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SOUTH AFRICAN BROADCASTING CORPORATION
COMMISSION OF ENQUIRY INTO BLACKLISTING AND RELATED MATTERS
REPORT

1. INTRODUCTION: THE ISSUES

1.1. The Chief Executive Officer of the South African Broadcasting Corporation Limited, Mr Dali Mpofu appointed a commission of enquiry on 29 June 2006 with the following terms of reference:

“The first issue

- 1.1. The existence or non-existence in the News and Current Affairs Division of the SABC of guidelines or stipulations in respect of the utilisation of independent political analysts/ commentators/ experts. If such guidelines exist, whether they are already operational in practice or at a policy-formulation stage.**
- 1.2. The content of those guidelines or stipulations and whether they amount to undue ‘blacklisting’ or ‘banning’ of such analysts. (In this context the word ‘undue’ shall include any arbitrary reason and/or improper or ulterior motive.**
- 1.3. The making of any remarks or assertions by any employee of the SABC in respect of the official SABC statement issued on 20 June 2006 (and discussed on SAFM on 21 June 2006). More particularly whether such remarks or assertions were in conformity with the factual situation, as at that date, within the news and current affairs environment. If not, the nature and extent of any deviation and the probably causes thereof.**

The second issue

- 1.4. The source(s) of the perceived or real low morale and employee dissatisfaction within the News and Current Affairs Division, if any, and the causes thereof.**

The third issue

- 1.5. Whether the SABC's current policies and practices in respect of the utilisation of independent political analysts/commentators/experts is in conformity with local and international best practice."**

- 1.2. These issues were investigated over eight days of evidence during which 39 witnesses were heard.

2. THE BACKGROUND

- 2.1. The Commission of Enquiry had its genesis in the publication of an article in the *Sowetan* on 20 June 2006 under the headline "SABC BANS TOP MBEKI CRITICS". There was a sub-headline stating "Gagging order slapped on black commentators". The article went on to state:

"The SABC is embroiled in another controversy after recently being widely criticised for cancelling a documentary film about the rise to power in the ANC of President Thabo Mbeki. The film was considered to be too critical of Mbeki. The latest furore concerns the reported banning of four top black political commentators and analysts.

The commentators are Aubrey Matshiqi, an independent analyst, William Gumede, the author of a book about Mbeki and the ANC and Business Day journalists Karima Brown and Vukani Mde.

Sowetan has reliably learnt that SABC editor Snuki Zikalala instructed his staff that views and opinions may not be sourced from the four commentators for news and current affairs programming.

‘He specifically warned us not to engage them on matters pertaining to the [presidential] succession race in the ANC because of their alleged bias’ said the source.

Matshiqi apparently worsened his relationship with the public broadcaster when he recently warned that the ANC succession battle could lead to civil war unless the party managed it carefully.

‘We were told that we should ignore Matshiqi because he says there is a revolution coming’ said the source.

Matshiqi confirmed to Sowetan last night that he had been told by the SABC producers that he was not welcome at the public broadcaster’s headquarters in Auckland Park.

Business Day political editor Karima Brown, who has written extensively about the ANC leadership-struggle, said she was not shocked or surprised by the SABC’s move.

‘I have not heard about the ban. I was contacted recently to be a guest on AM Live and participate in the succession debate, but I was phoned again and told not to come’, she said.

Brown and Mde have also rubbed Mbeki supporters up the wrong way by ridiculing the formation of the Native Club.

The club, meant to attract ‘relevant black intellectuals’, is the initiative of Mbeki political advisor, Titus Mafolo.

Neither Mde nor Gumede could be reached for comment.

Kaizer Kganyago, an SABC spokesman, refused to comment on whether Zikalala had issued the banning instructions, but said that the SABC considered quality when contracting independent commentators.”

- 2.2. On June 21 2006 the *Sowetan* followed up this story. It reported that Moeletsi Mbeki, the younger brother of President Thabo Mbeki **”is on the list of black commentators banned by the SABC on the authority of editor Snuki Zikalala”**. The implication of this article was that Moeletsi Mbeki had been excluded because of his critical approach to the government in relation to Zimbabwe’s political crises.
- 2.3. The allegations published in the *Sowetan* took root in the media generally. The SABC decided to issue a statement on the matter in the following terms:

“Media statement – SABC responds to alleged ‘banning’ of ‘disloyal critics’

The SABC would like to state that the news division has not imposed any blanket bans on the use of individual commentators by our current affairs programmes as reported by the Sowetan today.

After a number of problems experienced with experts and analysts, and some public feedback received by the SABC, a proposal was taken at a News Management meeting to devise policy guidelines on the use of commentators. These problems did not relate to the commentators’ views on the succession debate or any specific topic or person, but to occasions where it was clear that commentators were sometimes ill-informed, providing viewers and listeners with analysis based on facts that were either incorrect or out of date.

A discussion document was drafted by News Management, which would assist in establishing what kind of analysts were appropriate, in terms of expertise and experience to comment on a relevant topic to be discussed on a current affairs programme.

For example, the discussion document currently suggests that any analyst selected for their expertise and experience would preferably need to be attached to an academic institution, research organisation or body that is actively involved in the area that is under discussion or has the necessary capacity to do so. The only intention is to assure the quality of our end product, as any other publication or business hopefully does.

The SABC subscribes to freedom of speech in its policies and we strive to give the South African public a diversity of opinions and voices on any topic discussed. Our daily panels on radio and television clearly attest to this. In fact, any neutral observer will agree that principal players and organisations who have pronounced themselves on the so called succession debate have had ample coverage, almost on a daily basis on SABC platforms.

The discussion paper is just that, a discussion paper. Nothing has been made into policy and the SABC wonders where these sources within and outside the SABC got the false information that this was now policy at the News department. SABC policies are determined by the Board of the SABC not by departments.”

- 2.4. As a response to the criticism levelled at it in the *Sowetan*, the spokesperson for the SABC, Mr Kaizer Kganyago appeared on AM Live on 21 June to convey the official stance of the SABC as contained in its statement. He was questioned about the statement by the presenter of AM Live, Mr John Perlman. What followed was wholly unanticipated by Mr Kganyago. While the latter insisted that there was no blanket ban on anybody, Mr Perlman informed listeners that the system of excluding commentators was **“already in practice”**. He stated, **“Mr Kganyago, it is**

happening in practice that certain people are no longer being used on SABC by instruction”.

2.5. An extraordinary situation thus arose in terms of which an official SABC statement was being contradicted on air. The debate was fuelled by the publication of further articles and letters in the press. Former employees of the SABC lent support to the allegations of blacklisting. Accusations and counter-accusations abounded. More names were added to the list of those allegedly excluded. The GCEO felt that the matter had to be addressed by an independent commission of enquiry.

3. PROCEDURE AND METHODOLOGY

- 3.1. The Commission was given the discretion to adopt rules and procedures designed to achieve a speedy but in-depth enquiry.
- 3.2. The Commission was informed in advance that it was required to take all reasonable steps to ensure that any persons appearing before it were adequately protected from any undue influence, pressure, intimidation or coercion.
- 3.3. The Commission had no powers of compulsion. Open invitations were extended to any person who wished to appear before the Commission or make a written submission. Ultimately, the Commission heard 39 witnesses. Several of these witnesses testified only on condition of anonymity. Although many of the

witnesses came forward voluntarily, the Commission specifically requested that a number of individuals appear before it. All of the Commission's requests in this regard were complied with.

3.4. The proceedings before the Commission were not a trial nor a vehicle for enquiring into labour disputes. The Commission's task was to investigate the matters within its terms of reference. In certain instances there are irresolvable disputes of fact. However, the core findings are based upon evidence which is undisputed.

3.5. The allegations levelled against the SABC were, in truth, directed against Dr Zikalala, the Group Executive: News and Current Affairs. Unavoidably, therefore, the enquiry focused on Dr Zikalala. It was decided that it would be appropriate to invite Dr Zikalala to testify early in the proceedings and thereafter afford him the opportunity of responding to such allegations as emerged at the end of the proceedings. It was considered important that Dr Zikalala be given a fair opportunity to comment upon and respond to accusations that had been levelled against him. We are satisfied that this opportunity was afforded to him.

3.6. In the course of proceedings, various persons questioned the independence of the members of the Commission and Professor Guy Berger, whom the commissioners had engaged as an advisor. Mr Golden Miles Bhudu, in his written submission, questioned

Mr Sisulu's position as a member of the ANC and past CEO of the SABC. When he appeared before the Commission, however, he did not pursue his objections. Mr Sisulu's past position with the SABC, the fact that he is a supplier to the SABC (through his shareholding in Urban Brew) and his political affiliations are matters of public record. One of the witnesses who testified before the Commission was Elinor Sisulu, the sister-in-law of the chairperson. During her testimony, Mr Sisulu recused himself and the findings regarding Elinor Sisulu are those of Mr Marcus alone.

- 3.7. When he was approached to serve on the Commission, Mr Marcus disclosed to Mr Mpofu that he had instructed by *Business Day* to defend a defamation action instituted by Dr Zikalala. To that end he had drafted a plea. However, he was no longer involved in the case and would not be conducting the trial. Mr Marcus made it clear that this should be disclosed to Dr Zikalala in advance and in the event of an objection, he would decline the appointment. It was so disclosed and Dr Zikalala stated that he had no objection to Mr Marcus sitting as a commissioner. When he appeared before the Commission on 22 July 2006, however, Dr Zikalala raised a new concern, namely, that Mr Marcus was retained by e.tv and e.tv was the SABC's "opposition". Dr Zikalala was repeatedly invited to state whether he objected to Mr Marcus sitting as a commissioner on this ground. He elected not to do so. The matter became academic, however, because the correct factual position is

that Mr Marcus's retainer for e.tv expired on 30 June 2006 and was not renewed. When Dr Zikalala appeared before the Commission on the second occasion, he was so informed, and did not take the matter further.

3.8. Before the Commission commenced its work, attorneys representing certain witnesses raised a series of questions concerning the presence of Professor Guy Berger. Similar concerns were raised by certain witnesses during the course of proceedings. The gist was that he had prejudged the controversy and was close to SABC management. The commissioners pointed out they were satisfied with the independence of Professor Berger as a resource person and further that he had no decision making or fact finding powers. This response was conveyed to those who expressed concern and they all proceeded to testify.

3.9. The issues canvassed in this report are matters of substantial public importance to South African democracy and the role of public broadcasting therein. It would indeed be abhorrent, and at gross variance with the SABC's mandate and policies, if practices of the old order were being repeated in the new, with the effect of again disqualifying South Africans from democratic discourse and debate. For this reason, we are firmly of the view that this report should be released to the public after consideration by the Board. The controversy giving rise to the appointment of the Commission is a matter of public record. In appointing the Commission, the

GCEO, Mr Mpofu stated that he “**chose to go for independent persons of generally accepted high integrity so that the public would feel secure that we were not trying to sweep anything under the carpet**”. The Chairperson of the Board, Mr Eddie Funde, likewise recognised that if there has been a breach of the SABC’s policies, this was something the “**public would have to know about**”.

