



11 ANNEXURE D

**MINISTRY: ARTS AND CULTURE
REPUBLIC OF SOUTH AFRICA**

Private Bag X898, Pretoria, 0001, South Africa. tel: (+27 12) 441 3014. Fax: (+27 12) 441 3614.
Private Bag X9137, Cape town, 8000, South Africa. tel: (+27 21) 465 5620. Fax: (+27 12) 465 5624
www.dac.gov.za

Ref: SARA Enq. Mr C Hlatswayo Tel. (012) 441-3664

Ms. X Tom
Chairperson
Portfolio Committee: Arts and Culture
Parliament Street
Cape Town
8000

Email: amtiya@parliament.gov.za

Dear Honourable Chairperson

**RE: COMPLAINT FILED BY THE SOUTH AFRICAN ROADIES ASSOCIATION
(SARA)**

The e-mail of the 26/05/2017 received from the Office of the Honourable Chairperson of the Portfolio Committee on Arts and Culture refers.

In the above correspondence the Chairperson indicated that the Portfolio Committee has received a complaint filed by the South African Roadies Association in terms of Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (Act 4 of 2004).

The Chairperson further indicated that the Committee received documents from the South African Roadies Association outlining the complaint and allegations of misrepresentation on the part of the departmental officials. In this regard the Committee requested the Department to provide responses to the complaint with

evidence proving that the Department did not mislead the Committee during its engagements. The documents from the complainant were attached.

This correspondence is by way of response to the allegations. Before proceeding with the responses, it is important to note that these allegations appear to be solely based on the summaries and meeting records captured and published by the Parliamentary Monitoring Group (PMG), and not the written reports submitted to the Portfolio Committee by the department or the audio recordings of the meetings which are available on the PMG website. The DAC is not provided with an opportunity to comment on or correct these reports prior to publication and as such, cannot be held liable for any inaccuracies or misrepresentations therein.

Given the seriousness of these allegations against the DAC and its officials, it would have been prudent for the South African Roadies Association to avail itself of the complete audio recordings which are available for each meeting on the PMG website before making such claims. Alternatively, it would have been advisable for SARA to submit transcribed records as the basis for their complaint. The DAC has responded as completely as possible, recognising the possible inaccuracies and gaps in the source material.

Attached herewith responses received from DAC officials on matters referred to in your earlier correspondence.

Yours sincerely;



MR NATHI MTHETHWA, MP

MINISTER OF ARTS AND CULTURE

DATE: 13-06-17

RESPONSES BY DAC OFFICIALS TO THE SARA COMPLAINTS

The DAC submitted formal reports to the Portfolio Committee of Arts and Culture on the implementation of the Settlement Agreement, which provide more detail and outline consistently progress from the DAC's perspective on the implementation of the Settlement Agreement in, amongst others:

- March 2016
- April 2016
- May 2016
- June 2016
- October 2016
- November 2016
- Timelines of the study submitted to the Portfolio Committee on 7 March 2017

These reports consistently outline developments with regard to each element of the Settlement Agreement, and further document progress. Not all the submitted reports, however, appear to be included in the PMG website archive.

Further, based on a request for information received from the Chair on 26 May 2016, the DAC provided supporting information on matters pertaining to SARA on 3 June 2016, some which information is provided in the annexes to this response.

1. Meeting of the Portfolio Committee on Arts and Culture held on 1 September 2015

Allegation:

Chief Director Dr Jokweni on behalf of Deputy Director –General Newton

- a) "The Department was currently waiting for a detailed plan of action from SARA, outlining how they would spend the R10 million that would be given to them by the Department.
- b) "The Department was searching for an independent third party through which to administer the funds.

Response:

The statement made by Dr Jokweni is an accurate indication of progress from the perspective of the DAC at the time of meeting.

