



The FW de Klerk Foundation
CENTRE FOR CONSTITUTIONAL RIGHTS
Upholding South Africa's Constitutional Accord

Mr I Vadi
Chairperson
Portfolio Committee on Communications
3rd Floor, 90 Plein Street,
Cape Town
8000

Per telefacsimile No: 086 619 9194
Per email:nskaka@parliament.gov.za

25 July 2008

Dear Sir,

Re: Legislative Proposals to Amend the Broadcasting Act 4 of 1999

1. The Centre for Constitutional Rights notes the proposed amendments which seek to give the National Assembly the power to control the removal of individual members from the South African Broadcasting Corporation (**SABC**) Board, and also to dismiss the entire Board.

2. The purpose of the amendments is to empower

- a. the National Assembly to remove a member of the SABC Board from office without the recommendation by the Board that is at present necessary in terms of section 15 of the Act;
- b. the National Assembly to dissolve the entire board by adoption of a resolution - which is not possible in terms of the present Act unless, in the unlikely event, that the Board recommends that all its members should be removed; and
- c. the President to appoint an interim Board until a new Board can be constituted in terms of the Act.;

The Centre is concerned that such control will undermine i) section 16(1)(a) that guarantees the freedom of the press and other media and ii) the principle in section 192

A UNIT OF THE FW DE KLERK FOUNDATION

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RP Hoffman (Director) N de Havilland (Deputy Director)

Panel of Advisors:

Anthea Jeffery, Johan Kruger, Penuell Maduna, Johann Marais, Matthews Phosa, Brian Spilg, Hennie Strydom, Francois Venter, David Welsh, Marinus Wiechers

that broadcasting should be in the public interest and should ensure fairness and a diversity of views broadly representing South African society. The Centre also believes that the proposed amendments are inconsistent with the objects set out in section 3 of the Act in so far as they will not contribute to democracy; that they will not strengthen the political fabric of South Africa and that they will not ensure plurality of news, views and information.

3. Section 192 prescribes that:

"broadcasting must be in the public interest, and must ensure fairness and a diversity of views broadly representing South African society."

4. In the context of sections 16(1) (e) and 192 it is essential that members of the SABC Board should be able to act without fear of retaliation for any bona fide decisions that they might take - including decisions that might bring them into disfavour with the political party that commands a majority in parliament.

5. In granting the National Assembly the power to dismiss individual members of the board - and indeed the whole board - the danger will exist that Board members will only take decisions that are favourable to the majority of the members of the House. What this effectively means is that the Board will be subservient to the Government of the day.

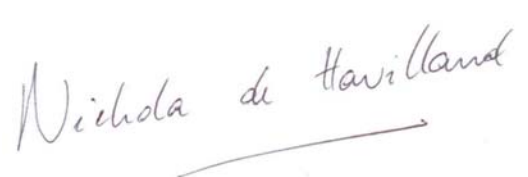
6. It is essential that the SABC Board should operate within the spirit of sections 16(1)(e) and 192 to ensure the protection of freedom of expression and the corresponding right of the public to be informed of all matters of public interest, which requires not favouring or protecting any one view.

7. Under the circumstances the Centre believes that no change should be made to the present situation where members of the Board may be removed from office only on account of misconduct or inability to perform their duties efficiently after due enquiry and only upon the recommendation of the Board.

8. The Centre is also concerned with the proposed amendment which empowers the President to appoint an interim Board in the event of the National Assembly dismissing the entire Board. No provision is made for public participation in the appointment of this interim Board, and no procedure is prescribed. No provision is either made regarding any qualifications of these board members and no time frame is given regarding the replacement of the interim Board with a permanent Board. These aspects should be clearly defined in any proposed amendments to ensure independence of any interim Board.

9. The proposed amendments will undermine the requirements of sections 16(1)(e) and 192 and will negatively affect freedom of expression and the Board's ability to "ensure fairness and a diversity of views broadly representing South African society" and to pursue the objects set out in section 3 of the Act. . It is accordingly unconstitutional.

Yours faithfully,

A handwritten signature in cursive script that reads "Nichola de Havilland". A horizontal line is drawn underneath the signature.

Adv N de Havilland
Deputy Director
Centre for Constitutional Rights.