4. THE SABC’S MANDATE

The Broadcasting Act

4.1. No discussion of the issues raised by this enquiry can meaningfully occur without a proper appreciation of the role of the SABC as a public broadcaster. Some of the witnesses who appeared before the Commission sought to draw comparisons between the SABC and privately owned media organisations. In the main, such comparisons are inappropriate. The SABC has a statutory mandate which flows primarily from the Broadcasting Act 4 of 1999. This Act places particular obligations upon the SABC. The preamble to the Act acknowledges that “**the South African broadcasting services are owned and controlled by South Africans**”. It also records the objective of encouraging “**the development of South African expression by providing a wide range of programming that refers to South African opinions, ideas, values and artistic creativity**”. It resolves to

“align the broadcasting system with the democratic values of the Constitution and to enhance and protect the fundamental rights of citizens”. These broad objectives are reflected in the statute itself.

- 4.2. Section 2 of the Act records the objects of the Act as including the following:

“2. Object of Act

The object of this Act is to establish and develop a broadcasting policy in the Republic in the public interests and for that purpose to –

- (a) **contribute to democracy, development of society, gender equality, nation building, provision of education and strengthening the spiritual and moral fibre of society;**
- safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa;**
- .
- .
- .
- (d) **ensure plurality of news, views and information and provide a wide range of entertainment and education programmes ...”**

- 4.3. Section 6 of the Act requires the SABC to comply with a charter. It must also formulate policies relating, *inter alia*, to news and programming.

4.4. This enquiry has focused on the public service obligations of the SABC. Section 10 of the Broadcasting Act provides in relevant part:

“10. Public Service

(1) The public service provided by the Corporation must -

- (a) make services available to South Africans in all the official languages;**
- (b) reflect both the unity and diverse cultural and multilingual nature of South Africa and all its cultures and regions to audiences;**
- (c) strive to be of high quality in all of the languages served;**
- (d) provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests ...”**

The Code of Conduct

4.5. The SABC’s Code of Conduct was developed in 1993 and was revised in its 2004 editorial policies to incorporate new developments and changes in the law. In its present form, it affirms a commitment to the principle of editorial independence. Those parts of the Code which are relevant to the present enquiry include the following:

4.5.1. **“We report, contextualise, and present news and current affairs honestly by striving to disclose all the**

essential facts and by not suppressing relevant, available facts, or distorting by wrong or improper emphasis.”

4.5.2. “We understand that if South Africans are to meet the challenges of building a nation and a strong democracy, they must have access to relevant, reliable, and timely information of the best quality. In covering newsworthy events, we aim to give them what they need in order to make informed decisions about their lives.”

4.5.3. “the SABC is not the mouthpiece of the government of the day, nor should it broadcast its opinion of government policies, unless they relate directly to broadcasting matters.”

4.5.4. “We seek balance by presenting relevant news on matters of importance, as far as possible. This may not always be achieved in a single programme or news bulletin, but should be done within a reasonable time.”

4.5.5. “We resolutely uphold the principle of journalistic freedom and see the protection of a journalist’s sources as an important part of this principle ...”

- 4.5.6. **“We do our utmost to make a timely correction of any information that was broadcast and is found to be inaccurate.”**

The editorial policies

- 4.6. Through broad external and internal consultation, the SABC has developed policies covering a wide range of editorial issues. This enquiry is concerned with those policies applicable to news and current affairs programming. It should be noted, however, that a substantial portion of the witnesses were unaware or vague about the content of these policies.
- 4.7. In the introduction to the policies concerning news and current affairs, the following is stated:

“The SABC occupies a distinctive position of trust in the lives of its viewers and listeners. We are the most extensive, all-inclusive and diverse news organisation in South Africa. The SABC considers it a duty to provide consistent, relevant, useful and top quality information and analysis on which all South Africans can rely as they discuss and deliberate, form opinions and build a common future.”

The policy states further:

“The SABC should offer information that is substantial, and analysis that is authentic and meaningful to ordinary, enquiring South Africans so that they can form their own opinions.”

- 4.8. The use of analysts and commentators is specifically addressed in the SABC's policies in the following terms:

“Use of guests, analysts and specialist commentators

The SABC's principle of providing the full spectrum of opinions, perspectives and comment also applies to selection and use of guests, analysts and specialist commentators. This requires editorial staff to choose, as participants, people who have a wide range of views, opinions and perspectives, and are drawn from all over the country. Such people should be required to declare any vested interest they may have in the matter to be discussed.”

Core editorial values

- 4.9. Apart from the Code of Conduct and specific editorial policies, the SABC is guided by what it describes as **“core editorial values”**. These values are, amongst other things, informed directly by the Constitution. The matter is put thus:

“The values articulated in the Constitution – including national development, unity, diversity, non-racialism, non-sexism, democracy and human dignity – represent those things that are commonly held by South Africans to be important. They bridge political, class, social and gender divides, and although we are still at the start of our project of national development, those are what anchor us as a nation. For the public broadcaster, then, they must form the foundations of our editorial policies.”

- 4.10. Among the core editorial values stressed by a number of senior witnesses who appeared before the Commission was the value of transparency and honesty:

“The SABC ensures that the principles of honesty, openness and transparency govern every aspect of its relationship with shareholders, stakeholders, suppliers and the public.”

- 4.11. The effect of these provisions is that any exclusion of persons for reasons of political orientation (or any other unacceptable reason) would be a clear violation of the SABC’s own policies and codes. Such an exclusion would be extremely serious. It would undermine our democratic ethos and deprive the public of the full spectrum of views to which it is entitled.

The status of the SABC’s policies

- 4.12. The SABC’s policies are specifically mandated by the Broadcasting Act. They are the product of an extensive process of consultation and debate, not simply within the SABC but among the public at large. The process was time consuming and wide ranging. The SABC’s policies are binding upon everybody in the organisation. While they are subject to continual assessment and revision, they cannot be changed without Board approval.
- 4.13. Both Mr Mpofu and Mr Funde, were clear that there could be no changes to the SABC’s editorial policies without Board approval. They were also clear that in relation to the use of analysts and commentators, the policy reproduced above was operational on 21 June 2006 and that there had been no changes to that policy effected by the Board. Both were aware that there had been some

“discussion” on the issue of the use of analysts and commentators but that there had been no official change to the policy.

The “guidelines”

4.14. In the media statement issued by the SABC on 20 June 2006 reference is made to a proposal to devise policy guidelines on the use of commentators. The media statement also refers to the drafting of a “discussion document” to **”assist in establishing what kind of analysts were appropriate in terms of expertise and experience to comment on a relevant topic to be discussed on a current affairs programme”**. The media statement makes it clear that the discussion document is not yet SABC policy.

4.15. We were furnished with a copy of the discussion document. It is headed **“Guidelines on the use of commentators, experts and analysts by SABC news”**. It was drafted by Mr Graham Welch on the instruction of Dr Zikalala. According to Dr Zikalala, Mr Welch was asked to **“develop guidelines based on international experience”**. The discussion document provides as follows:

“The purpose of this document is to provide guidelines for SABC’s editorial staff on the use of commentators, experts and analysts (hereafter referred to as commentators) in news programming, in a way that facilitates the fulfilling of our public service broadcasting mandate.

Commentators are used in News programming in order to fulfil two main functions namely:

- **To offer analysis of developments within a story.**

- To offer an alternative view of developments within a story.

In order for a commentator to be in a position to deliver on this they need to fulfil certain criteria, including being an expert in the field, having a good understanding of the issue under discussion and in certain instances having direct experience of the issue under discussion.

Diversity

As per the editorial policy, News should strive to offer the full spectrum of views and perspectives on the issues of the day; in practical terms this means that editorial staff, when selecting commentators, should not rely on the same voices (and faces, in the case of television) to comment on particular issues. There are few areas in South Africa life where there is only one competent commentator that is able to provide a view; over time, these selections should aim to include as many different individuals as possible.

Furthermore, the commentators should, as outlined in the editorial policy, be as demographically representative of the South African population as possible. This, in practice, means that a conscious effort must be made by the individuals responsible for these editorial decisions to ensure that issues of race and gender are addressed when making the selection.

Competency

Commentators must have a demonstrable level of competency in whichever field they are selected to speak about. Generally this will mean that they are attached to some sort of academic institution, research organisation or body that is actively involved in the area that is under discussion. Where possible 'independent experts' should be avoided. It is also important that News avoids using commentators whose knowledge of a particular subject is based largely on a reading of the media – unless, of course, the discussion involves the media.

Additionally, beyond competency within the specific field, the commentators should be comfortable in front of a microphone or camera and be able to operate effectively in a media environment. Do not underestimate the importance of a commentator's ability to deliver a pithy sound-bite.

Identification

The commentators must be clearly identified. This includes clearly indicating which organisation, institution or company the individual represents, so the audience can contextualise where the remarks are coming from.

The media

Where possible News should avoid using individuals from rival media organisations as commentators. If it is necessary to get a media perspective on developments, the relevant specialist editor with the News Division should be utilised. As a general rule, non-SABC media workers should be spoken to as newsmakers and not commentators.”

4.16. We were told that these guidelines are now with the Board. What is clear, however, is that up until now, there has been very little consultation about the guidelines with the SABC itself. While there was a vague awareness of the fact that a discussion document had been drafted, very few individuals within the SABC had any knowledge of the detail of the document and certainly had not been consulted. It is, of course, possible that consultation will take place in due course. The process, however, is strikingly at odds with the way in which the current SABC policies were formulated. As indicated above, these policies were the product of extensive consultation, both within and outside of the SABC.

4.17. Shortly after the controversy broke on 20 June 2006, there was an attempt hastily to convene a workshop on the use of commentators and analysts. This was plainly a response to the problems that had arisen. In the event, no workshop took place.

As attempt to convene a workshop on such an important matter with virtually no advance notice was, in any event, doomed to failure.

- 4.18. It is quite apparent that the discussion document, irrespective of its merits and demerits, cannot supplement or supplant the SABC's policies without Board approval. At the conclusion of this report, we assess whether or not the SABC's policies in relation to the use of commentators are in conformity with international standards. Comment will also be made on how the "guidelines" relate to existing policy and whether any inconsistencies exist. It suffices at this stage to stress that although Dr Zikalala's mandate to Mr Welch was to draft guidelines based upon international standards, it turns out that on his own admission Mr Welch did not have reference to any international standard at all.

5. THE EVIDENCE ON EXCLUSION OF COMMENTATORS

The Commission's approach

- 5.1. Our point of departure is that it is perfectly permissible for the SABC to have in place a policy dealing with the selection and utilisation of commentators and analysts. Nobody who appeared before the Commission suggested otherwise. Clearly, the SABC has a duty to screen persons as authentic experts and persons who will add value to programming. Mr Mpofu stressed the matter of

“quality” in this regard. We note, however, that “quality” should be assessed over time, in the ongoing discourse and debate by a range of experts and their interrogation by SABC journalists, rather than by one-off decisions relating to each-and-every programme which would assume the existence of absolutely neutral and unassailable experts. The main point we would like to stress is that any decisions on who constitutes a legitimate commentator or analyst must be consistent with the SABC’s mandate and particularly its duties as a public broadcaster as elaborated in its editorial policies.