- a) The DAC committed R10 million to the renovation of SARA House in correspondence from the Acting DG on 17 June 2015. The Department did request SARA to submit a detailed plan of action in terms of how they were going to utilise the R10 million which was the initial amount offered to SARA. SARA, however submitted

a plan which did not indicate clearly how the organization intended to utilise the R10 million, the document provided merely outlined the MOU timelines and not the actual plans for the project. It is important to note that at this point, as reported to the Deputy Public Protector in the meeting with SARA on 12 August 2015 and the Portfolio Committee on 8 September 2015 and the matter of the transfer of the committed funds was already under dispute.

b) The Department initially intended to appoint IDT as per the Settlement Agreement, and was reviewing other options through a range of internal discussions which SARA was not party to. After further interrogation of this matter, the Department concluded to rather proceed with MOA and transfer the funds to SARA. This view was documented in a report to the Office of Institutions Supporting Democracy (OISD) in January 2015, copied to the Portfolio Committee and Deputy Public Protector (See Annexes A 1 & 2).

2. Meeting of the Portfolio Committee on Arts and Culture held on 24th May 2016

Allegation:

Acting Director-General Ndima

a) "Mr Vusithemba Ndima, Acting Director General, Department of Arts and Culture, noted that the Department (or DAC) was still working closely with South African Roadies Association (SARA) and would provide assistance for the appointment of service providers for SARA's project."

Deputy Director General Newton

b) "The intention was to transfer funds to SARA and give recommendations of reliable organisations whom it could employ."

Response

The statements made by Mr Ndima and Ms Newton are accurate indications of progress from the perspective of the DAC at the time of meeting. The DAC has consistently indicated that there are substantive challenges with regard to the implementation of the clauses of the Settlement Agreement pertaining to the renovation of SARA House. The information provided is consistent with all DAC reports to the Public Protector and the Portfolio Committee on this matter.

a) It is correct that the Department was at the time and is still working closely with SARA. This is evidenced by the Department's ongoing support of the organization in its endeavours, including but not limited to the International Interactions Programme; the Live Events and Technical Production Conference; the research in 2015 to inform the development of a Technical Production Services strategy; engagements with the sector through the DTI led process of developing a transformation charter for the sector and SARA's engagements at the various White Paper review sessions in 2016.

b) The Department indicated at the meeting with the Deputy Public Protector on 20 April 2016 that it would provide assistance for the appointment of service providers to the SARA project as indicated in the letter to SARA from DAC signed by ADG on the 1 February 2016 and follow up correspondence signed on behalf of the Acting Director General by DDG Newton on 29 April 2016. Further, the Terms of Reference for the appointment of a project manager, as agreed in the meeting with the Deputy Public Protector on 20 April 2016 were provided to SARA through the DAC project manager as agreed. See Annexes B 1, 2 and 3. The paragraphs below outline the commitment made by the ADG in the letter on 1 February 2016:

i) Paragraph 5.

"In this regard the DAC confirms having undertaken to make available further funds (professional fees) to enable SARA to appoint a Service Provider or other technical experts that would assist SARA in this regard.

ii) Paragraph 6.

"DAC confirms having undertaken cognizance of the time that has lapsed since it confirmed its available budget for the renovations as well as the possible escalation in price or costs of materials to be used during renovations, general labour, professional fees and ancillary expenses. In this regard, DAC will thus communicate to SARA its revised total allocation (funding amount) which shall not be lower than the current amount, within one month after commencement of the 2016/17 financial year. DAC confirms further that in line with its policies and funding criteria, the total will be transferred (in tranches or otherwise) directly to SARA who will in turn appoint relevant Service Providers to ensure that the renovations are carried out properly and within agreed timeframes. Unfortunately, DAC will not be able to contract IDT or any other Service Provider on behalf of SARA. However, the DAC remains committed to playing a critical role in the project and will among others, ensure that a Departmental representative forms part of the Project Steering Committee and is available to provide necessary support to SARA and its appointed Service Providers to the extent required and within its limitations."

The Department did indicate to SARA its willingness to provide SARA with advice on organisations it could consider for the project. After discussions with the Deputy Public Protector on 20 April 2016, the DAC prepared and submitted to SARA Terms of Reference (TORs) for the appointment of a project manager to facilitate the work.

