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Ms Shouneez Martin

Registrar, BCCSA

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30 November 2020

Dear Ms Martin

COMPLAINT AGAINST MULTI-CHOICE SA AND THE SABC IN RESPECT OF PROGRAMMING FLIGHTED ON THE SABC NEWS CHANNEL ON THE DSTV BOUQUET AND ON THE SABC'S FREE TO AIR DIGITAL CHANNELS

1. The SOS Support Public Broadcasting Coalition (SOS) is a registered not-for-profit organisation, which itself is a civil society coalition that is committed to, and campaigns for, broadcasting services that advance the public interest. While the SABC is our primary focus – as the key site of and the institution established to drive public interest broadcasting – SOS also engages in the advancement of community broadcast media in South Africa. SOS is made up of a broad range of civil society organisations, trade unions and their federations, and individuals (including academics, freedom of expression activists, policy and legal consultants, actors, script-writers, film makers, producers and directors).
2. The SOS Coalition campaigns tirelessly for an independent and effective public broadcaster. SOS engages with policymakers, regulators, and lawmakers to secure changes that will

promote citizen-friendly policy, legislative and regulatory changes to broadcasting and its associated sectors.

3. Media Monitoring Africa (MMA) is a not-for-profit organisation that has been monitoring the media since 1993. MMA's objectives are to promote the development of a free, fair, ethical and critical media culture in South Africa and the rest of the continent. The three key areas that MMA seeks to address through a human rights-based approach are media ethics, media quality and media freedom.
4. MMA aims to contribute to this vision by being the premier media watchdog in Africa to promote a free, fair, ethical and critical media culture. MMA has over 20 years' experience in media monitoring and direct engagement with media, civil society organisations and citizens. MMA is the only independent organisation that analyses and engages with media according to this framework. In all of our projects, we seek to demonstrate leadership, creativity and progressive approaches to meet the changing needs of the media environment.
5. As part of their aims to promote a public broadcaster that is governed and acts in accordance with international best practice standards for public broadcasting, it is incumbent upon SOS and MMA to act when the South African Broadcasting Corporation (SABC) falls short of its stated commitment to ethical journalism, including in respect of its news channel flighted on DStv, operated by MultiChoice SA (MultiChoice), and as part of its digital free-to-air channels.
6. The SABC is a member of the National Association of Broadcasters and has committed to complying with the provisions of the BCCSA Codes of Conduct for both Free to Air and Subscription Broadcasters. Similarly, MultiChoice SA is a member of the NAB and has committed to complying with the provisions of the BCCSA Code of Conduct for Subscription Broadcasters
7. SOS and MMA hereby lay a formal complaint against both the SABC and MultiChoice SA in respect of programming flighted by the SABC on its news channel which is carried on the DStv bouquet, channel 404, and in particular, on the show, Full View, which is broadcast daily between 18h00 and 31h00, which channel is also carried on the SABC's digital terrestrial free to air channels.
8. The complaint concerns an interview with ANC Secretary-General, Mr Ace Magashule, conducted by two SABC journalists, on Wednesday 18 November 2020 at approximately 18:34 CAT, during a broadcast of the show, The Full View. A copy of this interview is available online at: <https://www.youtube.com/watch?v=lq6YQRZ9ufc>
9. We are of the respectful view that the BCCSA must take account of the fact that the SABC is the public broadcaster. And as the public broadcaster, it not only has a significant public service

mandate, it also has a unique role in providing access to news and information for the majority of people in South Africa. The High Court has held in *SOS Coalition and Others v the SABC and Others* Case Number 81056/14, that the SABC is required to 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.” [at paragraph 36, Available at: <http://www.saflii.org/za/cases/ZAGPJHC/2017/289.pdf>]