- 5.2. The kernel of the problem is whether decisions were taken or instructions given which were not justifiable in terms of the SABC’s mandate and policies. In assessing this issue, the minimum that is required is that such decisions are taken in good faith having regard to the SABC’s mandate and policies. Good faith, however, is a necessary, but not a sufficient condition. In addition, such decisions have to be objectively defensible.
- 5.3. The SABC is required to be honest, open and transparent. It is not the mouthpiece of the government of the day. It is required to be accountable. Accountability is a core value of the Constitution. It means that South Africans should have a right to have reasonable explanations for decisions taken. In a memorable passage, frequently cited with approval by our courts, the late Professor Etienne Mureinik stated:

“If the new Constitution is a bridge away from a culture of authority, it is clear what it must be a bridge to. It must lead to a culture of justification – a culture in which every exercise of power is expected to be justified; in which the leadership given by Government rests on the cogency of the case offered in defence of its decisions, not the fear inspired by the force of its command. The new order must be a community built on persuasion, not coercion.”
 (Etienne Mureinik “A Bridge to Where? Introducing the Interim Bill of Rights” (1994) 10 South African Journal on Human Rights 31 at 32).

We investigate whether reasons were given for the exclusion of certain individuals as analysts or commentators, both to employees required to implement the exclusions, and to the public in response to the *Sowetan*'s news report on the issue. In addition, we examine the quality of the reasoning. Problems are found to exist on both counts.

- 5.4. In assessing the manner in which decisions were taken or instructions given concerning the use of commentators, we do not wish to be understood as second guessing those by whom the decisions were taken. It is not our task to prescribe whom the SABC should use as analysts or commentators. We do no more than assess whether the decision in question were objectively defensible in terms of the SABC's mandate and policies. In some instances, while decisions might have been “well intentioned”, it does not follow that they are objectively consistent with the SABC's mandate and policies. Instead, we have found that there is a disturbing variance in several cases.
- 5.5. We deal with only those individuals in respect of whom it was admitted or proved that instructions (or at least intimations) had been given that they should not be used at all or should not be

used for particular purposes or should be used subject only to conditions. In each case we assess whether there was an objectively defensible basis for the decision or intimation.

- 5.6. It was impressed upon us that account had to be taken of the nature of the SABC as an institution and the hierarchy of decision makers. We accept that this is a matter which forms part of the equation. Irrespective of the size of the organisation, however, we are concerned with the manner in which important powers have been exercised. In virtually all cases, the personality and power of Dr Zikalala loomed large. Although he seldom dealt directly with individual producers or presenters, his instructions were filtered down usually through the head of news to the executive producers of the programmes in question. In the case of television, Dr Zikalala would communicate with the head of news, Mr Amrit Manga. As far as radio is concerned, the person who occupied the position in an acting capacity at the relevant time (but no longer) was Mr Solly Phetoe. Dr Zikalala described the executive producers as the “gatekeepers” who were obliged to ensure that stories are fair, balanced and accurate. Programme line-ups are discussed and debated by the presenters, producers and executive producers. Should there be any disagreement among them on the line-up, it is the executive producer who has the final say because he or she takes editorial responsibility for the content. Executive producers can, of course, be overruled by the heads of news or Dr Zikalala himself. As Dr Zikalala put it,

“**what I say has to go**”. In this regard, we note that there were instances where prior vetting occurred rather than retrospective counselling or reconsideration. This undermines the principle of editorial responsibility at executive producer level. Thus, instead of decisions being taken at each operative level, with occasional voluntary upward referral for advice, there have been instances where producers and executive producers were required in advance to submit names of proposed analysts or commentators to the level above them. We revert to this control-based system later.

- 5.7. In terms of the SABC’s policies, Dr Zikalala does not have the last word. That power, in theory, is vested with the Group Chief Executive Officer who is designated as the editor-in-chief. The SABC’s policies specifically envisage a range of decisions being taken by the editor-in-chief. The matter is put thus:

“In this regard, subject to standard management and editorial controls, programme producers and commissioning editors are responsible for either the production of the programme or the editorial control, or both. Should any difficulty arise during programme production and/or editorial control, or the programme producer or commissioning editor be unsure of anything, they should consult their supervisor for guidance. This process of voluntary upward referral could extend as far as the group chief executive officer, in his capacity as editor-in-chief. The role of editor-in-chief is one of many responsibilities that the GCEO assumes and should not be confused with the functions of the Heads of Radio, Television, News, Sports, and Education or of the other editors and channel and station managers employed by the SABC. The GCEO’s role is not to make day-to-day programming or newsroom decisions. However, the

Board of the SABC delegates responsibility, and holds accountable the GCEO for the performance of all news and other programmes, broadcast and presented on all SABC radio, television, internet and other multi-media platforms.”

In this system, it appears that the GCEO as editor-in-chief only operates as such when problems are referred upwards for advice or decision. While this “occasional” role is understandable, given the other responsibilities of the GCEO, it does mean that the real editorial power lies with the Group Executive: News and Current Affairs position.

- 5.8. While the system of upward referral permits a hierarchy of decision making in situations where there is uncertainty, the policies make it clear that **“as a rule, and as a matter of policy, the authority for editorial decisions is vested in the editorial staff”**. As will become apparent in due course, critical editorial decisions were taken out of the hands of editorial staff when it came to the utilisation of certain people as commentators or analysts.
- 5.9. It is against the background of the SABC’s mandate and policies that we turn to consider the evidence concerning the exclusion of certain analysts. It should be noted that most of the following discussion concerns SAFM and particularly the AM Live programme. The Commission did not uncover evidence of controversial exclusions as regards other radio stations or programmes. However, there are instances where current affairs

shows on television were affected. It may further be noted that allegations were made about the exclusions of the SABC's own reporters (notably African-language speakers) from AM Live as regards to their use as experts. However, we did not extensively pursue this matter which falls outside our immediate concerns. What is raised by this, however, is the matter of the degree of specialist expertise by the SABC's own employees, a matter to which we will return.

Karima Brown

5.10. Karima Brown was formerly an executive producer of AM Live. Since leaving the SABC she has become the political editor of Business Day. She was frequently used as a commentator or analyst after her departure from the SABC.

5.11. Dr Zikalala was unambiguous that he had given an instruction not to use Ms Brown as an analyst. His reason was stark. For him, Ms Brown has spread untruths. This charge flowed from the fact that Ms Brown (together with Vukani Mde) had co-authored a front page article in *Business Day* on 23 August 2005 under the headline “**MBEKI FUELS ANC FEUD, FACES DOWN ZUMA ALLIES**”. The article purported to reflect a crisis of unity in the ANC and described events which had purportedly taken place at the party's National Working Committee. It turned out that the story was wrong in a fundamental respect. President

Mbeki had not attended the meeting described in the article. *Business Day* accordingly published a correction on 24 August 2005 and an apology the next day.

- 5.12. For Dr Zikalala, Ms Brown was a person who spread untruths and could not be used **“to come and give an analysis”**. He repeatedly used the analogy of a witness who lies in a court of law –

“...in any court of law, if you lie, you can’t be called back as a witness. ... if a person lied publicly ... then how am I going to trust that person?”

In similar vein, **“if a witness ... lies (one will) never call that witness again because he fabricates stories”**

- 5.13. Taken on its own, the justification for excluding Karima Brown, namely, that she had published untruths, was seemingly unanswerable. On closer consideration, however, it proved to be both unsustainable and inconsistently applied.

- 5.14. The article giving rise to the accusation made it clear that the information was based upon unnamed sources. That this was indeed the case was put beyond doubt in the retraction. The retraction stated the following:

“It appears that our lead story yesterday may have been flawed. We cannot sustain our contention that President Thabo Mbeki attended a meeting of the African National Congress (ANC) National Working Committee at the ANC headquarters in Johannesburg on Monday and that he had ‘come down hard’ on key backers of former Deputy President Jacob Zuma. The ANC insisted last night that Mbeki was not at the meeting but normally reliable

sources say he was. Officially, Mbeki is on holiday this week and our enquiries leave substantial doubt that he did, indeed attend the National Working Committee meeting. We are proud of our political reporting on Business Day and we are deeply disturbed at the possibility that we may have erred badly. We apologise to readers for our inability to substantiate our report. We will make further enquiries and keep readers fully informed of the results.”

The apology stated the following:

“Despite our best efforts we are unable to substantiate our front page lead report on Tuesday that President Thabo Mbeki attended a meeting of the African National Congress (ANC) National Working Committee on Monday, where, we reported, he clashed with supporters of former Deputy President Jacob Zuma. As a result, we have no option but to unconditionally retract our assertions in the report about Mbeki. We apologise unreservedly to our readers, the ANC National Working Committee and the President for the report.”

- 5.15. When it was put to Dr Zikalala that Ms Brown had not necessarily deliberately spread untruths, but that she may have been the victim of sources who had lied to her, he introduced a different dimension. Now, the question was not so much whether she had lied, but whether or not she was a good journalist. A good journalist, contended Dr Zikalala, would never have made such a serious error. While that may be true (a matter upon which we do not pass judgment), it is a substantially different reason for not using Ms Brown as an analyst. Ms Brown in her evidence before the Commission did not seek to make excuses for the error that had occurred. She unequivocally acknowledged the mistake. Taken as a separate reason for excluding her, this rationale (the

quality of her journalism) may have a degree of legitimacy. However, her employer has continued to retain her services, despite the erroneous report.

5.16. Once Dr Zikalala's primary reason for excluding Ms Brown as a commentator is advanced, namely, that she purveyed untruths, it ought axiomatically to follow (for all the reasons given by Dr Zikalala) that she should not be used for any purpose at all. As Dr Zikalala put it, "**our credibility is of primary importance**". This, however, was not consistently Dr Zikalala's stance. He went on to tell the Commission that he was prepared to permit Ms Brown to be used in relation to articles that she had written. In other words, should she write an article of interest, there would be no objection to her use in regard to discussion of such an article. Her use in this capacity does not square with his earlier objection to her involvement in the *Business Day* story and the need for the SABC to ensure its own credibility.

5.17. The issue, however goes further. Another justification advanced by Dr Zikalala, but not confined to Ms Brown exclusively, was that he did not favour the use of journalists and editors "**from competitor publications to comment on current affairs issues**". This was because the SABC and newspapers such as *The Star* or *Business Day* were competing for audiences. The same concern appears later in the draft policy elaboration prepared by Mr Welch (and not approved by the Board at the time of the exclusion of Ms

Brown). We are extremely sceptical of this notion, which appears to have no international precedent for a public broadcaster whose rationale is, anyway, not that of competitor to private media in general, let alone the print media. Even if it were to be accepted, however, it would be a basis for not using journalists at all. That, however, was not Dr Zikalala's standpoint. On the contrary, he was content to use Ms Brown in relation to articles that she had written.

