**Briefing notes by the Minister of Communications, Ms AF Muthambi on the occasion of the ad hoc committee inquiry into the fitness of the SABC board to hold office, Parliament**

**Chairperson and members,**

Over the last week and half since the commencement of this Committee’s Inquiry into the SABC Board, a number of statements have been raised by the witnesses which I feel must be corrected.

I also want to urge the Committee to note that some of the issues raised pre-dates my assumption of the Ministry in July 2014, as part of the fifth administration.

In the course of my presentation, however, I will endeavour to provide the much needed context that has been ignored.

Chairperson, I would  also like proceed under the premise that the SABC Inquiry is as per the five (5) keys legislated areas in terms section 15A of the Broadcasting Act; that I am here in my capacity as the shareholder to assist the Inquiry.

**1.   Perhaps let me start by providing the historical context to the issues:**

Chairperson, you will to recall that when the Zuma Administration took over in 2009 from the previous administration, the SABC’s governance and financial health was in tatters.  In fact the SABC experienced corporate governance crises late 2006 when there was an ‘alleged’ interference in the appointment of the Board and the Executives.

During these crises, in particular, in 2008/09 financial year, the SABC lost R910 million and was forced to seek external funding elsewhere so that operational broadcasting requirements to the public would be sustained while the turnaround strategy was being conceptualize to ensure future potential corporative governance crisis do not revisit the SABC.

On 24 November 2009, government announced the approval of government’s bank guarantee for R1.473 billion[[1]](http://www.doc.gov.za/minister-communication-address-ad-hoc-committee-inquiry-fitness-sabc-board-hold-office#_ftn1) of which R1 billion was released to the SABC which has subsequently been paid back by the SABC which all met most of the tight conditions which were introduced. There were issues referred by the AGSA for investigated by the SIU as per the Parliament’s 2009 instructions.

**1.1.  Audit status to date**

Chairperson,  it must be noted that we an SABC whose governance and audit findings has had to deal with historical or legacy issues including the reality that SABC has not had unqualified audit since then.

 In this regard, the Corporation sought to redress matters previously reported by the Auditor-General of South Africa (AGSA) whilst balancing the provision of its broadcasting services as required by law.

To date the Board assisted by Management has resolved more than 90 per cent of the issues that were raised by the AGSA. To this end, they only have one audit findings.

**2.   Proposal to have an SABC ombudsman as mechanis for amending the editorial policy of the SABC as suggested by the SABC 8; allegation levelled against the SABC’s editorial policy, etc**

Chairperson, you must be aware that the Communications sector has a sets of rules which apply almost universally across in terms of how the sector is regulated. This is precisely to safeguard the Constitutional provisions of fairness therefore, I was surprised that the SABC 8 as witnesses omitted to tell this Committee about the existence of these checks and balances, instead witnesses proposed an ‘ internal ombudsman’.

Chairperson, section 16(1)(2) of the Film and Publication Act,(1996 as amended) notes that newspapers published by a member of the body recognised by Press Ombudsman are exempted from pre-classification by FPB.

Secondly, the Film and Publication Act is consistent with the Electronic Communications Act (ECA), Act No.36 of 2005 as amended, in terms of this requirement which affects the advertising industry; mainstream print media and broadcasting sector**.**

To illustrate the point further, section 54 of the ECA on the Code of Conduct for broadcasting, reads, “ all broadcasting service licensees must adhere  to the code of conduct  for broadcasting service licences, this provision does not apply to broadcasting service licence who is a member of a body and in this case,  the SABC is a member of a National Association of Broadcasters(NAB) which has proved to the satisfaction of ICASA that its members subscribe and adhere to a code of conduct enforced by the NAB.

The SABC is further obliged to comply with rules governing the broadcasting services which is monitored by an independent body, which the SABC always encourage its viewers to challenge any content that is aired in all its platforms which may be offence, unfair  etc to report such irregularities to the Broadcasting Complaints Commission of South Africa (BCCSA).