10. The interview conducted by the SABC news staffers violates a number of provisions of the:
 - a. Code of Conduct for Subscription Broadcasters, relating to News and commentary on matters of public importance, namely:
 - (a) Clause 28.1.1 which requires broadcasting services licensees to report news truthfully, accurately and fairly.
 - (b) Clause 28.1.2 which requires news to be presented in the correct context and in a fair manner without intentional or negligent departure from the facts, whether by
 - 28.1.2.1 Distortion, exaggeration or misrepresentation;
 - 28.1.2.2 Material omissions; or
 - 28.1.2.3 Summarisation.
 - (c) Clause 28.1.3 which provides that “only that which may be reasonably true, having reasonable regard to the source of the news, may be presented as fact, and such fact must be broadcast fairly with reasonable regard to context and importance”.
 - (d) Clause 28.2.1 which provides that “licensees may broadcast comment on and criticism of any actions or events of public importance”.
Clause 28.2.2 which provides that “comment must be an honest expression of opinion and must be presented in such manner that it appears clearly to be comment, and must be made on facts truly stated or fairly indicated and referred to”.
 - (e) Clause 28.3.1 provides that “in presenting a programme in which a controversial issue of public importance as discussed, a broadcaster must make reasonable efforts to fairly present opposing points of view either in the same program or in a subsequent program forming part of the same series of programmes presented within a reasonable period of time of the original broadcast and within substantially that same timeslot”.

b. Code of Conduct for Free to Air Broadcasters, relating to News and commentary on matters of public importance, namely:

(a) Clause 3(b) which prohibits a broadcaster from broadcasting materials which, judged within context sanctions, promotes or glamorises... unlawful conduct.

(b) Clause 11(1) which requires broadcasting services licensees to report news truthfully, accurately and fairly.

(c) Clause 11(2) which requires news to be presented in the correct context and in a fair manner without intentional or negligent departure from the facts, whether by

(a) Distortion, exaggeration or misrepresentation;

(b) Material omissions; or

(c) Summarisation.

(d) Clause 11(3) which provides that “only that which may be reasonably true, having reasonable regard to the source of the news, may be presented as fact, and such fact must be broadcast fairly with reasonable regard to context and importance”.

(e) Clause 11(4) which provides that “where a report is not based on fact or is founded on opinion, supposition, rumours or allegations, it must be presented in such manner as to indicate, clearly, that such is the case”.

(f) Clause 12 Comment:

(1) Licensees may broadcast comment on and criticism of any actions or events of public importance.

(2) Comment must be an honest expression of opinion and must be presented in such manner that it appears clearly to be comment, and must be made on facts truly stated or fairly indicated and referred to.

(g) Clause 13(1) which provides that “in presenting a programme in which a controversial issue of public importance as discussed, a broadcaster must make reasonable efforts to fairly present opposing points of view either in the same program or in a subsequent program forming part of the same series of programmes presented within a reasonable period of time of the original broadcast and within substantially that same timeslot”.

11. In our view, the interview transgresses each and all of the above clauses of the Codes in that it is conducted in a manner that makes it clear that the journalists are not complying with the requirements of the Codes set out above. The one-sided, self-interested, interview style and inflammatory language used by the interviewers undermines the above-listed provisions of the Codes. We think that even if it could be argued that the broadcast constituted “comment” which is, in our view, doubtful, given the fact that it is an in-depth interview with the ruling party’s Secretary-General on breaking news topic, the commentary was not made on facts truly stated or fairly indicated and referred to as required in terms of the Codes. In this regard:

- a. One of the interviewers begins the interview by stating that directors earn “millions of Rands” without giving any details or differentiation between, for example, executive and non-executive directors’ remuneration.
- b. The interviewer goes on to state that the staff are “earning peanuts”, that the retrenchments are a jobs “bloodbath”. And that “atrocities are being done to peoples’ lives”.
- c. In the introduction, there is no attempt to put forward an accurate, disinterested, dispassionate, balanced view of the retrenchments processes at the SABC, which staff were notified about recently, in order to contextualise the interview, whether as a news item or as commentary.
- d. The dangers of the obvious personal conflicts of interest of a member of staff engaging in a topic regarding retrenchments of members of staff were not raised at all, let alone dealt with in a manner that sought to emphasize the need for balance and a careful presentation of fact versus opinion on the issue.
- e. The actual salary scale figures, which had been published in the day before in the SABC’s 2019/20 Annual Report (available at: <https://www.sabc.co.za/sabc/wp-content/uploads/2020/11/SABC-AR-2020.pdf>) were not referred to, even although they showed that the average salary of the lowest level of SABC staffer is R464 000.00 p.a. – an amount that is nearly double the average salary of a non-agricultural worker in the formal sector which is R257 460.00 p.a., according to the latest Quarterly Employment Survey for Q2 issued by Stats SA on 15 October 2020 as reported on here: <https://businesstech.co.za/news/finance/440963/this-is-the-average-salary-in-south-africa-right-now-5/>. In the context of available wage data for South Africa, the characterization of the salaries being earned by staffers (other than top or senior management at the SABC) which range from an average of R1,234 000.00 p.a. for middle management to the above mentioned average of R464 000.00 p.a. for the

