorial policies was passed in 2004. In the drafting process the SABC convened extensive public meetings across the country. There was a huge public response and the final policies were seen to be in line with international best practice. They embraced the principles of diversity and independence from all vested interests.

However, the policies are not perfect. One contested issue was that they included the principle of 'upward referral' in terms of editorial decision-making. The policy gives the SABC's GCEO (in the final instance) a say on editorial matters. The GCEO is designated as the editor-in-chief. The problem with this principle of upward referral was that it opened the door to political and commercial influences on editorial decision-making.

These problems, however, paled in comparison to the problems that were later experienced by the SABC. In 2013 the then controversial GCOO, Hlaudi Motsoeneng, started to talk about the need for a radical re-think of the SABC's entire editorial decision-making process. He started to call for a '70% good news agenda' i.e. an agenda to protect government and, particularly, the President. With this new thinking circulating the SABC initiated its long over-due editorial policy review process in 2013. (The policies were supposed to be reviewed every five years, so the review should have been started in 2009.)

Although the 2013 process was initially consultative, consultation was soon abandoned. No draft policies were tabled for comment, and the

final policies were adopted clandestinely in 2016. The final copies were not made publically available and could not be accessed, for instance, on the SABC's website.

One of the controversial amendments made to the editorial policies was that the GCOO (i.e. was designated 'editor-in-chief', and the editor-in-chief was given increased powers. The policy of 'voluntary upward referral' in editorial decision-making processes was amended to 'mandatory upward referral'. This meant that any controversial editorial issue had to be referred to Motsoeneng for approval.

With these editorial policies in place, Motsoeneng then sent directives to SABC journalists to give President Zuma favourable coverage. He also banned footage of violent protests in the lead up to South Africa's highly contested 2016 local government elections. Human rights NGOs Media Monitoring Africa (MMA), Freedom of Expression Institute (FXI), and SOS laid a complaint with ICASA. ICASA upheld the complaint and the SABC was directed to remove the ban. (This directive was in contravention of the SABC's charter, the Broadcasting Act of 1999 etc.)

In 2017, after MMA and SOS lodged a further complaint, ICASA declared the 2016 editorial policy amendments illegal. ICASA stated that the SABC had failed to engage in sufficient public participation as stipulated by the Broadcasting Act of 1999. The SABC now needs to re-start its consultation process around the review of the editorial policies. This is good news for activists.

## 4.6 South African content quotas

Finally, it is important to look at South African content quotas. South African content quotas are critical – they ensure that the majority of content on our SABC stations is local. Local content on radio is specifically linked to South African music, and local content on television is linked to the production of programming by South African independent producers.

The issue of local content quotas in South Africa has long been a controversial issue. One of the major problems has been the fact that ICASA has failed to play its role in monitoring broadcasters to ensure they meet their quotas. Further, there have been a number of regulatory processes to set local content quotas. The most recent culminated in new regulations being passed in 2016. The new quotas called for a minimum of 65% local content on the SABC's public channels and 45% on the SABC's public-commercial channels. In terms of radio the regulations called for 60% local music moving to 70% within a year on public stations and for 35% for commercial stations.<sup>4</sup>

Then in a shock move in May 2016 the then GCOO, Hlaudi Motsoeneng, announced that he had decided to air 90% local music across all radio stations including public-commercial stations. This was to be implemented immediately. Then in June 2016 he announced that the SABC would implement 80% South African content across all television channels.

The problem with these announcements was that they were implemented overnight and without securing the necessary finance. (It is much more expensive to produce South African content than to buy cheap foreign content.) Also, Motsoeneng didn't consult audiences or advertisers. Audiences and advertisers started to abandon the SABC resulting in significant financial losses.

The SABC's Interim Board appointed in 2017 has called for these local content quotas to be reversed and for the SABC to adhere to the negotiated ICASA local content quotas. SOS supports this more measured, financially sustainable position.

---

<sup>4</sup>SABC Annual Report of 2015 / 2016.

## SECTION 5: CHALLENGES WITH THE SABC'S LEGAL STRUCTURE

### What is to be done?

The SABC is a public company. The SABC was corporatised in 2004. The law emphasises that the Minister is the sole shareholder of the SABC.