So with due respect, Chairperson, when people talk about an internal ombudsman, what they do not say is that such an establishment of a stand-alone structure or the ‘internal ombudsman mechanism’ will not be recognised by NAB and ICASA as per the current provision of the ECA.

The implication is that such an internal ombudsman will have to have its own code of conduct, invest in human resources by employing competent staff outside of the SABC, the SABC will have to cease being a member of NAB / BCCSA, and there will be a public outcry and negative perception of the SABC’s leaving the established mechanisms to form its own internal mechanism.

In addition, the SABC in our sector is not alone; in fact print and broadcasting are not alone in this regard, for purposes of assisting the Adhoc Committee and the SABC 8. The advertising sector follows the same path.  For instance, section 55(1) of the ECA stipulates all broadcasting service licences must adhere to the Code of Advertising Practise, which is referred to as the Code, which is from time to time determined by (Advertising Standards of South Africa (ASA), which is the body for this sub-sector).

We need to also remind this Committee that when the DA submitted a Memorandum of Demands to my Office as well as to the Chief Whip of the Majority Party signed by the Honourable van Damme present here today: the DA was clear that this Party only supported mainly white journalists and one Indian journalist.

In the DA memorandum, the names of the following journalists were written; Jacques Steenkamp, Foeta Krige, Suna Venter and Krivani Pillay only.

The names of Thandeka Gqubule-Mbeki,  Mr Lukhanyo Calata, Ms Mthimkhuku, and others were never mentioned. We will provide the Committee the Memorandum of Demands as evidence to this effect.

Chairperson,

We can report that the SABC suspension was settled before the labour Court, with seven of the eight employees having returned to work. The exception was the case which involves the Contributing Editor and we have to acknowledge that the circumstance leading up their suspension were rather unfortunate and should not recur. The Court on this matter has ruled against Mr Vuyo Mvoko and he is perhaps using this Committee as forum shopping exercise

Chairperson, holding a public office come with its major public scrutiny but I found the personal attacks by the SABC 8 disheartening. In my maiden Budget Vote Speech around July 2014 and in various other platforms, I indicated that South Africa was not doing to meet the International Telecommunication Union (ITU) deadline of migrating from analogue to digital broadcasting by June 2015, so it was my expectation that the SABC journalists would know about the missed deadline as the Corporation is a significant player in the market as well as the fact we continued to roll-out DTT Imbizo throughout the country.

I have never interfered with the Editorial decisions of the SABC, I do not run the SABC perhaps, I offered my advise that during Imbizo Programme, there are areas of focus as I felt that needed public scrutiny. The allegations by Ms Thandile is based on the hear-say.

**Let me deal with allegations made by witnesses about the process that what was not followed leading up to the Editorial Policy:**

**3.   SABC News editorial policy 2013**

Chairperson,

Firstly, the process to review the Editorial policy of the SABC had not been complied with and as the Committee at the time, we were concerned that the provisions of periodic updating of the policy had not happened regularly at the SABC.

So the process to review was started by predecessors but implemented in my tenure.  In this regard, therefore, the affairs of the SABC are governed by the Broadcasting Act No 4 of 1999 as amended particularly section 6 of the Act which provides for the Charter of the Corporation that the Corporation must comply with.

The SABC is required in terms of the Act to develop the news and editorial policies. It also makes provision for the SABC to ensure that there is public participation in the development of such a policy by inviting and considering public comments on such draft policies.

Stakeholders including political parties, groups such as SOS and others were all afforded the opportunity to comment on the proposed amendments to the editorial policy.

This provision as required by the section 6 (5)(a) Act was complied with by the SABC to ensure compliance with the SABC’s licence conditions, in relation the News Editorial Policy.

To this end, a process of public consultation was undertaken as part of the initial review process in 2013 and early 2014. In the preparation of the policy, the Board ensured that there was sufficient public participation and public input in development of the policy in line with section 6 and 7 of the Act as part of SABC’s continued role of upholding the latter of the law.