lowest level of staff, as “peanuts”, is not an accurate or fair description of such salary scales, properly contextualised.

- f. Similarly, it is clear that there has been a “bloodbath” of job losses in the country recently as a result of the Covid-19 Pandemic. The latest unemployment figures reflect this with unemployment at 30.8%. (See EWN reporting on the figures available here: <https://ewn.co.za/2020/11/12/sa-unemployment-rate-increases-to-30-8-in-q3-of-2020-qlfs#:~:text=JOHANNESBURG%20%2D%20South%20Africa's%20unemployment%20rate,data%20from%20Statistics%20South%20Africa>.) And the media sector has been particularly hard hit (See Sanef’s report on job losses in the sector: <https://sanef.org.za/wp-content/uploads/2020/06/SANEF-Covid-Impact-Research-Final-Report8.pdf>). However, the SABC journalists have failed to provide any justification for characterising the retrenchments process at the SABC as a “bloodbath”, particularly when retrenchments have been specifically required to be undertaken by Parliament as a result of the ad hoc Committee Report on the SABC, the National Treasury as a precondition for two separate bailouts, recommendation of the Auditor-General and the Special Investigative Unit, as have been widely reported in recent years in the press. The proper contextualisation of these state-imposed requirements and bail-out pre-conditions, to counter the legacy of state capture at the SABC, is not made, indeed these are not even mentioned.
- g. The statement that “atrocities are being done to people’s lives” is also a violation of the Codes’ obligations not to distort, exaggerate or misrepresent. The Compact Edition of the Oxford English Dictionary, Vol 1 defines “atrocious” as “savage enormity, horrible or heinous wickedness” [at page 136]. The Constitution of the Republic of South Africa, 2006 (the Constitution) does not countenance an organ of state, such as the SABC, engaging in atrocities. Indeed, retrenchments are considered to be, as a matter of law and of fact, part and parcel of normal commercial life as is evidenced by the provisions of section 189 of the Labour Relations Act, 1995 – a post-Apartheid flag-ship statute specifically designed to protect the rights of labour.
- h. Mr Magashule states that some members of the Board “support privatization” and are “arrogant” and “intransigent”. No mention is made of the fact that the decision to initiate the retrenchments process was taken by a majority of a quorate Board in accordance with the requirements of the Broadcasting Act, 1999 and general company law certainly those Board members were not given an opportunity to respond, either individually or collectively, as required by both Codes as set out above.
- i. When Mr Magasule says that the ANC and its Alliance partners and their deployees, including Minister of Communications and Digital Technologies, Ms Stella Ndabeni-

Abrahams, are to “put a stop to arrogance”, presumably of the above-mentioned board members, the interviewers make no attempt to contextualise his remarks for the public. This is a crucial failure on the part of the interviewees and is a violation of clauses 28.1.1, 28.2.2 and 28.3.1 of the Subscription Code and of clauses 3(b), 11(1), 11(2) and 13(1) of the Free-to-Air Codes including, *inter alia*, because such statements are in clear contradiction of the provisions of the SABC’s governing statute, the Broadcasting Act and this important factual background and legal context was required to have been provided by the interviewers. In this regard:

- (a) the SABC Board is to “control the affairs of the Corporation” - at s13(11) of the Broadcasting Act;
- (b) the High Court has held in *SOS Coalition and Others v the SABC and Others* referred to above and with regard to the SABC: “The ultimate decision-making power is that of the Board and not the Minister...” [at paragraph 125] and [at paragraph 127] “The effect of section 13(11) therefore is to confer on the Board the exclusive powers to control the affairs of the SABC. The Minister is accordingly precluded from exercising any powers by which she may control the Directors in how they control the affairs of the SABC”;
- (c) Mr Magashule is proposing to ensure unlawful conduct on the part of the Minister and others by interfering in Board matters. This, in our view, is a direct contravention of clause 3(b) of the Free-To-Air Code and required the interviewers to point out the implications of such a course of action; and
- (d) further, not only are Mr Magashule’s statements not properly contextualised by the interviewers, they are actively encouraged. The interviewers pose a series of questions to Mr Magashule including: “The Governing Party has yet to call the SABC Board and address them, what is the ANC doing to save jobs at the public broadcaster?”; “What have you (the ruling party) done in halting the process of s189?” “Mr Magashule, let me put it bluntly, the SABC is forging ahead with retrenchments, whether we like it or not. You are sitting there as Secretary General of the governing party. What is stopping you from extending a call right now, to president Ramaphosa, ... to say President, please make sure that those poor workers of the SABC do not lose their jobs.” And they called on Ace Magashule to remove the executives and board members “because they were appointed by Parliament and not by SABC workers”. These questions do not, in our view, fall within the parameters of fair comment or news presentation because, again, the underlying facts (particularly in respect of the SABC’s legal position) are not indicated or referred to at all, let alone in a fair and truthful

manner. Worse, these questions and comments, on their own terms, promote unlawful conduct in violation of clause 3(b) of the Free-To-Air Code.

12. Unfortunately, the interview referred to above, and which is the basis of this complaint, has not been an isolated example of the kinds of broadcasts that the public has been subjected to by the SABC news team in the past week or so. This has been evidenced by the number of media outlets that have published opinion pieces and editorials decrying the abuse of the airwaves by the news team in broadcasting material that undermines the basic tenets of ethical journalism. In this regard please see:

<https://www.businesslive.co.za/bd/opinion/columnists/2020-11-23-carol-paton-sabc-a-dangerous-proxy-war-that-can-harm-ramaphosa/>

<https://www.timeslive.co.za/sunday-times/opinion-and-analysis/2020-11-22-the-sabc-nettle-will-have-to-be-grasped-eventually/>

<https://www.news24.com/news24/columnists/guestcolumn/opinion-sabc-crisis-this-is-a-watershed-moment-for-independent-public-broadcasting-20201119>

13. Sanctions

- a. In terms of section 14 of the Constitution of the BCCSA, the BCCSA may, in response to a complaint, take a number of courses of action.
- b. SOS and MMA are of the view that the above-mentioned broadcast (which, we reiterate, is one of many similar broadcasts) resulted in a number of serious breaches of both of the BCCSA Codes.
- c. We are of the view that an appropriate sanction would be to:
 - (a) impose a fine of R80 000.00 as provided for in section 14.5 of the BCCSA Constitution;
 - (b) record criticism of the conduct of the SABC in relation to the complaint as is provided for in clause 14.6 of the BCCSA Constitution;
 - (c) direct that a summary of the findings of the BCCSA be broadcast by the SABC at the beginning of each broadcast of The Full View on three consecutive weekdays, as is provided for in clause 14.3 of the BCCSA Constitution; and

(d) recommend, in terms of clause 14.7 of the BCCSA Constitution, that the SABC take steps to discipline the news staff responsible for the violations of the Code to ensure that all news staff understand that what happened was series of egregious breaches of the most serious kind which undermined the standing of the SABC as the public broadcaster and damaged the trust that the South African public has in the ethics, fairness and professionalism of its news production operation.

14. We look forward to this matter being dealt with by the BCCSA as expeditiously as possible.

15. As a matter of courtesy, we advise that a similar complaint in respect of copies of the interview that have been posted, and remain, online, has been simultaneously lodged with the Press Council.

Thank you,

Sincerely



Duduetsang Makuse and William Bird

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