5.18. Dr Zikalala's attitude to the use of Ms Brown was conveyed to the head of news Mr Phetoe who in turn conveyed it to Mr Steven Lang, the executive producer of AM Live. It was Mr Lang's task to convey it to the AM Live team, including the presenter, Mr Perlman. For Mr Lang, whether Ms Brown was discredited or not was "**an open question**" on which he could not comment. He personally did not have a problem using Ms Brown. Indeed she was often used under Mr Lang's tenure as executive producer. Most significantly, however, Mr Lang was "**never satisfied**" with the explanation given to him by Mr Phetoe.

5.19. Mr Lang, unlike Dr Zikalala, was alive to the distinction between a mistake and a lie. He was prepared to assume that Ms Brown had made a mistake in relation to the article in question. Accordingly, Mr Lang was "**very uncomfortable**" about the exclusion of Ms Brown. His discomfort flowed from the fact that as political editor of Business Day, Ms Brown was someone with

“standing in our society and someone who is entitled to make political comment”.

5.20. Mr Phetoe, in his evidence, stated that he had a discussion with Dr Zikalala about the fact that Ms Brown had reported an **“incorrect story”**. When she was scheduled to be used shortly thereafter, Mr Phetoe had a problem with a person who **“had just made a terrible mistake”**. While he recognised that Ms Brown had probably made a mistake, he considered that **“her credibility was at issue.”**

5.21. For the sake of completeness, we deal with the position of Vukani Mde, the co-author, with Ms Brown, of the controversial article. Dr Zikalala did not believe that Mr Mde could have played any significant role in writing the article. This was because he was a junior journalist. There was no evidence to suggest that any instruction had been given not to use him as a commentator or analyst.

5.22. Our conclusion on the allegations concerning the exclusion of Ms Brown are as follows:

5.22.1. An instruction was given by Dr Zikalala that she should not be used as an analyst, although she could be used in relation to articles that she had written.

5.22.2. Dr Zikalala's justifications for her partial exclusion do not withstand critical scrutiny. This is compounded by the fact that they are inconsistent.

Aubrey Matshiqi

5.23. Until recently Mr Matshiqi was an independent political analyst. He is now a senior associate political analyst at the Centre for Policy Studies. He has been frequently used as an analyst by local and international media, government, political parties, policy institutes, academic institutions, foreign embassies and the corporate sector. He writes regularly for a variety of publications. He has a long history of political involvement in the United Democratic Front, the ANC and other political organisations. Dr Zikalala advanced two reasons for not using Mr Matshiqi as a commentator or analyst:

5.23.1. First, for the period that Mr Matshiqi was not attached to a research institute, Dr Zikalala said one should be careful about using him because he **“does not have research capacity, absolutely doesn't”**.

5.23.2. Second, Dr Zikalala refused to allow Mr Matshiqi to be used in relation to the debate on the succession within the ANC by virtue of a statement attributed to Mr Matshiqi which Dr Zikalala interpreted as constituting incitement to violence.

5.24. As will appear more fully below, other reasons for not using Mr Matshiqi emerged during the course of evidence. Mr Lang was told by Mr Phetoe that Mr Matshiqi was being used too frequently. In addition he had written an article in the *Sowetan* in which (on Mr Lang's recollection) Mr Phetoe understood Mr Matshiqi as saying "**something about if the country goes on the current path ... there could be a revolution**". According to Mr Lang, this was interpreted by Mr Phetoe as Mr Matshiqi "**inciting revolution or saying there is a revolution or using scare tactics, something along those lines.**" In his evidence before the Commission, Mr Phetoe stated that the concern was that Mr Matshiqi had written an article claiming "**that the country would be facing a civil war very soon**". It was also mentioned by Mr Phetoe that Mr Matshiqi did not belong to a particular institution. Mr Lang stated that he was not "**at all happy with these reasons**" save for the question of the frequency of use. As far as affiliation to an academic institution was concerned, Mr Lang did not think that this criterion was consistently applied nor did he regard it as an issue of overriding importance.

5.25. As to the question of affiliation to an academic institution, Dr Zikalala simply assumed that this meant the absence of access to research facilities. In Mr Matshiqi's case this was not correct. Prior to joining the Centre for Policy Studies, Mr Matshiqi had wide access to research facilities. Apart from this, however, the Commission was referred to examples of the inconsistent use of

this criterion. Other analysts, not affiliated to any particular research institution, were apparently used as commentators or analysts, without objection. The names of Dr Somadoda Fikeni and Mr Protas Madlala were mentioned in this regard.

5.26. The allegation that Mr Matshiqi had expressed himself in a manner which fanned violence requires elaboration. We deal below with what occurred. For present purposes, however, it is important to stress that Dr Zikalala apparently feared the impact of what Mr Matshiqi might say. His concern was how such comments would influence people, especially “illiterate” people in Kwa-Zulu Natal.

5.27. The article to which Dr Zikalala refers was published in the *Sowetan* on 24 October 2005 under the headline “**CIVIL WAR WARNING**”. In relation to the conflict between Jacob Zuma and President Mbeki the article states that Mr Matshiqi warned “**if the current volatile situation continues, conditions for a civil war become fertile**”. A week later, however, and on 1 November 2005, Mr Matshiqi wrote his own article in the *Sowetan* clarifying what he said. The relevant part of this article stated:

“I argued that if we were in a country that was not as democratic and open as South Africa, I would say that the current conditions surrounding the Jacob Zuma crisis constituted circumstances – in their embryonic stage – that would lead to a coup or civil war.

I added that we were fortunate our country is an open democracy, but warned, as reported in Sowetan on

October 24, that ‘if the current volatile situation continues conditions for a civil war (may) become fertile’.

The last part of my argument was – I assume for reasons of limited space – the portion that was quoted prominently in the article.”

5.28. Later in the same article, Mr Matshiqi elaborated:

“First, the difference between a prediction and a warning should be obvious. I am not predicting a civil war but warning that in the absence of effective political management the situation may spiral out of control creating conditions which may indeed take the form of a civil war.”

5.29. Significantly, Mr Matshiqi’s article in the *Sowetan* was itself a response to criticism that his original (reported) comments had elicited. A reasonable reading of Mr Matshiqi’s own article does not, objectively viewed, amount to an incitement to violence. More importantly, however, is the fact that the day after Mr Matshiqi had been quoted in the *Sowetan*, he was interviewed on several radio stations including the SABC and other independent stations. Dr Zikalala was obviously not aware of this. The issues raised by Mr Matshiqi were publicly ventilated on one of the SABC’s own stations. The dire consequences that Mr Zikalala feared among the allegedly illiterate populous in Kwa-Zulu Natal were never realised. This is not a question of being wise after the event. We do not accept that there was a reasonable basis for the fear in the first place. But even if we are wrong on this score, it would not have constituted an acceptable reason on its own to

exclude Mr Matshiqi for commenting on the succession debate. If his views were considered extreme or alarmist, they could have been counter-balanced by opposing views or even by skilful elucidation by the presenter.

- 5.30. A further incident concerning Mr Matshiqi requires special mention. He had been invited to provide comment and analysis on the judgment in the criminal prosecution of Schabir Shaik. That judgment was broadcast over three consecutive days by the SABC. Without remuneration being provided, Mr Matshiqi was invited to provide comment and analysis. In the judgment, it will be recalled, Mr Justice Squires found that there was a “**generally corrupt relationship**” between Mr Shaik and Mr Zuma. This finding dominated debate throughout the country at the time and has continued to do so. The profound implications of initially not charging Mr Zuma and thereafter a judicial finding that he was party to a corrupt relationship continued to reverberate within the body politic. Mr Matshiqi considered that the finding by Mr Justice Squires meant that Mr Zuma ought to be charged. Dr Zikalala found this quite inappropriate:

“... the day when judgment was passed on Schabir Shaik, Aubrey Matshiqi said on air, now it’s time for Zuma to be prosecuted on this issue. I sent a note. I said the Schabir Shaik thing is not about Zuma. Aubrey Matshiqi must not bring the Zuma name in here because it’s the prosecutors who will decide whether they prosecute Zuma or not. You don’t have to bring in Zuma in here. Concentrate on the issue of Schabir Shaik, don’t tell the public now that’s over with Schabir Shaik, now we will see what happens to

Zuma. Now you're already building an opinion to ordinary people."

- 5.31. What transpired is a matter of dispute. Mr Matshiqi informed us that he was literally taken off air and told not to return to the studio after this comment had been made. Dr Zikalala denied giving an instruction for Mr Matshiqi to be taken off air. What is clear, however, is that Mr Matshiqi did not return to the studio.
- 5.32. We find Dr Zikalala's intervention on this issue to be in conflict with the editorial policy requiring provision of a "full spectrum of opinion". It was a direct interference with the expression, not simply of a point of view, but one which has dominated political discourse in our country. Such intervention, whether or not it resulted in Mr Matshiqi being taken off air, is simply not objectively defensible.

William Gumede

- 5.33. Mr Gumede is the author of a biography on President Mbeki entitled "*President Mbeki and the Battle for the Soul of the ANC*". Mr Gumede has a long history in journalism having written for several newspapers and acted as deputy editor of the *Sowetan* and senior editor at the *Financial Mail*. He has won several awards for journalism. He is a visiting research fellow at the Graduate School of Public and Development Management at the University of the Witwatersrand.

5.34. With regard to the use of Mr Gumede as an analyst, Dr Zikalala stated that he had never given an instruction that he should not be used. However, Mr Gumede was discussed on line-conference during which Dr Zikalala said the following:

“I never said don’t use William Gumede. I said to, I think to one editor, I said I have a problem with William Gumede. I have not read his book because his book is based on sources. Everything sources say, sources that, no, that’s not journalism. Now I said to them look, you can use them but at your own risk but the man, the book itself is based on sources. And for that information, I was about to employ William Gumede as one of my column editors. But immediately when he wrote the book – about sources, I said this man is not reliable because he does not mention (his) sources. In journalism if you have sources, I as an editor must know that those sources exist, they don’t exist in your head.”

5.35. We are constrained to observe that for a person in Dr Zikalala’s position to pronounce so emphatically without having read the book in question, is remarkable. Had he read the book, it would have been apparent that while use is made of undisclosed sources, it is also properly referenced so that the reader is able to determine at least those sources which are disclosed. In the preface to the book, Mr Gumede explains why he relied on undisclosed sources:

“Many of my sources agreed to be interviewed on condition of total anonymity, while others were willing to talk provided that I did not attribute certain comments to them. I have honoured their wishes, because the information and insight they provided was invaluable and would otherwise not have seen the light of day.”

This amounts to fairly standard journalistic practice, where a mixture of named and anonymous sources may be used to make a case. The use of anonymous sources *per se* is not enough to discredit a journalist. The SABC's own Code of Conduct recognises the protection of a journalist's sources as an incidence of journalistic freedom.