**Stakeholder engagements were held with more than 30 organisations and interest groups from across the country and this was followed by 17 public hearings, where each province hosted at least one. Almost 2,000 people attended these hearings**:

* Public consultations were advertised on SABC platforms and in selected print media; and
* The SABC received 216 written submissions from individuals and organisations

In addition the proposed amendments to the editorial policy was translated into all eleven official languages and placed on the website of the SABC.

The policy was approved by the Board of Directors of the SABC for implementation by management. As required by section 5(b) of the Broadcasting Act and the regulator, Independent Communications Authority of South Africa (ICASA) was duly notified in writing on the amended policy as per the requirements.

What we witnessed pre-election was an undue pressure on the part of certain section of the society to force changes to the already approved policy and we believed that if allowed, it was going to erode and influence the editorial independence of the SABC.**( See Minutes of the SABC Board dated 25 February 2016 on PBS/PSC and the Board resolution in which the Mr Mavuso praised the SABC Management for producing the Editorial Policy that can stand the test of times**)

**4.   Censorship Policy VS Editorial Policy**

Chairperson,

If you asked anyone whether a journalist or NGO to give you a relevant clause of censorship in the new policy, none will show you, despite the fact that the policy is easily accessible on the SABC website.

This is because there is no clause like a ‘ so-called censorship’ the SABC does not have such.. we need to deal with facts, that is why even in the case involving the SABC against Media Monitoring Africa (MMA); the subsequent judgement by ICASA, ruled against the SABC’s media statement on it editorial decision not the policy.

The point that I am making here is that in implementing the new Editorial Policy, SABC took an **Editorial Decision,  Not an Editorial Policy,** which in its view is also in line with section 16 of the Constitution on the limitations Freedom of Expression  **Section 16 (2)(a)(b)(c) stipulates that freedom of expression does not extend** to:
propaganda of war;

* Incitement of imminent violence; or
* Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

In the same vein, the Broadcasting Act, on Section 2(a) compels the SABC to establish and develop a broadcasting policy, to contribute to democracy, development of society, gender equality, nation building, provision of education and strengthening the spiritual and moral fibre of society. In addition in Section 2(r) there is a requirement for the SABC to develop local programming content, which resonates with 90% local content, in fact the European Union (EU) members have 70% EU content on their policy as per the 2007 EU Directives.

Chairperson,

Some members of Parliament and the witnesses have indicated that I did not subject this Policy to Parliament; the Act is clear, it only requires that such information be lodged by the Board not the Minister to ICASA alone, not Parliament, unless if we want to amend the Act, using other means. As a shareholder we have never received any request from Parliament requiring that we come before the Committee to brief Editorial Policy

In my own initiative, I personally sent the copy of the Editorial Policy to Honourable Van Damme to show that there was nothing untoward, this was a number of questions were posed regarding it.

I therefore cannot be unfairly and wrongly accused of the breach of legislative prescripts which are not in existence.

**5.   On former board members**

Chairperson,

I  am disappointed when  some of your witnesses happened to be former Board Members (**Ronnie Lubisi)** who do not know what is the legislated Board quorum requirements.   Section 12 of the Act requires that the Board is composed of twelve(12)Non-Executive Directors and three (3) Executive Directors, GCEO, COO and CFO, to make a total number of fifteen(15) Board Members.

Section 13(10) of the Act stipulates that Nine members of the Board which must include chairperson or deputy constitute a quorum at any meeting of the Board. The false assertion that the Board never inquorate since the departure of the Board members like Ronnie Lubisi, Prof Bongani Khumalo and other is factually incorrect. The truth is that post this period, the SABC had 6 non-executive and 3  Executive directors until recently when Mr Krish Naidoo and Mr Mavuso publicly r**esigned on 05 October 2016.**

I am also not really surprised because Mr Naidoo and Mr Mavuso once confessed to us at the SABC Bilateral meeting held in Irene Pretoria on 15 April  2016, that they have never looked at the Act, when I asked them questions but overnight they have become experts.