#### 5.1 Problems with the present legal structure – role of the Minister

The Broadcasting Act of 1999 allows the Minister of Communications to determine the SABC's Memorandum and Articles of Association (now the Memorandum of Incorporation). These company documents give the Minister significant powers in terms of appointment of executive directors. (The executive directors include the group chief executive officer (GCEO), the group chief operating officer (GCOO), and the group chief financial officer (GCFO).) The Memorandum of Incorporation also allows the Minister, as the sole shareholder, to have a say in terms of the SABC's corporate plans and financials. This ultimately compromises the SABC's editorial independence, particularly because the GCEO plays the role of editor-in-chief. The Minister, in effect, helps select the editor-in-chief!

#### 5.2 The Companies Act of 2008

Previous Minister of Communications, Faith Muthambi, played a particularly destructive role as Minister of Communications. She argued that because the SABC was a public company the Companies Act of 2008 should be the primary piece of legislation governing the SABC – rather than the Broadcasting Act of 1999. The Broadcasting Act of 1999 is very clear about the appointment and removal of Board members, and gives Parliament an important role to play. The Companies Act on

the other hand allows the Minister (as the shareholder) to appoint and remove members of the Board. However, this is highly inappropriate for a public broadcaster.

The South African Parliament established an Ad Hoc Committee to investigate the various crises unfolding at the SABC. This was established in November 2016. One of the issues investigated by the Ad Hoc Committee was the issue of the legislation governing the SABC including the Companies Act and the Broadcasting Act. One of the recommendations of the Ad Hoc Committee was to clarify the role of the Minister and to investigate if amendments were required to the Broadcasting Act and the Companies Act.

The Ad Hoc Committee stipulated that Parliament must play the primary role in appointment and removal of Board members. SOS fully endorses this recommendation.

#### 5.3 The Broadcasting Amendment Bill of 2015

Another destructive intervention made by Minister Faith Muthambi was the tabling of the Broadcasting Amendment Bill of 2015. The Bill was narrowly focused on the issue of Board appointments and removals.

The Bill proposed a set of radical amendments to the Broadcasting Act of 1999 including that Parliament should no longer play any role in appointments or removal of Board members.



In terms of appointments the Bill recommends that the Minister should be responsible for this and that they be assisted by a nominations committee. The recommendations of this committee should be non-binding, and the Minister was to nominate the committee. With regard to Board member removal processes, the Bill called for the President to play the central role in removals. The Bill proposed that the President set up a panel and that this panel should investigate removals. The President should consult the panel and the Minister before removing Board members. Again, there was an understanding that Parliament should play no role.

The Parliamentary Ad Hoc Committee mentioned above noted its discomfort around these proposals and called for the Bill to be withdrawn. Again, SOS fully endorses this recommendation.

#### 5.4 The dividing of the SABC into public and public-commercial divisions

A further problem with the policy and legislation governing the SABC is that the Broadcasting White Paper and the Broadcasting Act of 1999 call for the division of the SABC into “public” and “public-commercial” divisions. These divisions were originally aimed at ensuring the financial viability of the SABC, with the commercial wing cross-subsidising the public wing. The understanding was that this division would reduce the amount of advertising needed for the public channels.

This model has not worked. The public television channels, for instance, make more money than the public-commercial channels. (Historically, the public channel SABC 1 has generated significantly more money than the public-commercial channel SABC 3.) The SOS

Coalition has thus called for the removal of these divisions and for all channels to be public channels relying on a mixed funding model.

#### 5.5 Creating a Chapter 9 institution to protect the SABC from all vested interests?

The SOS Coalition and others have long debated an ideal legal structure for the SABC and the proposal put forward has been for the SABC to be converted into a Chapter 9 institution.

