

**SUBMISSION BY SABC BOARD MEMBERS TO THE  
PORTFOLIO COMMITTEE ON COMMUNICATIONS FOR  
MEETING ON 23 JUNE 2009**

**1. INTRODUCTION**

- 1.1. On Wednesday 17 June 2009 at approximately 16h00hrs SABC Board Members received a letter from the Chairperson of the Portfolio Committee on Communications (the Committee) inviting it to an enquiry in terms of Section 15A (b)(sic) of the Broadcasting Act No. 4 of 1999 as amended( the Act).
- 1.2. The letter stated that the Committee noted that 9 members have resigned from the SABC Board and that the resignations include that of the Chairperson and the Deputy Chairperson. It stated that the committee wished to enquire into two aspects being:
  - 1.2.1. the legal status of the Board with its current membership;
  - 1.2.2. whether in the light of the resignations, the board is still able to fulfill its statutory functions in terms of the Act;
- 1.3. The committee also indicated it would consider oral and written representations at the meeting in order to report to the National Assembly. In view of the late notifications, most Board Members could not attend the Committee Meeting. The following morning when it became apparent that the Company Secretary had not informed the Chairperson of the unavailability of the members, the Deputy Chairperson forwarded a letter to the Chairperson of the Portfolio Committee requesting a postponement. Two board members attended. On Friday, 19 June 2009 an identical letter of invitation was issued by the Chair of the Committee to the Board Members, the only difference being that the Committee Meeting was to be held on Tuesday 23 June 2009.

**2. THE BROADCASTING ACT no. 4 OF 1999**

- 2.1. The Broadcasting Amendment Act No. 4 of 2009 was promulgated on 10 March 2009. The Amendment Act provided for the removal from office of members of the SABC Board as well as resignation of any members. The

relevant Section for the purpose of this submission is Section 15A (1)(b) which reads as follows:

*(b) The National Assembly may, after due enquiry and by the adoption of a resolution, recommend the dissolution of the Board if it fails in any or all of the following:*

*(i) Discharging: Its fiduciary duties;*

*(ii) Adhering to the Charter; and*

*(iii) Carrying out its duties as contemplated in Section 13(11)*

2.2. Once there has been a resolution adopted by the National Assembly, the President must dissolve the Board if the National Assembly recommends the removal of all the members.

### **3. CONCERNS OF SABC BOARD MEMBERS**

3.1. The letter dated 17 June and 19 June 2009 purports to be an invitation to participate in an enquiry in terms of Section 15(A)(1)(b). The first concern the SABC Board has is that like in the case of the first letter of 17 June, the letter of 19 June gives the Board only 1 day, being Monday to prepare for the "enquiry". While Board members have rescheduled most of their appointments in order to attend at Parliament, it is not possible for the Board in such a short period to do the necessary preparations to make the necessary submissions to the Committee.

3.2. In the first instance the Board would of necessity require independent legal advice on account of the nature of the query contained in the letter of invitation. It is simply not possible to obtain such advice in one day.

3.3. It is not clear what the intention of the Legislature is with regard to the manner in which a due "enquiry" is to be conducted. Nor does the letter of invitation give any indication what is expected of Board Members.

3.4. Further questions Board Members have are the following:

3.4.1. What are the terms of reference of the "enquiry";

3.4.2. What is the nature of evidence that is required to be placed before the Committee. The Board has been very concerned about statements made by members of the Management to the Committee without any substantiation required by the Committee;

- 3.4.3. What procedure would be adopted to ensure fairness and objectivity;
- 3.4.4. What the substantive rights of Board Members are and how those rights would be safeguarded in any enquiry;
- 3.5. Board members also have a very real apprehension of bias. Since its appointment in January 2008, members of the Committee have both in Parliament and outside Parliament not only made unsubstantiated allegations against Board Members, but has also made it clear that it intends to have the Board dissolved as soon as it could. Some Members of the Committee attempted to pass a vote of no confidence in the Board in April 2008 without any substantial reason for doing so.
- 3.6. Related to this concern is the fact that members of the Committee, appear to have taken sides with some members of the Group Executive of the SABC. As a result the Board's authority was significantly undermined and remains by a few Group Executive Members. This created an untenable situation where decisions taken by the Board were either not carried out or those Group Executives who did respect the Board's authority were victimised. In the light of this board members have a very real concern about fairness and objectivity.
- 3.7. While Membership of the Committee has changed since the New Parliament came into being this year there is a continuation of the implicit and explicit threat to remove the Board from the Committee. The Board Members are concerned that any enquiry conducted by the Committee in such circumstances will not be fair. Statements by the Chairperson over the last few weeks seem to indicate that a decision has already been made to dissolve the board.

#### **4. ADMINISTRATIVE FAIRNESS**

- 4.1. On the basis of the matters set out above, we are of the view that the manner in which this "enquiry" has been convened does not comply with the principles of administrative fairness enshrined in the Bill of Rights of the Constitution and further provided for in the Promotion of Administrative Justice Act no. 3 of 2000 as amended (PAJA).

- 4.2. While we have not had access to independent legal advice, we are aware that Section 33(1) of the Constitution provides as follows:  
*Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.*
- 4.3. Section 3(1) of PAJA provides as follows:  
*Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.*
- 4.4. Both the Constitution and PAJA are applicable to Parliament because it is an organ of State and it exercises a public power in terms of legislation.
- 4.5. The Board is willing to participate in a properly constituted enquiry that is both procedurally and substantially fair.
- 4.6. The Board is concerned that findings may be made through a flawed process which is likely to have a prejudicial impact on them both collectively and individually.
- 4.7. It is the Board's respectful submission therefore that for the reasons set out above, it is not able to participate in the "enquiry". Members would be more than willing to participate in future in a properly constituted enquiry which complies with relevant legislation including the Broadcasting Act, the Constitution and PAJA.

## **5. CURRENT STATUS OF THE BOARD**

- 5.1. Whilst Board Members are not able to participate in the "enquiry", we nevertheless wish to assure the Committee that to the best of our knowledge the Board is currently properly constituted and is quorate until the notice period of the board members who have resigned expires.