The question I asked related to the separation of Board-Committees on Public Service and Commercial Services including the requirement to have two separate Annual Reports; one for the public service broadcasting and the other for the commercial service.

The point is here is that when you have witnesses disputing the sensitivity or the existence of commercial interest of the SABC when in fact it has SABC 3, Metro FM and various platforms which are commercial entities under the  SABC does not surprise me at all.  I must hasten to say the Skills Audit document is not part of the commercially sensitive document. **The document was withdrawn in Parliament by the Board after the SABC staff complained that they were never interviewed and those interviewed were asked irrelevant questions to their area of expertise.**

**6.   On Advisor calling meetings with Board**

The alleged involvement of the advisor meeting with the Board cannot possible implicate me. I have since taking Office, implemented a number of legitimate and proper fora; such as quarterly Bilateral meetings all Boards and Councils of various entities.

As a Minister, I chair and participates in many Board Forums, Forums of the Chairperson of Audit Committees, CEO and CFO’s Forum, all of these serves as platforms within which Board and executive policy and regulatory issues with me and my advisors.

I have not once heard complaint about the meeting held with my advisors and the complaint for me is new.

**7.   From articles of association to memorandum of incorporation (MOI)**

Chairperson, so much has been questioned around the MOI sometimes people exaggerated or over-estimated their testimony. Witnesses have all questioned my powers without reading the laws which governed the SABC.

It is important to note that the MOI is the issue which is legislated in the Broadcasting Act, 1999 since the conversion of the old state broadcaster to the public broadcasting we have today.

The requirement for the MOI is also in line with the Companies Act.  So what I Have done as a Minister is in line with section 8A(3) stipulates the Minister determines the memorandum and articles of association of the Corporation and must submit these to the Registrar at least one week prior to the date of the notice contemplated in section (1).

Section 8A(3) says that ‘ the Registrar’ must, on the date of the notice contemplated in sub-section (1), register the memorandum and articles of the Corporation in terms of section 63(1) of the companies Act and issue a certificate of incorporation and certificate of incorporation and certificate to commence business to the Corporation, but no fees are payable in respect of such registration or use.

Following the amendment to the Companies Act, in 2008, the law now required the memorandum of incorporation and the process to initiate and file this document still rest with the Minister.

Chairperson, these are the requirements of the laws, the Broadcasting Act and the Companies Act not the Minister’s interferences as it has been put to you by the witnesses.

I would want to echo what Krish Naidoo said, that whilst there is no requirement in the legislation for the MOI to done in conjunction or by the SABC Board, however, as the Ministry, we extend a courtesy and our process was so transparent that we made the document available to the SABC Board for their comments and inputs, before the final document was signed-off and lodged with CIPRO. **See Minutes of 04 September 2015 of the SABC AGM and meeting of 29 June 2016 where the Board went through the MOI and there was a Board resolution approving the MoI**

**7.1.      PC on Communication Meeting on MOI**

The lies or the untruthful statement that you were presented with is concerning to us. This is precisely because the MOI was never a secret document, on the contrary, on 23 June 2015, we appeared before the Portfolio Committee on Communications in which the subject of the discussion on a meeting held at Committee Room V454, was the Briefing by the Minister of Communications on the Memorandum of Incorporation of the SABC; the Broadcasting Charter; as well as Legislation and governance instruments for various entities under the Ministry. After the lengthy debate the matter of the MOI was subsequently closed. **There was a lot errors with the MOI including confusing the SABC with SAPO in the same document**

In our normal quarterly Bilateral meeting with the SABC Board, including the Annual General Meetings which I chair as per the relevant legislative prescripts, not a single Board member highlighted any sense of discomfort about the MOI and I would expect that the Board as people who are involved in the governance of the SABC, would be able to advise me and this never happened.