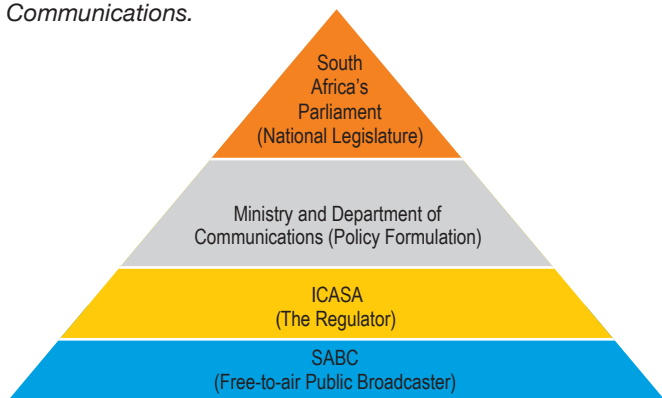
Chapter 9 of the Constitution provides for a number of state institutions that support Constitutional democracy. Examples of Chapter 9 institutions include ICASA, the Public Protector and the South African Human Rights Commission. These institutions are directly answerable to Parliament, and the Constitution specifically protects Chapter 9 institutions’ governing bodies from political and other interference. It is important to note that turning the SABC into a constitutional body would require a constitutional amendment. The SOS Coalition and its members have been lobbying for this for a number of years.



## SECTION 6: OVERSIGHT AND GOVERNANCE OF THE SABC

### What is to be done?

*Legally the SABC is governed by a number of oversight structures which include: the South African public, Parliament, ICASA, and the Ministry and Department of Communications.*



It is important to look at what can be done to improve the overall accountability of the SABC. It is also important to clarify the roles of the various oversight bodies so as to ensure that there is no confusion regarding the roles and responsibilities of the different structures.

In this handbook we make a distinction between external structures and governance structures within the SABC set up to ensure accountability.

### 6.1 External structures

#### 6.1.1. The general public

Present legislation allows for a number of opportunities for consultation with the public. These include:

- Opportunities for the public to debate new broadcasting and related ICT legislation.
- Opportunities to select the SABC Board.
- Opportunities to debate the SABC's editorial policies.

However, given the multiple crises at the SABC, these processes do not seem to be sufficient. The SOS Coalition and others have therefore proposed a number of new mechanisms. These include the following:

- Public Editor / Office of the Public Editor. The Public Editor would be an experienced, senior journalist appointed by the Board. The Editor would deal with editorial related complaints and would promote dialogue between the SABC and its audiences through addressing audiences on SABC television, radio and on-line platforms. The Public Editor would compile annual reports to the Board, and these would be included in the SABC's annual reports.
- National Public Stakeholder Committee. This Committee would be coordinated by the Board and made up of the SABC's key national stakeholders including SABC unions; cultural industry representatives including independent producers, scriptwriters etc.; NGOs and CBOs that deal with the youth, women, disabled people, public broadcasting and freedom of expression issues, human rights, refugee, social

welfare and socio-economic rights, and educational, labour, business, sport and faith-based national bodies. The role of the Committee would be to ensure that the SABC is performing its public broadcasting role with specific reference to programming issues. Further, it would review the SABC's charter periodically with a view to advising the SABC Board and the Minister of Communications on amendments. This would be to ensure that SABC programming remains relevant and accountable to audiences. The Committee would submit a written report to the SABC Board on an annual basis and this would be included in the SABC's annual report.

- Provincial Public Stakeholder Committees. The Board would also coordinate these nine Committees. They would be made up of provincial stakeholders including community-based organisations and audience feedback panels. They too would submit an annual report to the SABC Board, and their reports would be included in the SABC's annual report.

### 6.1.2 Parliament

In terms of present legislation the role of Parliament is three-fold.

Parliament must:

- Monitor the SABC's corporate plans and financials.
- Appoint skilled, experienced boards for the SABC and councillors for ICASA.
- Pass comprehensive broadcasting legislation in the public interest.

Parliament has had a checkered history in holding the SABC to account. It has selected a number of problematic boards and has not held the SABC to account in terms of its finances and corporate plans. However, the 2016

/ 2017 Ad Hoc Committee led by Vincent Smith did an excellent job in investigating the SABC crises and putting forward clear recommendations. The SOS Coalition believes that the capacity of Members of Parliament (MPs) must be strengthened in order to hold the SABC to account in terms of its corporate plans and financials, but also to have an in-depth understanding of broadcasting, content and programming trends in the digital environment.