- 5.36. We stress that we express no opinion on Mr Gumede's expertise. We are not qualified to do so. We state unequivocally, however, that the judgment passed on Mr Gumede by Dr Zikalala was unfair. While on the evidence it may be true that no instruction was given not to use Mr Gumede, it is inevitable that when views of this sort are expressed by a man in Dr Zikalala's position, they would be understood and interpreted as amounting to an instruction. This pattern appears to have developed in other instances. We are aware of a controversy concerning allegations of plagiarism against Mr Gumede. However, this issue was never mentioned by any witness in regard to Mr Gumede's use as a commentator or analyst.

Paula Slier

- 5.37. Paula Slier is a freelance correspondent who, at one stage, was based in the Middle East. The SABC had a contract with her. She is a former award-winning SABC journalist. At the time of Yasser Arafat's grave illness, she happened to be in Ramallah.

There was uncertainty as to Mr Arafat's state of health. He was hospitalised in Paris where certain medical reports were being released but it was uncertain, at least for a while, whether he was alive or dead. Ms Slier had been filing reports from Ramallah concerning the state of Mr Arafat's health. The then head of news, Ms Philippa Green, received a direct instruction from Dr Zikalala not to use Paula Slier. So emphatic was this instruction that a note was placed on the system to the following effect:

“URGENT NOTE: ALL DESKS

The MD of News, Dr Snuki Zikalala has directed that NO MATERIAL OR STORY SUPPLIED BY JOURNALIST PAULA SLIER should be used by SABC news desks until further notice. Dr Zikalala says this instruction applies to all units of SABC news.”

- 5.38. Dr Zikalala elaborated about his giving an instruction not to use Paula Slier. It is important that his justification be quoted *verbatim*:

“Paula Slier, I’ll give you an example. Paula Slier, why I said we should not use Paula Slier. What happened is that during the time of when Arafat passed away, when Arafat passed away Paula Slier used to work for us as a journalist and Paula Slier was much more biased towards what’s happening in Israel. It was a Jewish war and especially the Middle East. We knew exactly her bias because she once wrote an article justifying the separation of the Palestinians, which was very, very negative towards us. From the movement where I come from we support PLO. But she supported what’s happening in Israel. And then I said to them Paula Slier we cannot use her on the Middle East issue because we know where she stands. We need somebody who’s impartial. We do have a correspondent there, I said lets use the correspondent ... that person is impartial, does not take sides. Paula Slier on the Middle

East issue we can bring in all the tapes that she's written, she takes sides. I've got that editorial responsibility to do that. That's why I'm employed, to do checks and balance. I said no, you can't you can't undermine the Palestinian struggle, you can't. for me it's a principle issue."

5.39. We leave aside the question of whether or not Ms Slier had taken sides in the manner suggested by Dr Zikalala. Even if she had, and we have no evidence to support this, the circumstances concerning Mr Arafat's state of health was not an issue which impacted upon Ms Slier's opinions, if any, concerning the Middle East conflict. Most importantly, however, was that the instruction was motivated by a political position adopted by Dr Zikalala which has no place whatsoever in a public broadcaster. For Dr Zikalala, it was a question of support for the PLO which, from the perspective of his "movement" was a matter of principle.

5.40. We find that a direct instruction was given by Dr Zikalala not to use Paula Slier (for news reporting at least) for improper reasons. It was in direct conflict with the SABC's policies and Code.

Sipho Seepe

5.41. Sipho Seepe is the Academic Director of Henley Management College. He was previously Deputy Vice Chancellor of Vista University. He has written widely on social and political issues.

5.42. Dr Zikalala stated that he had not given an instruction that Sipho Seepe should not be used as an analyst or commentator.

However, the use of Siphon Seepe was discussed on the line-conference. Dr Zikalala stated on line-conference that a range of newspapers had stopped using Siphon Seepe completely. *Business Day* and *the Star*, according to Dr Zikalala “**will never use Siphon Seepe**”. Dr Zikalala considered Siphon Seepe to be “**very controversial**”. If he was going to be used, it was necessary to bring in somebody else. Mr Phetoe explained his understanding of why Dr Zikalala regarded Mr Seepe as controversial. Mr Phetoe stated that Dr Zikalala’s concern was that Mr Seepe had a disrespect for the Government and a disrespect for the President in particular. When Dr Zikalala was recalled and this was put to him, it was not denied. He considered Mr Seepe’s articles as “**not articles that were building this nation but articles that were undermining the President**”. Dr Zikalala said that his concern, therefore, was to ensure that there was a countervailing view where Mr Seepe was used.

5.43. Although not couched in the form of an instruction, it is important to appreciate the impact of an opinion expressed by Dr Zikalala on his subordinates. They would not lightly challenge this view and would probably interpret it as tantamount to an instruction not to use Mr Seepe.

5.44. We are also profoundly concerned that this attitude to Mr Seepe should be conveyed because of his apparent disrespect for the Government and the President in particular. It is not the role of

the SABC to represent the Government or to improperly shield the Government from criticism.

Moeletsi Mbeki, Elinor Sisulu and Trevor Ncube

- 5.45. There was direct evidence that Dr Zikalala had given an instruction not to use Moeletsi Mbeki and Elinor Sisulu as analysts in relation to the crisis in Zimbabwe. This was confirmed by Dr Zikalala. His reason was that he considered both individuals to be out of touch with developments in Zimbabwe because they did not live there. He accordingly had issued an instruction requiring Zimbabwean based analysts who had first-hand experience of developments within the country to be utilised.
- 5.46. It is important that this issue be contextualised. The circumstances giving rise to the instruction are recorded in a letter dated 6 April 2005 from Ms Green, then head of radio news, to Dr Zikalala. We reproduce the letter in full:

“Dear Snuki

I was extremely perturbed by events on yesterday’s Radio News line talk.

I began by congratulating the Radio News team for covering the elections, and doing the establishing stories about Zimbabwe in a fair, balanced and in-depth way. Although you agreed, you quickly added statements that among other things:

- 1 Threatened to take action against myself and the National Bulletin Editor, Vusi Sithole for any ‘opinion’ that is reported on Zimbabwe. This is unclear. I’m not sure what it means, because in**

fact our reporters have not expressed opinion. They have behaved as journalists throughout and brought pride to the SABC. If your intention was to humiliate me in front of my whole staff for having done nothing wrong, then I take exception to this. Perhaps your intention was to intimidate the staff into confusion about what they are and are not allowed to report on Zimbabwe. This may indeed have worked given the queries I have had on what can be reported on Zimbabwe.

- 2 You expressly forbade the views of members of civil society on the situation in Zimbabwe, naming two specific individuals: Elinor Sisulu and Moeletsi Mbeki. Elinor Sisulu is an active member of civil society both here and in Zimbabwe. She is married to a South African, and so lives here. She is also an important writer in South Africa. All of these factors make her voice on various matters, including Zimbabwe, a valuable one. As for Mr Mbeki, he is a former journalist and now businessman who also happens to be head of the SA Institute of International Affairs. As such, his voice on Zimbabwe is also a legitimate insight into matters there, just as pro-Zimbabwe government sentiments expressed in South Africa are a legitimate voice.
- 3 You also informed our line talk that you had excised the voices of Zimbabwean Archbishop Pius Ncube and publisher Trevor Ncube from a TV report on Zimbabwe, and said that you held the same views about their voices on radio. I cannot see how we can fulfil our public broadcasting mandate and agree to this. Archbishop Ncube, whatever we may think of his view, is the head of the Catholic Church in Zimbabwe. The recent death of the Pope has shown the extent of the Catholic following around the world. There is no doubt that the Archbishop represents an important constituency not only in Zimbabwe, but also in the region. Barring his views on the situation in his own country would then be equivalent to barring the views of Archbishop Desmond Tutu on social and political matters here.
- 4 Our own editorial code and the goals that we in the news division set ourselves was to promote the voices of civil society in our news and current affairs programmes.

- 5 I have consistently stressed the importance of balance, of allowing people the right to express themselves and allowing people the right to reply on the public broadcaster. I have also stressed to our journalists the importance of establishing the truth when people make claims, as indeed has happened and will happen in Zimbabwe and in other places. My public record shows that I have not erred in this quest, either in our own elections, in any other SADC election or indeed in most other stories we cover. I have always asked our reports to follow up on an allegation as indeed was the case in Zimbabwe, and for our editors to check the facts. At the same time I have tried not to suppress the voices of those who feel aggrieved by a situation. That is precisely why no BCCSA cases were upheld against Radio News last year and why we received widespread accolades for our coverage of the SA elections.
- 6 I object to the inference that I am anything less than professional and dedicated to the editorial code of the public broadcaster in my work, and I object especially to your threatening ‘action’ against me in front of my staff on no basis.

In conclusion if your instruction was not to use Moeletsi Mbeki, Archbishop Pius Ncube, Trevor Ncube or Elinor Sisulu, all legitimate public figures, then I submit that it is so unreasonable to be unimplementable. It would be morally wrong, professionally wrong, and ethically wrong, and violate not only our editorial code but the spirit of our Constitution.

I would be grateful if you could clarify this.

Thank you for your attention.

Sincerely
Pippa Green
Head of Radio News”

- 5.47. This letter elicited a one sentence reply from Dr Zikalala the same day:

“I don’t think that I will have the time and energy to be involved in such arguments.”

When asked why he had not responded fully to this letter, Dr Zikalala said:

“Why should I waste my time to sit down and respond to each and every sentence to what she said? She knew what my views were and I sat with her and discussed them and debated them and what else must I do. So I said why should I get involved in this matter.”

5.48. We place considerable reliance upon Ms Green’s letter. It was a contemporaneous record of what had transpired. It was written at a time when it could never have been anticipated that its use would be the subject of a commission of enquiry. The issues raised in Ms Green’s letter were of fundamental import. They recorded an instruction not to use particular commentators for reasons which were described as professionally and ethically wrong. Dr Zikalala did not attempt to contest the underlying facts in Mr. Green’s letter.

5.49. Both Mr. Mbeki and Ms Sisulu appeared before the Commission. Contrary to Dr Zikalala’s impression that they were out of touch, both struck us as having deep roots and connections within Zimbabwe. This is especially true of Ms Sisulu. She was brought up and educated in Zimbabwe. She worked, for a time, for the Zimbabwean Government. Her family still resides in Zimbabwe. She visits Zimbabwe five to six times a year. Most importantly, however, she is the Director of the Crisis in Zimbabwe Coalition,

an organisation which draws together approximately 250 Zimbabwean NGO's including women's organisations, youth groups, the Zimbabwe Congress of Trade Unions, media and human rights institutions. It is a vast resource of information on Zimbabwe. Ms Sisulu and members of the Coalition are regularly used by the international media to provide analysis and comment on the situation in Zimbabwe.

5.50. Mr Mbeki has substantial business interests on the African continent. He is also a political analyst having been rated as one of the top analysts in South Africa by the *Financial Mail*. He is the Deputy Chairperson of the South African Institute of International Affairs based at the University of the Witwatersrand. The Institute has contact with the major parties in Zimbabwe. Mr Mbeki himself talks to Zanu PF and the MDC "**quite regularly**".