It must be remembered that the Broadcasting Act in section 14, provides that the Board as the accounting authority of the Corporation manages the affairs of the Board. The Board is supported by the three Executive Directors, and no more than eleven (11) members. Therefore, executive Committee of the Corporation manages the day to day operations of the SABC not the Minister.

**I was surprised when Mr Masinga failed to tell this Committee about the Western Cape Judgment (Case No 1072/15) in which he sought to invalidate the amendments of the MOI. The Court dismissed his case and the judgment confirmed that the Minister was legally correct to amend the MOI.**

I must also add, that contrary to the change in ‘MOI’as it has been put to you, the MOI we signed did not start with myself, former Minister Pule, has started the process, Minister Carrim inherited the process and I simply gave the Board an opportunity to comment on the MOI.

**7.2.      Context on the so-called purging of board members**

Chairperson,

The current non-executive members of the SABC Board were appointed by the Acting President Kgalema Motlanthe on 25 September 2013.

In November 2013, President Jacob Zuma accepted the resignation of Ms Noluthando Gosa as a non-executive member of the Board of the South African Broadcasting Corporation. In July 2014 Thembinkosi Bonakele resigned from the Board to take up a position of a Commissioner at the Competition Commission.

In 2014 allegations surrounding the Board’s Chairperson Ms Ellen Tshabalala regarding her academic qualifications emerged. These allegations were subject of an inquiry by Parliament and Court processes. This led to the Chairperson resigning from the Board of the SABC in December 2014.

In January 2015, Prof Bongani Khumalo tendered his resignation from the Board which the President accepted.

In March 2015 the President requested the National Assembly to initiate a process to fill the vacant positions that came as a result of the resignations of the non-executive members of the Board. This process is yet to be concluded by the National Assembly as no new non-executive members of the Board have been appointed.

During March 2015 the SABC Board took a resolution to remove the three non-executive board members (i.e. Ms Hope Zinde, Mr Ronnie Lubisi and Ms Rachel Kalidaas) as non-executive members of the SABC Board in terms of section 71(3) of the Companies Act of 2008. This was done following an investigation on the conduct of the said non-executive board members and the passing a resolution of vote of no confidence in the board members indicated above.

Section 71(5) of the Act stipulates that the Board members must within twenty (20) business days apply to a court to review the determination of the Board. The removed board members did not exercise this option that paved the way for Parliament to accept and initiate a process to fill the vacancies.

The removal of the board members has been a subject of discussion by the Committee to a point where the Committee had to seek legal opinion on the lawfulness of the procedure followed in the removal of the three board members.

It is important to note that section 8A of the Act provides that the SABC is deemed a public company incorporated in terms of the Companies Act, thus making the SABC to be subjected to the provisions of the Act.

Subsequent to this legal opinion, the Minister was requested to respond to the Parliamentary legal opinion. As a result on 23 June 2015, the PC on Communication endorsed the removal of the three Board members from the Board.

**8.   On Public Protector’s report**

Chairperson, let me answer the question on the Public Protectors Report in twofold: that both the preliminary and Final Reports were submitted to the SABC before my tenure in 2013 and 2014. (**See Minutes of 02 July 2014) save to say that I emphasised the importance of the adhering to the Public Protector Report, see the SABC Minutes).**

**9.   Appointment of the COO**

When I met the Board for the first time shortly after my appointment on 02 July 2016, I was fortunate that I knew the weaknesses of the SABC as I have served on the Portfolio Committee on Communications in Parliament.

One of the various the recommendations which I participated in my time in Parliament is that, is that we constantly offered to the SABC our advice for the ensuring stability both in the old Ministry of Communications and all its entities and such recommendation were to be followed up by the 5th Parliament.

