**The SOS: Support Public Broadcasting Coalition**

**SOS’S RESPONSE TO MINISTER PADAYACHIE’S MEDIA BRIEFING STATEMENT**

**12 November 2010**

The SOS Coalition once again welcomes the appointment of the new Minister and Deputy Minister of Communications. We welcome their energy, commitment and drive. We congratulate them on producing a plan of action within 11 days of being in office. We believe that this bodes well for the future.

Going forward SOS would like to positively contribute to the Minister’s plans. We hope that this statement will be the starting point for these contributions. In particular SOS would like to comment on the Minister’s statements on the SABC and ICASA.

Upfront there are two points SOS would like to make. Firstly, we wish to reiterate our call to Parliament to extend the deadline for nominations to the SABC Board until the key corporate governance breaches have been dealt with by Parliament.

Also, SOS would like to note its disappointment as regards the Minister’s stated intention to push the Public Service Broadcasting and ICASA Amendment Bills through in the first quarter of 2011. SOS believes that there is rather a clear and overwhelming need for a FULL policy review process.

***The South African Broadcasting Corporation***

SOS notes the Ministry’s commitment to stabilising the SABC to ensure that it operates “competently” in the public interest. We also note the Minister’s commitment to working with all stakeholders including Parliament, the Chairperson of the Board, Board members, executive leadership, the executive management and general staff of the Corporation.

We welcome this. However we would like to add that part of this stabilisation plan needs to include a clear focus on the various corporate governance breaches that have taken place at the SABC. In particular we need to ensure that the various stakeholders involved in these breaches (including most importantly the Chair of the Board) are held to account. We need a firm clear commitment from all stakeholders to good corporate governance in the future and that this is backed up with process and accountability.  We believe this commitment to good corporate governance and the rule of law is one of the first steps in re-building the shattered credibility of the SABC.

Corporate governance breaches that have taken place at the SABC include:

* The SABC Chair’s unilateral appointment of the Head of News,
* the Board’s decision to employ an external candidate to the Acting CEO position despite the fact that the SABC’s Articles of Association disallow this (the decision was later reversed),
* the Chair of the Board’s refusal to sign the delegation of authority document as regards the appointment of Acting CEO, Robin Nicholson, creating a legal crisis where the SABC was effectively operating without a CEO; and
* the Chair’s unilateral decision to announce on SABC TV and radio that due to problems with the appointment of the Acting CEO he hoped to bring back suspended CEO, Solly Mokoetle.

SOS views the role of the Chair in a particularly serious light. SOS has long been calling for the Chair of the Board to resign or for the appointing body (including the President and Parliament) to remove the Chair.

Further, to the issues of bringing stability to the SABC, SOS notes the Ministry’s commitment to fast-tracking the Draft Public Service Broadcasting Bill. We note the Ministry’s commitment to tabling the Bill before Cabinet within the first quarter of 2011. SOS welcomes the Ministry’s energy and commitment to reviewing the legislation. However there are a number of fundamental flaws in Bill that can not be rectified through a “fast-track” process. These include, but are not limited to, the following:

* The Bill aligns broadcasting to the “developmental goals of the Republic”.  Previously broadcasting was aligned to the Constitution. **SOS believes that the SABC and community stations’ mandates should not be unduly restricted to the “developmental goals of the Republic”. Public broadcasting should continue to be linked to the much broader and inclusive mandate of deepening the goals of the Constitution.**
* The Bill introduces fundamental shifts to the broadcasting funding environment. It calls for the scrapping of TV licence fees and for amendments to the Income Tax Act, 1962, to ensure that up to 1% of personal income tax is set aside for public broadcasting. **Although SOS welcomes the Department’s commitment to accessing public funding** **SOS is concerned that the Bill’s proposals contradict SA tax laws. SA’s tax regime specifically excludes earmarked taxes. Given this fact it is not entirely clear why this option - rather than other public funding options for example Parliamentary grants, license fee funding, a tax on electronic equipment etc. – was proposed.**
* Also, in terms of funding, the Bill introduces a new Public Service Broadcasting Fund to be administered by the Media Development and Diversity Agency, requiring that the MDDA Act is amended. The Fund is mandated to finance a wide-ranging set of functions, including the public service division of the SABC (together with regional television and international broadcasting services), content development, community broadcasting services, and signal distribution. The MDDA at present funds small commercial and community media. **SOS is concerned that very few details are included in the legislation as to how this Fund will operate and how its independence from major vested interests will be safeguarded. Further, there are worries about the fund introducing new layers of bureaucracy. The capacity of the MDDA will also not enable it to undertake these extra substantive tasks.**
* The Bill introduces far-reaching new powers for the Minister of Communications. The Minister can now issue directives to the SABC and community media on “any matter connected to public service broadcasting” if the entity is unable to “perform its functions as prescribed in this Act”. **Due to the introduction of new far reaching powers for the Minister, SOS is concerned that the Bill is potentially unconstitutional. Further, SOS is concerned that the Bill’s proposals regarding the Minister’s powers to intervene undermine the power of the Board. Further the Bill unfortunately fails to clarify clear lines of accountability. SOS fears that this lack of clarity will undoubtedly lead to ongoing corporate governance crises at the SABC in the future.**
* Finally, community media’s role has now been reconceptualised. A new Charter and governing structures have been imposed on the community media sector. Further, the Bill insists community media forge partnerships with local municipalities. Municipal officials must sit on the governing structures of community radio stations. **SOS is concerned that the Bill imposes a top-down Charter and one-size-fits-all governance structures on community stations that in fact will potentially exacerbate governance crises. Also, SOS is concerned, amongst a number of issues, that the editorial independence of stations will be compromised.**

SOS believes that it is indeed possible and desirable for the Department to swiftly pass as a starting point some amendments to the Broadcasting Act, 1999. However, this should not negate a proper policy review process.  SOS believes that the DOC needs to review the Broadcasting White Paper, 1998. The White Paper is out of date and includes a number of gaps and contradictions. SOS believes that sound law making requires that coherent policy should set the parameters for new legislation.

In terms of immediate amendments SOS believes that the present Broadcasting Act includes a serious gap as regards the appointment of executive members to the Board. (The executive members include the CEO, COO and CFO.) SOS believes this has led to ongoing crises at the SABC. SOS believes that an immediate amendment should include a clause that states clearly that executive members of the Board should be appointed solely by the non-executive members of the Board. SOS believes that this will ensure clear lines of accountability in terms of governance and will better allow the Board to hold management to account.

***The Independent Communications Authority of South Africa***

SOS notes and welcomes the commitment from the Ministry to ensure the independence and effective functioning of the Regulator, ICASA. Further SOS welcomes the Ministry’s commitment to strengthening ICASA’s capacity including “measures to enhance its technical and financial competency”. Finally, SOS welcomes the commitment from the side of the Ministry to ensure a performance management system is developed by April 2011.

All these proposals are necessary and should certainly be welcomed.

However, SOS believes that there are some important gaps in these commitments - chief amongst them being a commitment to the proper resourcing of ICASA. SOS believes that this is in fact one of the major reasons for ICASA’s lack of efficiency and effectiveness.

Further, SOS is worried about the ICASA Amendment Bill. Again, SOS believes that the Bill was prematurely introduced, without a proper policy review process. SOS believes the Proposed Bill is flawed and potentially unconstitutional. In significant respects the Bill in fact downgrades the powers and responsibilities of ICASA e.g. the Bill proposes that ICASA’s CEO is downgraded to the position of COO so that ICASA no longer has its own accounting officer. Further, significant new powers are introduced as regards the Minister including the fact that the Chairperson of Council must now perform functions assigned by the Minister. The Minister is to chair the evaluation panel of councillors and the committee has the power to remove councillors. Finally, members of the important Complaints and Compliance Committee will no longer be solely appointed by ICASA but will now be nominated “by the Minister in consultation with the National Assembly” and appointed by ICASA. SOS believes that ICASA needs to regulate in the public interest, independent of all major vested commercial or government interests.

SOS believes that in terms of new legislation for the independent regulator, the Department once again needs to follow a swift yet comprehensive policy review process.

***The SOS Coalition***

The “SOS: Support Public Broadcasting” Coalition represents a number of trade unions including COSATU, COSATU affiliates CWU and CWUSA, FEDUSA and BEMAWU; independent film and TV production sector organisations including the South African Screen Federation (SASFED); and a host of NGOs and CBOs including the Freedom of Expression Institute (FXI), Media Monitoring Africa (MMA), and the Media Institute of Southern Africa (MISA-SA); as well as a number of academics and freedom of expression activists.

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