5.51. Dr Zikalala informed us that he had told Trevor Ncube personally that he could not be used on the SABC. The reasons were as follows:

"I had lunch with him, I said Trevor Ncube, every Friday in his newspaper he smashes Zimbabwe, every Friday. So why should I give him a platform on my broadcast? Because he's got an opportunity in his newspaper. Let's get another voice inside Zimbabwe. I said let's get a different voice, not a Mail and Guardian voice ... I said Trevor ... you should not be used because number one, every Friday, you smash Zimbabwe. Now you take that information and give it to our people and your information is biased, it's biased and it's not balanced."

- 5.52. We express no view on whether Mr Ncube is biased as alleged by Dr Zikalala. Even if he is, this in itself ought not to operate as an absolute disqualification for use as an analyst or commentator. His views can be appropriately interrogated or countered by others. The fact that Mr Ncube is able to express his views in the *Mail and Guardian* is certainly not in itself sufficient reason to exclude him from the public broadcaster, which has a different reach and responsibility.
- 5.53. We find that there was an instruction given not to use Mr Mbeki and Ms Sisulu for reasons which are not objectively defensible. We also find that Mr Ncube was directly informed by Dr Zikalala that he could not be used for reasons which are not justifiable.

Conclusions on the evidence of exclusion

- 5.54. It is clear from the evidence that there are a number of instances in which instructions were given either not to use a particular analyst or commentator at all or to use a particular analyst for limited purposes only. In other instances, strong views were expressed about certain analysts which would reasonably be interpreted as tantamount to an instruction. In the instances detailed above, we do not regard the reasons for such exclusion as being objectively defensible.
- 5.55. In the course of evidence, we were presented with the names of other analysts allegedly the subject of exclusion. The evidence in

this regard was disputed. In light of the fact that there are clear instances where such exclusions in fact took place, it is not necessary to debate other instances where the evidence is inconclusive.

5.56. Our findings should not be seen in isolation. Several witnesses referred to the phenomenon of self-censorship. The view was expressed that the prevailing climate resulted in decisions being taken to avoid the censure, real or perceived, of Dr Zikalala. We do not find these views exaggerated or implausible. It is a matter of serious concern that several witnesses only gave their evidence to the Commission on conditions of anonymity because they feared the repercussions should the fact of their testifying become known. An environment which induces fear is the antithesis of what a public broadcaster should be.

5.57. High among the concerns about a “blacklist” is whether there is a systematic exclusion of individuals as expert commentators on the unacceptable basis that they are critics of government policy or the President in one respect or another. We could not establish this as a definitively consistent pattern, at least as regards those individuals whom Dr Zikalala had no problem in acknowledging were excluded (in one form or another) as experts, and whose cases are discussed in this report.

- 5.58. It is therefore not possible to conclude, as some observers seem to suspect, that the reasons advanced by Dr Zikalala have been merely pretexts for a deeper and undue pro-government leaning on his part. Likewise, it is not possible to discern any trend such as the individuals' stance on the succession debate, or some other political issue. The decisions in question, while undoubtedly politically motivated in some instances, defied classification into a coherent political trend.
- 5.59. On the other hand, what does emerge is undoubtedly a worryingly narrow view of the range of permissible perspectives and qualities of what defines an individual as being approachable for comment and analysis. In turn, this situation restricts the range of views available to South Africans who depend on the SABC to provide them with the information upon which they make their democratic choices.
- 5.60. A wider view on the part of Dr Zikalala, at least in the cases of the individuals assessed in this report, would accord much better with SABC's mandate and policies. It would go a long way towards assisting the broadcaster to serve as a forum for the diversity of views in the country, including a forum for individuals who, to greater or lesser degrees, have something to add to the content of current affairs programming, and the vibrant contestation of ideas and analyses in our democracy.

6. THE ACCURACY OF THE MEDIA STATEMENT OF 20 JUNE 2006

6.1. In light of our findings, it becomes necessary to consider the accuracy of the media statement of 20 June 2006 in which it was denied that there had been any blanket ban on the use of individual commentators. It is important that the genesis of the media statement be properly understood. It was a direct response to the article which appeared in the *Sowetan* on 20 June 2006. That article had made a very specific allegation that four named individuals, Karima Brown, Vukani Mde, Aubrey Matshiqi and William Gumede had been blacklisted. One would have thought that any response from the SABC would have dealt with the position of these four individuals.

6.2. Although the media statement was put out in the name of Mr Kaizer Kganyago in his capacity as the spokesperson for the SABC, he had no personal knowledge of the facts contained in this statement. Indeed, he had only been with the SABC for two months. It appears that the statement was drafted by Mr Kganyago with assistance from others. The statement was certainly shown to Dr Zikalala before it was published. He gave the statement his approval. It was also discussed with Mr Mpofu. He, however, had no personal knowledge of the facts. In the result, the statement went out having been approved by Dr

Zikalala as the only person with personal knowledge of the underlying facts.

- 6.3. It is significant that prior to the release of the statement, Vuyo Mtembu, of the Communications Department sent an e-mail to Mr Welch which was copied, *inter alia*, to Dr Zikalala that stated:

“Thanks for the document on news rationale for choosing analysts for current affairs shows. However we need to respond in the negative or affirmative to whether these analysts (Aubrey Matshiqi, Karima Brown, William Gumede and Vukani Mde) as reported in today’s Sowetan have been ‘banned’ by news and if so what was the reason behind these specific individuals being ‘banned’”

- 6.4. The request for specific information as expressed by Ms Mtembu was self-evident. Yet the media release made no mention of the four individuals allegedly subject to blacklisting. The matter came to a head when Mr Kganyago was interviewed by Mr Perlman. Mr Perlman who had direct experience of being instructed not to use Karima Brown and Aubrey Matshiqi was confronted with an ethical dilemma. He was presented with an official statement by the SABC which he knew, from personal experience, to be untrue. He had to decide whether to perpetuate that untruth or to confront it. He chose the latter. In light of the evidence which has been produced before this Commission, we cannot fault him for doing so.

6.5. Dr Zikalala was questioned on the contents of the media statement. It was put to him that it was misleading by omission. It was suggested that had the media statement squarely admitted that instructions (or intimations) had been given concerning the four analysts and the reasons therefor, this Commission of Enquiry would have been unnecessary. Dr Zikalala disagreed:

“It’s not true that we banned people. We said they cannot be used on these issues.”

He went on to state:

“No, it’s not misleading because it says clearly here that we have not imposed any bans on the use of individual commentators, they’ve not imposed any bans. I was banned for five years, I know what banning is. I was detained and banned for five years. I was not to go to church, not to go to school, not to be in a gathering where there are five people. There was a banning order which was brought to me. That’s what’s called banning. ... Banning means this person cannot be used. But here I’m saying that Karima Brown cannot be used as an analyst. She is not an analyst. But she can be used on the stories that she’s written.”

6.6. We are unconvinced by this stance. Ms Mtembu clearly recognised the need for a response on the four named individuals and the public was entitled to an explanation consistent with the SABC’s own editorial principles of honesty, openness and transparency. The media statement avoided the issue. Indeed the matter was obfuscated by reference to the discussion document. If there were objectively defensible reasons for excluding

particular analysts or commentators, that is not something that the SABC ought to be ashamed of. On the contrary, it has a declared policy on the use of analysts and it is entitled to enforce that policy. What it cannot do, however, is exclude people for impermissible reasons. We find that is precisely what occurred.

7. FINDINGS ON THE FIRST ISSUE

- 7.1. Paragraph 1.1 of our terms of reference requires us to ascertain the existence or non-existence of guidelines in respect of the utilisation of independent political analysts, commentators or experts and whether such guidelines are operational. On this issue, the SABC has a broader officially approved policy on the use of guests, analysts and specialist commentators. We further find that an additional set of detailed guidelines was drafted by Mr Welch concerning the use of commentators, experts and analysts. This document appeared to be a retrospectively generated initiative, formalising what up to then had been ad hoc, fragmented and inconsistent practices. However, these guidelines – and any parallel or preceding practices that accord with them – have no official approved status unless and until they are accepted by the Board which would be the judge of whether they accord with extant mandate and editorial policy. We find that practices that came to be present in general form in the unapproved guidelines were utilised to exclude certain persons as commentators or analysts. The guidelines themselves were not

formally operational at the time of the alleged “blacklisting” incidents.

7.2. Paragraph 1.2 of the terms of reference requires us to determine whether these guidelines amounted to undue blacklisting or banning of analysts. As indicated, the guidelines post-date the alleged undue exclusions. Thus, the focus is on the manner of prior decision making, more fully described above, much of which was later crystallised in the guidelines. The “blacklisting” actions have undoubtedly resulted in a form of exclusion that is not sustainable. The precise terminology should not cloud the issue. The underlying problem is the exclusion of particular individuals, either entirely or for particular purposes, for reasons which are not objectively defensible. Whether one uses the label “blacklisting” or “banning” is beside the point. The extent to which the guidelines (drafted after the event) conform with existing editorial policy, particularly the requirement of a “full spectrum” of views is potentially problematic inasmuch as they invoke the same justifications as the practices. Thus the references in the guidelines to excluding “rival” media and unaffiliated experts, involves a troubling narrowing of the spectrum of opinion.

7.3. Paragraph 1.3 of the terms of reference focuses on the events which occurred on AM Live on 21 June 2006. It was on that programme that Mr Kaizer Kganyago presented the official SABC

media statement and was contradicted on air by Mr Perlman. We have found that the SABC media statement did not accurately reflect the position or provide reasons that would justify the exercise of SABC power in this regard. We have found that several persons were improperly excluded as commentators or analysts. Mr Perlman's position, therefore, was in conformity with the factual situation.

8. THE MORALE WITHIN THE NEWS AND CURRENT AFFAIRS DIVISION

8.1. The terms of reference for this part of the enquiry are inexact. The level of morale is inevitably subjective and will be based upon the individual's peculiar experiences. Our impressions are based upon the evidence we heard and should not be understood to be sweeping generalisations representing trends across the SABC as a whole. This important proviso notwithstanding, what we did uncover does merit management and Board attention.

8.2. We have already commented on the fact that several witnesses testified only on conditions of anonymity. This, in itself, is a disturbing phenomenon. It suggests an atmosphere of fear and distrust which is scarcely conducive to the kind of open and rational debate expected with a public broadcaster. By contrast, there were other witnesses who expressed surprise at the suggestion that morale might be low within the newsroom. An

issue of this sort, however, is not determined by a counting of heads. One unnecessarily dissatisfied employee is one too many and we certainly encountered many more than one. There was certainly sufficient evidence for us to conclude that the fears of victimisation expressed by the witnesses concerned were not exaggerated or implausible.