Based on Budget Review and Recommendations Reports (BRRR), oversight visits, and Committee meetings, our view would **give reference to the strategic plan of the entities.**

**One of those critical issues was the filling of the vacant position at the SABC, which I mentioned when I met with the Board, sadly only Prof Khumalo remembers that I discussed the filling of positions at the SABC.**

**Nobody mentioned here that recently, in the meeting with the PC on Committee in October, 2016, I have refused to appoint him as the Acting COO after the Board had recommended that he assume the position on the Acting position, after the SCA had ruled against his appeal.**

Not a single witness told me about the Report, what the steps taken by them.  For me, the Board and witnesses should have told what they did between 2013 and 2014 before my time.

To account about my responsibility, on a number of occasions I have appeared before the Committee to appraise Parliament, for instance,  On 05 October 2015, the Committee called a meeting to discuss the following items: SABC Board on Public Protector Report; SCA ruling; appointment of former COO and implications of court & ICASA rulings; Broadcasting Act compliance.

The SABC Board indicated it complied the recommendation to have the former COO suspended and that disciplinary hearing which was broadcast live on SABC television had cleared him.

The Board also indicated that it was taking the report for judicial review as some of the witnesses alleged to have been interviewed by the Public Protector’s Office had declared under oath that they were never interviewed and some who were interviewed were never asked the questions whose answer is given in their names.

**10.**   **Multichoice vs SABC deal**

Chairperson, again this matter of the contract was signed before my time in 2013. We have to understand that around 2005, ICASA granted/ approved licensing of the SABC’s two Channels: SABC 4 and 5.

Since then Parliament and National Treasury failed to secure the funding of R60 million necessary for the SABC to implement the vision in line with the preparations of the DTT. The deal between the SABC and Multichoice has culminated into SABC getting R 500 million which it has utilized to run the 24 Hours News Channel in preparation for the DTT.

The matters was cleared by ICASA, the regulator which exonerated the SABC and Multichoice because no national archives were sold to Multichoice, we need to understand this.

Despite this, on the 21 April 2015, the Ministry appeared before Parliament to discuss issues related to SABC and MultiChoice deal.

The Minister and the ICASA CEO explained that the complaint lodged with the Competition Commission against SABC in connection with the selling of SABC archives had been withdrawn because it was maliciously based on misleading information.

The complaint covered:

* Handing over the SABC archive to MultiChoice;
* SABC ceded its power to determine its policy on set-top box control to a commercial competitor; and
* MultiChoice may require best local programming from the SABC is aired exclusively on DStv first.

To our surprise, the Multichoice SABC Deal has again found its way here into the inquiry. It is important to note the deal was not even negotiated by the previous Board, it happened during the interim Board of Mr Ronnie Lubisi, Mr Mr Vusimuzi  Mavuso, Ellen Tshabalala.

**Let me deal with the issues of DTT**

In 2008, the Cabinet approved a Digital Migration Policy (BDM) and what should be noted is the following:

**11.    Access system/ Encryption**

The above-mention standard was based on the UK model and furthermore dictated that the STBs shall be enabled to receive services from different platforms and operators.

The South African STBs have a standardised operating systems prioritising security features, interoperability and inter-connectability. For this reason the policy provided for the STBs to have a control system to prevent STBs from being used outside the borders of South Africa and to disable the usage of stolen STBs.

**12.       Context of the Revised BDM Policy**

In December 2012, the policy was revised and adopted by Cabinet. In the main, the reason for this revision was to avoid challenges in implementing the digital migration programme caused mainly by differences between broadcasters and manufacturers relating to the use of a control system. The Department opted to remove the mandatory Access Control on (STBs) except for those subsidised by government as means to protect government investment.

What is factually correct, which the witnesses have unfortunately erred on is that in November/December 2013, Cabinet approved that the DBM policy be subjected further public consultation.

So it was only in 2015, that the Digital Migration Policy was approved by Cabinet and this has been implemented in the Northern Cape and other provinces ever since. Chairperson, the witnesses mentioned that Cabinet approved the non-encryption. The Policy was only approved in 2015.

[[1]](http://www.doc.gov.za/minister-communication-address-ad-hoc-committee-inquiry-fitness-sabc-board-hold-office#_ftnref1) Department of Communications (2009).