The SABC Board appointment process by Parliament needs to be strengthened. (See proposals below.)

### 6.1.3 ICASA: the regulator

All broadcasting regulatory matters fall within the jurisdiction of the Regulator – the Independent Communications Authority of South Africa (ICASA). However, ICASA has played a lackluster role in the broadcasting sector. In terms of the SABC the regulator is supposed to regulate and pro-actively monitor the public broadcaster and, at least annually, to ensure compliance with its charter, its licence conditions and all relevant legislation and regulations, including South African content quotas.

However, the regulator has systematically failed to:

- Monitor the SABC's compliance with its local content quotas.
- Monitor the SABC's licence conditions.
- Create a broadcasting environment that is conducive to the thriving of a diversity of broadcasting players producing a diversity of content.
- Specifically support the SABC as South Africa's public broadcaster and free to air broadcasters more broadly.

ICASA has instead played a lackluster monitoring role and has systematically boosted subscription broadcasters. In this regard ICASA and its predecessor the IBA:

- Set aside valuable spectrum for subscription terrestrial player M-Net.
- Facilitated a 20-year open window period for M-Net on the SABC during prime time viewing.
- Exempted subscription broadcasters from cross-ownership and control regulations applicable to free to air broadcasters thus allowing Naspers owners of M-Net and DStv to consolidate their ownership of media assets across print, online and pay TV sectors.
- Set aside valuable space on the DTT multiplexes for M-Net despite its tiny audiences and the near total dominance of DStv on the satellite platform.

ICASA's independence from government has also been compromised. Government moved to amend the ICASA Act in 2006 to include a new, complicated appointment process that removed the role of the President, reduced Parliament's role, and gave greater powers to the Minister.

A final problem is that ICASA has an ambiguous constitutional position. An independent regulator is provided for in Chapter 9 of the Constitution that deals with state institutions supporting constitutional democracy. However, general provisions relating to Chapter 9 bodies (sections 181, 193 and 194) do not refer to ICASA. This creates uncertainty as to its status.

There are a number of problems that require attention in order for ICASA to fulfill its obligations. SOS believes that:

- The regulator should be re-constituted as a fully-fledged Chapter 9 institution. Its ambiguous position as a Chapter 9 institution must be rectified (through its specific inclusions in section 181, 193 and 194) thereby better safeguarding its independence.
- Funding to regulator must be increased in order for it to monitor and regulate effectively, and also to safeguard its independence. In this regard the regulator should retain its licence and administrative fees.
- The independent research capacity of the regulator must be significantly strengthened to allow it to engage meaningfully in micro-policy development.
- The regulator must regulate particularly in the interests of free to air broadcasters.
- The Minister should play no role in the appointment of councillors.

#### 6.1.4 The Ministry and Department of Communications

As discussed above, the role of the Minister has become increasingly problematic at the SABC particularly in terms of the Broadcasting Amendment Bill, but also in terms of the SABC's new Memorandum of Incorporation (MOI).

In September 2014 then Minister Faith Muthambi moved to amend the SABC's new Memorandum of Incorporation. In line with the Companies Act of 2008, previous Minister Yunus Carrim had signed an MOI with the SABC. This MOI had replaced the SABC's Articles of Association.

A number of commentators, including SOS, have argued that Muthambi's amendments were specifically drafted to make legal a number of illegal processes that she had driven. These included the appointment of Hlaudi Motsoeneng to the permanent position of COO without advertising the post

and her removal of three oppositional non-executive Board members. The amended MOI gave the Minister power to appoint executives without advertising the post. It gave her powers to unilaterally re-appoint executives. It gave her the power to block disciplinary action of executives recommended by the Board, and it gave her the power to unilaterally recommend the removal of Board members. This final provision was illegal in terms of the Broadcasting Act of 1999. Board members can only be removed by the Board itself or Parliament. It is critical that this MOI is re-drafted.

