

PRESIDENT

REPUBLIC OF SOUTH AFRICA

05 February 2009

Dear Madam Speaker

**REFERRAL OF THE BROADCASTING AMENDMENT BILL, 2008 (THE BILL) TO THE  
NATIONAL ASSEMBLY**

I have received the above Bill from the Secretary of Parliament for me to assent to and sign into law.

I have received submissions from members of the Inkatha Freedom Party, the Democratic Alliance and the Freedom Front, who requested that I should not assent to nor sign the Bill, because of the perceived unconstitutionality of clause 3 of the Bill. The submissions are attached herewith for your information and consideration.

Clause 3 of the Bill (hereinafter referred to as section 15A) seeks to insert section 15A into the Broadcasting Act, 1999 (Act 4 of 1999) (the Principal Act), and to amend the existing section 15 of the Principal Act. The main issue raised in the submissions is about "procedural fairness".

- It is submitted that "the constitutional issue at stake in the Bill is the absence in section 15A of any express reference to the requirement of a procedurally fair enquiry preceding the National Assembly's recommendation to remove all the members of the Board".

- It is further submitted that “the absence of an express reference to a preceding enquiry in clause 15A(1)(b) is inconsistent with the right to just administrative action”.
- It is contended that “the absence in sections 15A(1)(b) and (2) of any requirement of procedural fairness is intentional, and the legislature has specifically sought to exclude such right when the National Assembly recommend the dissolution of the Board”.

I have also been favoured with a legal opinion which deals with the issues raised in the submissions. The legal opinion concluded that the Bill is not unconstitutional.

I have spent some time deliberating on this matter. However, my difficulty is that clause 2 of the Bill which seeks to substitute section 15 of the Principal Act, makes specific provision for a “due enquiry” by a committee of the National Assembly when the removal of an individual Board member is considered, but the Bill is silent on the process to be followed with regard to the removal of the entire Board.

Whilst I believe that in exercising powers contemplated in section 15A(1)(b) of the Bill, the National Assembly will be guided by the standards and principles enshrined in the Constitution of the Republic of South Africa, 1996 (the