- 8.3. The manner in which certain commentators or analysts were excluded, as described above, is itself cause for concern. The circumstances in which this occurred are suggestive of a distrust within the news and current affairs hierarchy for those beneath them who are responsible for editorial decisions. Where editorial autonomy at lower levels is compromised for reasons which are not objectively defensible, the working environment is compromised.
- 8.4. In particular, Dr Zikalala appears to intervene at a micro-level inappropriate to his level of management. This goes against the standards of the World Radio and Television Council which states that **“the first way of ensuring that public broadcasting has enough autonomy is to distinguish, in its administrative structure, between two levels of management: day-to-day business, on the one hand, and general policies and long-term decisions, on the other hand”**. Dr Zikalala appears to have intervened in day-to-day business, plus in a seemingly ad hoc and inconsistent manner, and then belatedly attempted (via Mr Welch)

to develop policy guidelines in regard to these practices. The effect of this management style is that rather than voluntary (and presumably occasional) “upward referral” as outlined in the editorial policies, there is a downward micro-management which can only impact negatively on morale, initiative and an appropriate sense of ownership by executive producers, producers and presenters. The top-down development of the subsequent guidelines is likely to reinforce this situation, and the management style in general is likely to be a factor in staff turnover, and particularly those witnesses who said they felt undermined in terms of their responsibilities and degree of authority in regard to their jobs. This pattern runs against the observation by the Office of the Auditor General (OAG) in reviewing the Canadian Broadcasting Corporation in 2000. **”Positive culture and continuous improvement depend on staff involvement and commitment”**. The OAG noted that some CBC employees **“cited a lack of trust of employees on the part of management, coupled with a top-down approach to management”**. These issues are clearly also central to the issue of morale in the SABC newsroom.

- 8.5. Questions have been raised concerning whether or not the exclusions were politically motivated. The intimation (as interpreted by Mr Phetoe) regarding Siphon Seepe (alleged disrespect for the government and the President in particular) and the outright exclusion of Paula Slier (alleged support for Israel)

suggest that those decisions, at least, were politically driven. Irrespective of the reasons for exclusion, it does not appear to us that the newsroom provides an environment in which people can safely articulate their views without fear of repercussion. We were told that the effect on some employees is to keep their heads down and avoid any innovative thinking that could attract opprobrium from above.

- 8.6. One incident in particular had disturbing connotations. Jacques Pauw, the executive producer of Special Assignment told the Commission of an incident that occurred in July 2005. Dr Zikalala had requested a copy of the Special Assignment programme due to be broadcast on the evening of 19 July 2005. The programme dealt with security at Johannesburg International Airport. It transpired that the programme in question had been shown to three people from the office of the Presidency. Mr Pauw requested a meeting with Dr Zikalala because he regarded the showing of the tape to outsiders, prior to broadcast, as a serious breach of editorial independence. Moreover, Mr Pauw was not consulted or informed that any request for a pre-screening had been made. When he met with Dr Zikalala two days later, Dr Zikalala refused to confirm or deny that the documentary had been shown to members of the Presidency. His primary concern was to accuse Mr Pauw of spying on him (by obtaining the names of his visitors) and threatening to institute a disciplinary hearing against him.

- 8.7. Dr Zikalala did not dispute that the documentary had in fact been shown to members of the Presidency. Nor did he dispute that this had occurred without prior consultation with Mr Pauw. It is quite clear to us that Dr Zikalala was more concerned at what he perceived to be improper spying on him by Mr Pauw than the underlying issue. In the result, the documentary was screened with alteration. This incident suggests that Dr Zikalala was prepared to entertain outside interference even if, in the result, no such interference in fact occurred. Although he explained to the Commission that he would not countenance outside interference, this was never explained to Mr Pauw.
- 8.8. There were many other instances where editorial staff did not receive what they considered to be adequate responses to their requests for explanations for the exclusion of particular analysts or commentators. In some cases, this put them in the invidious position of having to explain to invited guests why the invitation was being cancelled. The apparent failure by Dr Zikalala, either personally or through his subordinates, to explain the decisions adequately in conformity with a culture of justification, is likely to have impacted negatively on morale.
- 8.9. The Commission was presented with a considerable amount of documentary evidence emanating from the Sea Point SABC news office. We took the view that the evidence, in the main, was beyond the terms of reference of our inquiry because it related to

employment issues. We accordingly did not hear oral evidence on these issues. Nevertheless, we feel it important to state that there appear to be serious problems at the Sea Point office which, if true, are concerned with issues of political partisanship. Although beyond our terms of reference, we strongly recommend to the GCEO that these issues be fully investigated.

8.10. There is, in our view, a serious problem regarding the manner in which decisions are communicated. In the various examples discussed, decisions were made by Dr Zikalala and channelled through the heads of news to the executive producers. In some cases, the executive producers were uncomfortable with those decisions. This is not surprising in light of our finding that they were not objectively defensible. The impression is created of management by command in which there is little room to contest controversial decisions.

8.11. As is to be expected, those who were concerned with the low level of morale had experience, direct or indirect, of having to execute decisions with which they disagreed or in relation to which they had received no adequate explanation. By contrast, we also heard evidence that Dr Zikalala is concerned to improve the quality of reporting and has taken active steps to do so, is passionate and committed and leads by example.

- 8.12. There has been a disproportionate focus in this enquiry on AM Live where the issues giving rise to our appointment seem to have crystallised. We have heard only limited evidence from other regions and cannot draw any conclusions relating thereto.
- 8.13. In summary, although we are hesitant to pronounce upon matter of morale generally, we are firmly of the view that the manner of decision making in the context of excluding particular analysts and commentators, is counter-productive and destructive of good morale.
- 8.14. Some employees felt that their own expertise was not being tapped in that outsiders were preferred over them to comment on current affairs issues. While we do not pass judgment on the available level of expertise within the SABC, we make the general observation that editorial staff could all benefit from additional or specialised training to develop the qualities required of expert analysts. This would encompass training in the subject matter as well as the genre of current affairs.
- 8.15. It is evident that while a measure of training has taken place at the University of the Witwatersrand, there does not appear to be a policy or strategy in place which could develop staff skills in a systematic and comprehensive way. We are of the view that there is a particular need to train presenters to conduct interviews with experts. We have already indicated that the focus of this enquiry

has been on AM Live. We stress, however, that there is a need for capacity building across the entire spectrum, and particularly, the African language programmes.

9. INTERNATIONAL BEST PRACTICE

Introduction

9.1. Most public Broadcasters – like the SABC – see themselves as reflecting all relevant views in their society. Thus, the Canadian Broadcasting Corporation (“CBC”) declares: **“The CBC would fail to live up to its mandate if, in the attempt to upset no one, to disturb no institution, it undertook to limit the comprehensiveness of its reporting of contemporary society”**. The CBC further holds in regard to “guest commentators” that **“the CBC’s concern is to ensure the presentation of a wide spectrum of opinion, particularly when the matter is sharply controversial...”**

9.2. The SABC’s current policy on the use of guests, analysts and specialist commentators is couched at the level of generality. It does not indicate how the selection of particular analysts is to be made nor does it elaborate on the diversity of situations in which analysts and experts might be utilised. With increasing problems concerning the use of analysts and questions being asked about why certain individuals had been excluded, Dr Zikalala instructed Mr Welch to draft guidelines based upon international experience.

It transpired, however, that Mr Welch did not have regard to any particular international standards.

- 9.3. International experiences need to be understood in their particular contexts rather than uncritically imported to the SABC. The examination of international experience is more a matter of abstracting deeper principles and systems which may have some national resonance rather than mechanistically imitating something that carries the label “best practice” but which may not be appropriate.
- 9.4. Most leading public broadcasters operate by policy and principle, which in turn requires that their staff must be fully conversant with current editorial policies. Following the Hutton Enquiry at the BBC, that broadcaster has now instituted a Journalists’ College. Employees are required to take online modules that test their knowledge of editorial policies. The onus is on staff to undergo this training and it is presumed that they have done so. In other words, ignorance of policy is not regarded as an excuse in the event of problems arising.
- 9.5. Expert commentators are most relevant in regard to news and current affairs programming. However, the Australian Broadcasting Corporation (“ABC”) recognises that besides specific news and current affairs programmes, other “factual programmes” such as sports and history are relevant to the issue.

Experts are seen to add credibility and authority to news stories going beyond the journalists who should be presenting a balanced picture of events and not influenced by their personal leanings. The role of the presenter, however, should not be underestimated. Presenters ought to have the knowledge and skill to interrogate experts in a meaningful manner in order to enhance the understanding of the story or event being commented upon, not least so that experts are not by default signalled to be infallible or without perspectives, but rather that multi-faceted perspectives can emerge over time and with diverse experts being properly interviewed.

Selection standards and disclosure

- 9.6. The broad standard for experts in some international cases is that there should be representativity, in recognition of a plurality of views, on a given issue.
- 9.7. Thus, the ABC Code of Practice (July 2004) states that there should be balance, through the presentation of the “principal relevant viewpoints” on matters of importance. This Code notes that requirements may not always be reached within a single programme or news bulletin, although the goal is to achieve this **“as soon as possible”**. ABC has a policy on the use of specialist commentators, requiring **“a range of views on significant issues over time, ensuring the broadcast and publication online of a**

diversity of perspectives. To achieve this programme makers should use a number of different commentators and analysts”.

- 9.8. For the BBC, this amounts to presenting an ongoing conversation which may well sometimes include, according to its editorial guidelines, **“people whose views may cause serious offence to many in our audiences”**. The Corporation adds: **“We must be convinced, after appropriate referral, that a clear public interest outweighs the possible offence”**.
- 9.9. The ABC Code says that a value is “fairness” which means that there should be balance and impartiality, and a wide range of perspectives, none being unduly favoured over others, and content that does not misrepresent viewpoints. However, it does go on to say that, as regards journalists, this part of the Code **“does not require them to be unquestioning, nor to give all sides of an issue the same amount of time”**. Further, it adds that “news values” and “news judgments” are a material consideration in reaching decisions.
- 9.10. In other words, the wider principle in these cases is a diversity of sources, including even “offensive” ones, although not presenting them in some kind of artificial parity.
- 9.11. Another dimension of selection concerns not just diversity, but also the degree of expertise. Experts may differ from non-experts in terms of their development, training, reasoning, knowledge,

social support, and innate talent. The challenge is to apply such distinctions in regard to assessing experts' knowledge and ability to perform within their domain of expertise. Once again, international practices in regard to expert knowledge demonstrate that substantial scrutiny should be at stake in regard to the credibility of commentators secured for current affairs programming. Like the SABC's existing policy, other public broadcasters stress the importance of disclosing any vested interests of "experts". Several go further, however. Senior staff at the BBC advise that presenters also need to disclose the background, affiliations and inclinations of an expert. Likewise with the ABC. The rationale is to contextualise, rather than disqualify, individuals – even if they are private (unaffiliated) consultants – who may feature as experts on particular programmes.

Editorial processes and authority

9.12. If there are guidelines for the use of experts, the question of accountability arises in regard to their use. This would seem to be part of general systems of responsibility and authority. According to the ABC, "**subject to normal editorial management and controls**", programme makers are responsible both for making the programme and for exercising editorial judgment. Like the SABC's Code, it says that "upward referral" should happen if there are problems or doubts. If this does not happen, the

producer is responsible for the editorial decision made (presumably as to whether the decision complies with, or contradicts, the policy guidelines).