The principle should be that the Minister should not be involved in management or at operational levels with either the SABC or ICASA. The role of the Minister and Department of Communications should be to draft all high-level (national) policy and legislation to ensure the integrity and sustainability of the broadcasting sector, including all three tiers of broadcasters in the public interest.

## 6.2 Governance structures to ensure accountability within the SABC

There are two structures within the SABC that need to take overall responsibility for the governance of the SABC – the Board and executive management.

### 6.2.1 The Board

There has been ongoing controversies and dissatisfaction around the SABC Board and its role. A number of dysfunctional boards have been appointed particularly from 2007 onwards. Since 2007 there have been three permanent Boards and three Interim Boards appointed with a steady stream of Board members resigning. A number of people have looked back to the appointment of the first democratic SABC Board as an ideal appointment process. This appointment was conducted by an independent panel of jurists.

## How the first democratic SABC Board was appointed

The panel received over 700 nominations for the new SABC Board. It reduced this to a short-list of 86. Members of the public were invited to lodge their objections to the candidates before hearings were conducted.

The 86 nominees were then interviewed, marking the first public hearings for public office in the history of South Africa. The independent judicial panel examined the qualifications of candidates by questioning them and raising whatever objections it had received. Parts of the hearings were broadcast on radio and television and reported on by the print media.

The panel then made a recommendation on the first democratically constituted 25-member SABC Board, and the names were submitted to the State President on 21 May 1993.

SOS believes that Parliament must continue to play the key role in appointing the SABC Board. However, this appointment process should be strengthened.

The appointment process as outlined in the Broadcasting Act of 1999 calls for a process that includes the following:

- A public nomination process.
- A parliamentary interview process including the shortlisting of 12 candidates.
- Appointment of the Board by the President.
- Selection of the chair and deputy chair by the President.

The SOS Coalition calls for Parliament to embrace the above process. However, in addition to strengthening this process, Parliament must adopt the principles of maximum public participation, transparency and political consensus.

The Coalition has thus called for the following:

- Maximum public participation. Parliament must ensure the prominent placement of advertisements and the use of all SABC platforms and channels calling for nominations of Board members. Further, Parliament must appoint a panel of civil society leaders to assist in the process of short-listing, interviewing and recommending members of the SABC Board.
- Maximum transparency. Parliament must publish the names of all nominees and the persons nominating them; publish the long list of candidates to be interviewed, including their CVs; broadcast and live stream the interviews of all candidates; publish written

reasons for the final short list and publish the final short list for public comment.

- Political consensus. Parliament needs to ensure that no person is appointed to the SABC Board without a broad consensus of all the political parties.

A further issue that is important to look at is the issue of the role of the Board versus executive management. There is often confusion as to their different roles. SOS has put forward its views on this.

The Board must:

- Be independently minded, uphold the public interest (i.e. should exclude those with commercial or party-political or other vested interests), and view as its main task the protection of the independence and the deepening of the public mandate of the public broadcaster.
- Be responsible for the strategic direction of the public broadcaster and hold executive management to account in this regard.
- Report annually to Parliament on its corporate strategies and plans and financial situation.
- Report annually to both ICASA and Parliament on how it is meeting its mandate (i.e. complying with its charter) and complying with its various licence conditions and editorial policies.
- Appoint executive management without external influence or input.
- Ensure that its operations are open and transparent to the public by making copies of Board minutes (excluding only those matters that are commercially sensitive to the SABC) available to the public, including on the SABC's website.