Allegation:

3. Meeting of the Portfolio Committee on Arts and Culture held on 23rd August 2016

Deputy Director – General Newton

a) "SARA had also submitted a proposal to the DAC for the establishment of a backstage academy, and had requested funding to run a feasibility study in order to motivate for further funding for the academy itself".

Response

The statement made by Ms Newton is an accurate indication of progress from the perspective of the DAC at the time of meeting.

A proposal for the feasibility study was received by the DAC from Mr Freddy Nyathela, while the proposal may have been by a UK based consultancy, the manner of submission via Mr Nyathela, and all follow up emails and correspondence via Mr Nyathela would indicate that SARA represented by Mr Nyathela was a partner in the project. Other than a meeting that was facilitated by SARA, which was attended by DAC officials and John Botham OBE (Owner and CEO Semperior Ltd), all contact about the project has been via Mr Nyathela, and all DAC correspondence was directed to Mr Nyathela. At this meeting John Botham OBE presented a proposal for the setting up of an SA Backstage Academy, to which SARA was also an interested party. DAC requested John Botham to indicate what role was DAC to play and it was indicated that it would be that of assisting or supporting a feasibility study. See Annexes C 1, 2 & 3.

4. Meeting of the Portfolio Committee on Arts and Culture on 6 September 2016

Allegation:

Acting Director –General Ralebipi

"The South African Roadies Association (SARA) was allocated R5 million. There had been zero expenditure to date and the project is at a planning stage."

Response:

Mr Ralebipi is a Parliamentary Liaison Officer (PLO) at the Department of Arts and Culture, and was not the Acting Director General. The meeting was attended by the Acting Director General, Mr Vusithemba Ndimba.

The statement is correct, and confirmed in the presentation which was made by the Department of Arts and Culture. Recalling that DAC made a R10 million commitment to the project in 2015, in the DAC Estimates of National Expenditure for 2016/17, page 43, the indicative allocations over the MTEF are provided (See Annex D).

The context of this particular submission to the Portfolio Committee was the infrastructure programme of the DAC. It refers to the funds that the DAC had allocated to SARA Renovations which were not yet transferred to SARA as per the grant letter signed by the Acting Director General on 17 June 2015, no expenditure is recorded against the grant as the dispute on the transfer of funds prevented the conclusion of the contract (see points 1 and 2 above).

5. Meeting of the Portfolio Committee on Arts and Culture on 8 November 2016

Allegation:

Acting Director –General Ndimma

- a) "In relation to the Backstage Academy Project a feasibility study is being carried out, to identify whether the project can be customised, because the legal team is not in favour of the project."

Response

Similar to point 4 above, the context of this discussion is critical to understanding the implications for SARA. The forensic audit carried out on the Enyokeni project pointed out a number of issues pertaining to the DAC conducting work on behalf of 3rd parties. This report, along with the legal opinion sourced by the DAC which indicated that the clause relating to the renovation of SARA House in the Settlement Agreement were unenforceable were critical in informing the challenges with regard to the DAC appointing service providers to do the work on SARA House. This statement is consistent with what has been reported to the PC 3 June 2016 and in reports tabled at the Committee, the Deputy Public Protector on 20 April 2016 and to SARA itself in the engagement between the DAC and SARA on 15 January 2016 and the follow up correspondence on 1 February 2016 and 4 March 2016 (See Annex E).

6. Meeting of the Portfolio Committee on Arts and Culture held on 29 November 2016.

Allegation:

Deputy Director-General Newton

- a) "The management at the Department had been dealing with SARA according to its White Paper, and trying to find a common solution"

Response:

What was stated by DDG Newton, as per the audio recording at 10:06 – 12:18, in the meeting was as follows:

"There has been very little progress since the last time we spoke, we heard the Portfolio Committee when you said that we should engage with SARA and try to resolve the issue of the dispute around the building and we are currently having discussions around what the best way is to do that because we are currently at a bit of a stalemate. The DAC has indicated its position quite clearly with regard to the renovation of SARA House and the South African Roadies Association has equally indicated that its position is that we should implement the Settlement Agreement. As the Portfolio Committee is aware, we have a legal opinion which indicates that the Settlement Agreement with regard to the renovation aspects is not legally enforceable,

so what that means is that we have to go back to the drawing board and think a bit. We have a clear intention to support the Roadies Association in the renovation of SARA House, the challenge is the modality in this regard, so we need to be thinking about the possible ways that our position can be made more palatable perhaps to the South African Roadies Association, but also the modalities of having a meeting that is actually a constructive meeting because we share the concerns expressed by the Portfolio Committee the last time that we met about the volatility of the relationship and the difficulties that we are having finding a meeting of minds. So at this point Chairperson, not all that much progress with regard to the issue of the renovations. The question of the feasibility study, the supply chain management processes are underway, the Bid Evaluation Committee is reviewing proposals in that regard and as we had the White Paper Review process, the South African Roadies were present, they made a written submission and so at a variety of levels, as we discussed at the last meeting of the Portfolio Committee, engagements are continuing but the key area of dispute continues to be SARA House".

It is thus clear that the meeting summary did not adequately capture the essence of what was said, wherein the lack of progress was acknowledged and reported on and the different levels of engagement with SARA, such as the process of revising the White Paper, were emphasised.

7. Meeting of the Portfolio Committee on Arts and Culture held on 7 February 2017

Allegation:

Acting Director-General Ndima

"This week we have appointed people who are going to be assisting us in conducting the feasibility study."

Response:

SARA misunderstood the statement above about what the Department meant when it said the feasibility study is being carried out, described in points 5 and 6 above. As a result SARA is further misinterpreting this reporting on 07th February 2017 by suggesting that it is false and conflicting. As reported, the service provider was appointed on 31 January 2017, and the reports provided to the Portfolio Committee indicate progress, as did correspondence to SARA from the Acting Director General as indicated in point 5 above. The DAC does not have a record of any further correspondence from SARA with regard to this project.

The DAC did not imply that the work was complete, but that, consistent with all reporting to the Portfolio Committee in August 2016 and all subsequent reports, and correspondence to SARA on 23 July 2016, 11 August 2016 and 14 December 2016 that work was on-going to conduct the feasibility study. At this stage, the tender had been advertised and other internal processes for adjudication were being organised. This information, and progress on this project has been documented in the reports dated 10 October 2016, 7 November 2016, and timelines of the study submitted to the Portfolio Committee on 7 March 2017 (See Annexes F1, 2 and 3).

Allegation:

8. Meeting of the Portfolio Committee on Arts and Culture held on 28 February 2017

Allegation:

Deputy Director –General Newton:

a) "The fact that R21 million worth of grants was held by the South African Roadies Association since the implementation agreement of April 2013 was testament to the fact that the settlement agreement did facilitate funding arrangements between the Department of Arts and Culture and the Roadies Association."

Response:

The DAC has consistently maintained in all reporting to the Portfolio Committee and the Deputy Public Protector the Settlement Agreement is being implemented, demonstrated by the funding allocated to proposals submitted by the South African Roadies Association. The information about funding commitments has been consistently reported in the Portfolio Committee as documented in the report dated 15 November 2016 and to the Deputy Public Protector. In this case the Department was indicating the amount of funds allocated to SARA, some of which were already contracted the projects. SARA was in possession of the revised offer for the renovation of SARA House in March 2016, and as such, funds were allocated to the project as indicated in the table the table below:

Year	Allocation	Project	Amount
2014 (corrected)	3 year funding	SARA International Interactions	R2 838 920.80
2015	1 year allocation	Live Events & Technical Production Conference	R800 000.00
2015 (revised in 2016)	1 year allocation	Renovation of SARA House	R15 000 000.00
2016	3 year allocation	Live Events & Technical Production Conference	R 2 500 000.00
TOTAL			R21 138 920.80

On the aspect of the Settlement Agreement date it may have been a typographical error, however it is common cause that the date of the Settlement Agreement is in fact April 2014.

Hopefully, the information provided will assist to clarify the matters raised and provides comprehensive response to the allegations made by SARA. The Department is available for further engagements where it may be required.