9.13. A senior ABC official interviewed on behalf of the Commission stated that it is practice at that broadcaster that decision-making should be pushed down to the lowest appropriate level. Responsibility is therefore located at the level where decisions are made. The ABC says it requires programme makers and editorial managers to exercise professional judgment in applying editorial policies, appropriately – especially in those cases where the lines of demarcation are less clear-cut. It adds that it is appropriate to impose a test of reasonableness on the detailed application of editorial policies.

9.14. One additional area of accountability is in regard to pre-approval by senior levels of the editorial hierarchy. This arose in the “sexed up” dossier report by the BBC’s Andrew Gilligan in 2003, who accused the UK government of using exaggerated intelligence they knew to be untrue in order to hype the case for war in Iraq. The Hutton Inquiry (2003) said that the subject was of such importance and gravity, that the BBC should not have allowed the broadcast without seeing the script first and considering whether to approve it. The BBC’s own inquiry by Ronald Neil (2004) said that a proper process had been in place **“but was not then followed”**. It stated: **“A core script was**

properly prepared and cleared in line with normal production practices in place at the time, but was then not followed by Andrew Gilligan". The Neil report said that: Live 'two ways' reports (in which a presenter interacts live with a reporter) were still an important part of modern broadcasting but **"they are normally inappropriate for breaking stories containing serious and potentially defamatory allegations"**. The same might be said of what is appropriate discussion by experts in current affairs programming. However, there are important differences between the Gilligan case and the current affairs programming under focus by this Commission. First, the Gilligan case concerned the immensely significant allegation that a country at war had been lied to in order to go into war. Issues like this are not the staple fare of news and current affairs programming and certainly not remotely similar to the kinds of cases dealt with by this Commission. Second, and more significantly, the Gilligan case entailed the conduct of an employee of the BBC (Gilligan himself). By contrast, it does seem unrealistic, if not draconian, to vet in advance a script of what an expert (unattached to the SABC) is going to say. Unlike reportage such as that by Andrew Gilligan, concerning a major confidential briefing by a source on a matter of substantial sensitivity and controversy, the nature of current affairs is more dynamic and improvisational.

- 9.15. What does emerge from international experience is that the extent of delegation of editorial control needs to be clear. The ABC's

policy guidelines say that if a programme “**is controversial or likely to have an extraordinary impact**”, the most appropriate senior manager should be notified in advance, even where specific editorial guidance is not being sought.

- 9.16. At no credible public broadcaster is generalised pre-approval required of executive producers’ choices of experts in current affairs. On particularly controversial topics this might be a matter of either compulsory or voluntary upward referral. The initiative for this, however, lies with the individual editor concerned and there is thus accountability for the decision made rather than a system in which prior permission is required. Normally the editorial decision-making autonomy and authority of the executive producers, working within policy guidelines, is respected.

Monitoring and review

- 9.17. Editorial policies without any monitoring and review, risk becoming little more than wish lists. This applies no less to policies on experts.
- 9.18. The ABC is one public broadcaster that is subjected to external audit every three years, and which as a result has also introduced its own (more frequent) monitoring and review system. It is currently developing a monitoring system to assess precisely how the ABC lives up to its policy requirements of diversity and

disclosure in regard to experts. The Canadian Broadcasting Corporation also undergoes audits by that country's Office of the Auditor General. These aspects of monitoring, in turn leading to review, are valuable features of international experience, and could profitably be applied to the use of experts. Such monitoring is something that could be undertaken by the SABC News Research which could update and expand its list of appropriate experts.

Culture and grievances

9.19. It is evident that policy guidelines are an essential element in the running of an organisation and fulfilment of its purpose. Staff need to know about such provisions. However, it is also clear that there are limits – that continuous elaboration of more and more policy is not a complete panacea for problems. First, there is a danger of policy overload, where there is simply too much for any individual to absorb and apply, even when there is extensive training. Second, it creates a culture that can stifle innovation and creativity, and paralyse behaviour. In light of these two points, the idea of elaborated guidelines to complement the existing SABC broad policy on use of experts will not necessarily resolve the problems. If it is to make a difference, however, rather than being envisaged as adding further controls and rules, it should be a basis for generating consensus on the role of SABC regarding the use of experts.

9.20. One would not want a situation where every decision sees the would-be decision maker scurrying back to a “policy” bible to see what can be justifiable by reference to the text. Instead, policy should also be enabling and empowering, not only constraining and regulating. It can and should not only guide as to what should not be done, but also what can and may be done. Recognising this is to encourage the development of an organisation where there is a culture of broad and basic consensus and trust, a result of which would be that more specific policy and its interpretation flows organically from shared values.

9.21. Relevant here is the assessment of the CBC by the Office of the Auditor General: **“a creative organization survives on the basis of its ability to attract, retain and motivate its creative talent, and to foster the development of young talent. This can be promoted by encouraging staff participation and recognizing their creative contributions and excellence. Our discussions with CBC staff and management indicate that cultural change in this area requires further visibility and support from senior management.”**

9.22. At the same time, it would be naïve to ignore the fact that even with such a trust-based and value-driven scenario (something that the SABC could still make much progress upon), there will be major differences. The challenge then is to find ways to accommodate them. The SABC could profitably consider a

process or mechanism whereby tensions in editorial decisions can be openly vented and thoroughly canvassed, even if the editorial chain of authority remains – as it should – in place. At the very least, the 1999 recommendation of the International Federation of Journalists (IFJ) could be considered: **“There should be regular meetings between the top managers and the representatives of the editorial staff to discuss matters affecting programming policy and editorial content”**. The IFJ further adds that **“(t)he editorial staff has the right to participate with management in the joint development of editorial codes/guidelines”**, and that editorial staff have a right to be heard on matters concerning editorial policy;

Conclusion

9.23. The international experience reviewed above constitutes valuable food for thought for the SABC going forward from the “blacklisting” controversy. There are distinctions between the uses of experts in current affairs and other genres, and the recognition that various (possibly conflicting) criteria come into play: representativity (including “offensiveness”), actual expertise, and the extent to which entertainment values (drama, conflict) are present. There are often biases towards certain social groups, which policy can address, but there is also a caution against hard quotas. The selection criteria for credible sources (in this case experts) can be elaborated, and guidelines for how they

are actually identified and treated on air. Editorial systems of upward referral, but also of editorial autonomy as well, have been reviewed. The importance of monitoring the use of experts – and upgrading policy and systems accordingly – has been noted. Lastly, the need for conflict resolution procedures has been touched upon.

9.24. Several other areas arise from international experience where the SABC can gain value, coming particularly from the BBC's response to the Neil Report into the "sexed up" dossier case. The first is that the Neil Report recommended that the broadcaster be open about mistakes, willing to learn from them and unambiguous about apologising for them. In addition, and as accepted by the organisation, it should develop a "**culture of learning from the reporting of difficult stories and from instances where mistakes have been made**". The BBC Governors agreed with the Neil panel's view that learning from events when things go wrong was a sign of organisational strength not weakness. Further, the BBC's response was that "**the Neil Report will become required reading for all current and future BBC journalists, their managers and Governors**". Finally, the report recommended the importance of continuous training.

9.25. These are all aspects that the SABC may wish to take into account as it moves forward to greater clarity in interpreting and actualising its mandate in regard to the issue of experts and

current affairs programming, and in communicating problems to the public.

9.26. It will be apparent from the foregoing that the guidelines produced by Mr Welch on the instruction of Dr Zikalala are, in our opinion, inadequate. Apart from not drawing on international experience, they contain aspects which we have been unable to locate in any other public broadcaster. In particular, the notions of avoiding “independent experts” and those from “rival media” are not something that we have found elsewhere. This is scarcely surprising. The underlying supposition that experts unaffiliated to a university or research institution have no research capacity is by no means axiomatic. It may indeed apply in certain cases but it cannot be adopted as a guideline in all cases. The notion of avoiding individuals from “rival media organisations” is seeming without precedent. Again, this is unsurprising because it is somewhat artificial to regard newspapers in particular as a rival to the public broadcaster. We have also noted the fact that the guidelines have thus far not been widely circulated or debated among the actual SABC staff members at the operational level. As noted earlier, the two provisions cited in this paragraph seem to narrow down the requirement of a “full spectrum” of views stipulated in the existing policies.

10. RECOMMENDATIONS

We make the following recommendations:

10.1. No instruction to:

10.1.1. exclude a particular analyst or commentator; or

10.1.2. use a particular analyst or commentator only for a particular purpose; or

10.1.3. use a particular analyst or commentator subject to any conditions;

should be given without proper motivation in accordance with the SABC's mandate and policies.

10.2. Every instruction described in paragraph 10.1 above, shall, if contested, and if the matter remains unresolved, be subject to upward referral to the editor-in-chief.

10.3. Any person who receives an instruction described in paragraph 10.1 above, shall be entitled to request the reason for such instruction in writing and such reasons shall be furnished without delay.

10.4. These points should all be incorporated into the editorial policies by the Board, and additional and ongoing efforts should be made to ensure the familiarisation of staff with the editorial policies.

- 10.5. Specific instructions ought not to be in the realm of the Group Executive: News and Current Affairs, whose function should be restricted to the level of general policy and strategy. The job description should be clarified in this respect. Where micro-management of lower levels of the news hierarchy is based on a lack of trust in the competence of such levels, this needs to be addressed by empowering such ranks with adequate training to do their jobs rather than enforcing controls after the event.
- 10.6. Development of elaborated guideline policies on the use of guests, commentators and analysts should follow a process akin to that giving rise to the existing policies. This requires extensive consultation, both within and outside the SABC. Certain strictures in the current document appear to contradict the SABC's mandate and general policies, and could lead to undue exclusions, and thus need to be qualified or excised.
- 10.7. Without becoming artificially quota-based, an annual or bi-annual audit on the use of commentators and analysts should be conducted (possibly by News Research). The Board needs to provide oversight of this and make recommendations in relation to the findings of any such audit.
- 10.8. Presenters should, where appropriate, be trained on how to interview analysts and commentators. SABC employees should be deployed to develop specialist expertise so as to constitute an

additional resource in regard to providing the public with informed analysis.

10.9. The position of GCEO as the editor-in-chief should be reinforced. The position ought to be commensurate with the high trust reposed on the incumbent. While not requiring day-to-day editorial decisions, we recommend that the GCEO –

10.9.1. establish a forum comprising senior management in news and current affairs to meet at regular intervals;

10.9.2. receive general feedback on the operations, direction and content of news and current affairs;

10.9.3. institute monitoring systems, possibly by the establishment of a dedicated position, to monitor policy compliance;

10.9.4. give direction where appropriate.

10.10. The Board should take close cognisance of the concerns about the particular management style of Dr Zikalala as outlined in this report particularly regarding problems of communication and the inappropriately narrow interpretation of the SABC's mandate. As custodian of the SABC's mandate, the Board – without becoming embroiled in management issues – needs continuously and publicly to emphasise that the Corporation is the property of all South Africans. Accordingly, the Board's leadership should

encourage SABC personnel to recognise their accountability to the public at large in terms of programming, ethos and presentation of a full spectrum of views and discourse within the country. In these ways, the Corporation can move forward from the damaging incidents around the “blacklist” controversy.