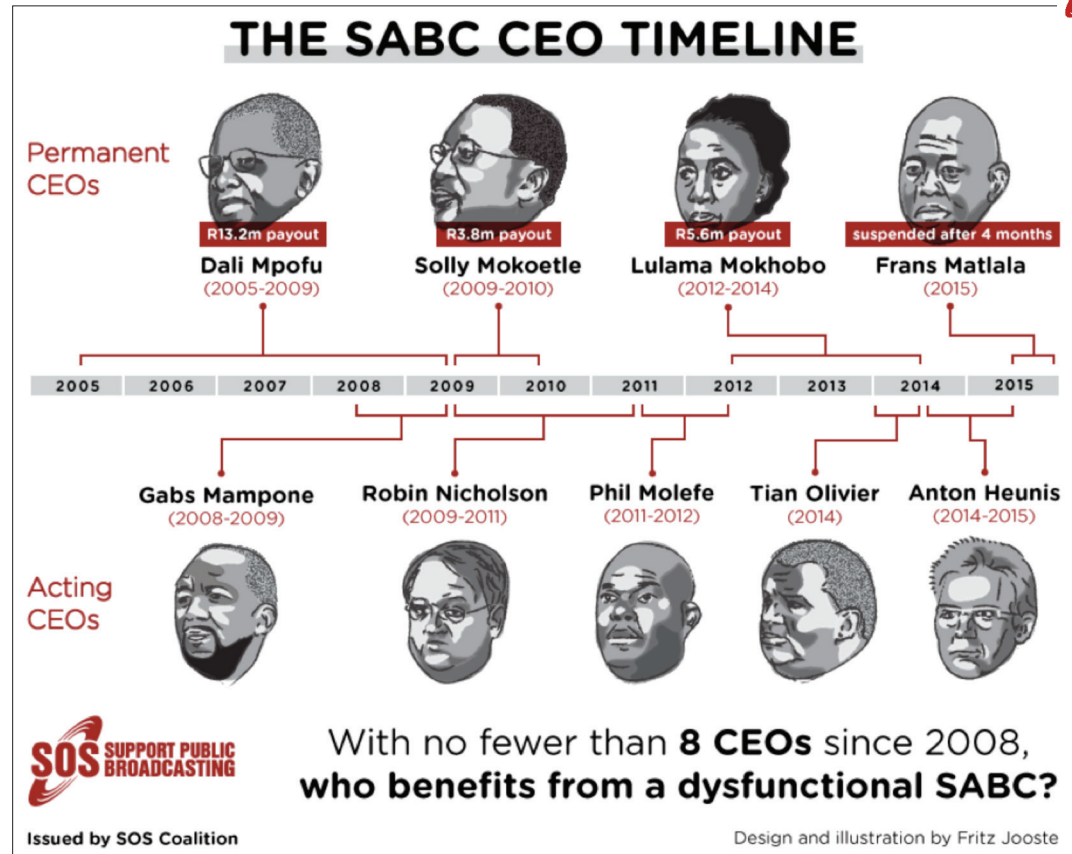
### 6.3 Executive management

Executive management must:

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

It is important to note the significant instability at the level of SABC executives. One of the reasons for this has been the constant meddling of various Ministers in appointment processes.

One of the key issues going forward is an amendment to the Broadcasting Act of 1999 that clearly states that the Board alone should make executive appointments. There should be no input from the Minister.



A brief note on the illustration: Frans Matlala was suspended by the SABC in November 2015, and was replaced by acting GCEO, Jimi Matthews. Jimi Matthews resigned in June 2016 citing, amongst other things, a “corrosive atmosphere” at the SABC. Soon after, James Aguma was appointed as SABC’s GCEO. However, in May 2017, James Aguma was suspended as SABC GCEO pending the outcome of his disciplinary hearing. Tsheliso Ralitabo is currently acting GCEO

## SECTION 7: THE SABC'S FUNDING MODEL

### What is to be done?

#### 7.1 International background issues

Internationally, public broadcasting's traditional funding sources – including government grants, licence fees and advertising – are under threat. Funding for public service broadcasting is thus a challenge internationally particularly as countries move to DTT which generally requires substantial public funding for the programme to be successful.

#### 7.2 National background issues: the SABC in crisis

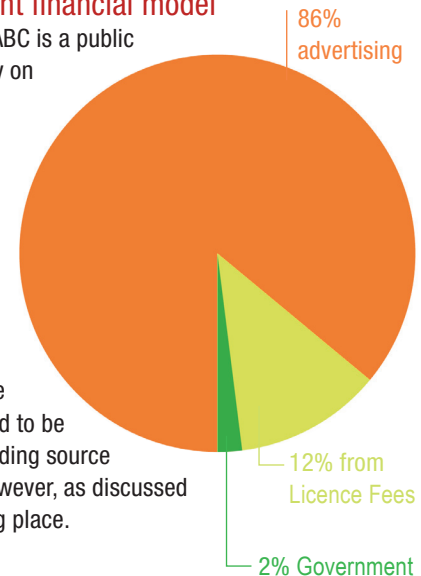
The SABC has experienced a number of financial crises largely due to financial mismanagement.

One of the most dramatic was the 2008 / 2009 crisis. Here the SABC lost close to a R1bn and stopped paying suppliers, including the independent producers that produce the majority of the SABC's programming. This created a crisis in the independent production industry. A number of smaller companies collapsed and a number of independent producers left the industry. The SABC was forced to get a government guarantee so that it could borrow money from commercial banks. The SABC then needed to pay this loan back with interest. This had a direct impact on programming. The SABC was forced to cut back on local content production and to increase repeats. The SABC eventually managed to pay back its loan.

Then in 2017 the SABC once again experienced a major financial crisis. Once again the SABC was forced to call on government for support to organise a financial bailout or government guarantee. There are a number of reasons for this including serious mismanagement of the SABC, the overnight introduction of 90% local content quotas on radio and 80% local content quotas on television.

#### 7.3 The SABC's present financial model

Despite the fact that the SABC is a public broadcaster it relies heavily on advertising. SABC funding is derived from the following main sources – approximately 86% from advertising, 12% from licence fees, 2% from government. Further, cross-subsidisation from the corporation's public-commercial channels to the public channels is supposed to be an important additional funding source for the public channels. However, as discussed previously, this is not taking place.





## 7.4 Considerations for the development of a new funding model

The SOS Coalition and others have debated a number of different funding models, all of which need to be thoroughly investigated by the Department of Communications. These models include proposals for the SABC to be funded solely by public funds and funding from commercial broadcasters. (Commercial broadcasters would benefit from the fact that advertising would no longer be taken up by the SABC and, therefore, would need to contribute to the SABC.) Another model proposed is for the SABC to continue with mixed funding but with higher percentages of public funds. SOS believes that the Department should engage in a specific financial modelling exercise before taking any decisions.

In crafting a new funding model, these are some of the issues that need to be considered:

- Parliament and the Ministry of Communications and Department of Finance must ensure that the SABC has sufficient public funding to pursue its public service mandate in respect of programming so that the SABC's editorial independence is not compromised through advertising-funded programming or product placement.
- Any policy and legislation developed on a funding model must ensure the long-term sustainability and effectiveness of public broadcasting in the digital era.
- An economic modelling exercise is required to ascertain the

actual funding requirements of the SABC. In this respect the Ministry and Department of Communications need to look at the costs of both the SABC fulfilling its public mandate in the present analogue and future digital multi-channel environment.

- New legislation must emphasise transparent SABC accounting (for example, reporting on percentage spending on programming in terms of genre, language, regional coverage etc.).
- The cross-subsidisation model should be done away with.
- The SABC must spend the majority of its funds on programming (as opposed to the present practice where the major portion of the SABC budget is spent on management and overheads).





## SECTION 8: HOW DO WE GET THE SABC WE WANT?

We need a bold new SABC for the digital age. Activists around the country should debate the issues raised in this Handbook and put forward clear proposals for government, the regulator and the SABC.

So how can we get an SABC that works for all of us?

### SHARE YOUR IDEAS WITH US ON:

Facebook.com/**SOSCoalition**

Twitter@**SOSCoalition**

Use the hashtag **#SABCYethu**

Visit our website and tell us what you think would make the SABC better: **[www.soscoalition.org.za](http://www.soscoalition.org.za)**



## ABOUT SOS:

The SOS Coalition represents a broad spectrum of civil society stakeholders committed to the broadcasting of quality, diverse, citizen-orientated public-interest programming aligned to the goals of the South African Constitution. The Coalition includes a number of trade union federations including COSATU and FEDUSA, a number of independent unions including BEMAWU and MWASA; independent film and TV production sector organisations including the South African Screen Federation (SASFED); a host of NGOs and CBOs including the Freedom of Expression Institute (FXI), Media Monitoring Africa (MMA), SECTION27 and a number of academics and freedom of expression activists.

