



**AfriForum**

*Part of the Solidarity Movement*

# **SUBMISSION ON SOUTH AFRICAN BROADCASTING CORPORATION BILL SOC LTD BILL 2021 (DRAFT)**

**Prepared for AfriForum by Adv. KG Kemp, Brooklyn Advocates Chambers**

*August 2021*

*The definition of insanity is doing the same thing over and over again and expecting a different result.*

– Albert Einstein

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## Introduction and context

The draft South African Broadcasting Corporation SOC LTD Bill was introduced on 30 June 2021 in the National Assembly by the Minister of Communications and Digital Technologies.<sup>1</sup> It was opened to submissions by the public on 16 July 2021 until 31 August 2021.

Initial response from civil society has been negative, though not for the reasons the general public may have expected.<sup>2</sup>

The Bill comes in the wake of several recent controversial state proposals that relate to broadcasting and communications regulation. The public will be aware of, for example, calls for the state to 1) tax devices like smartphones as televisions (as devices capable of receiving SABC content);<sup>3</sup> 2) force competitors like Multichoice and Netflix to collect fees on behalf of the SABC;<sup>4</sup> and 3) propose a household levy as a new funding model, such levy to be paid whether or not a household owns a television set.<sup>5</sup>

These proposals have their genesis in the *Audio and audio-visual content services policy framework* white paper,<sup>6</sup> which was introduced in October 2020. The Bill, to the surprise of many, does not include the above proposals and has therefore escaped sensationalist scrutiny. Despite this positive development and some few further ideas that merit praise (particularly the legislator's express aims to strengthen accountability), the Bill in its present form is inadequate and defective in respect of its actual stated objectives.

Broadly stated, the Bill will repeal and replace the Broadcasting Act 4 of 1999 ("the former Act") and amend the Electronic Communications Act 36 of 2005 (ECTA). Along with the Independent Communications Authority of South Africa Act 13 of 2000, the above legislation forms the overarching legal framework that applies to the public broadcaster and its operations, and indeed the entire broadcasting sector of South Africa.

It is important to note that the South African Broadcasting Corporation (SABC) is also subject to several other internal policies, codes and compacts that inform its governance and procedures, as well as the scope of its relationship with the state as sole shareholder. Insofar as necessary for purposes of this submission, they are not dealt with individually and specifically herein.

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<sup>1</sup> It has been introduced in terms of section 75 of the Constitution, whereby the ordinary bill will not affecting provinces; however, the National Council of Provinces will have an opportunity to scrutinise the Bill.

<sup>2</sup> Phakati, B. 2021. SABC Bill will not solve public broadcasters troubles, watchdog warns. *Business Live*, 21 July. Available at <https://www.businesslive.co.za/bd/national/2021-07-21-sabc-bill-will-not-solve-public-broadcasters-troubles-watchdog-warns/>. Accessed on 16 August 2021.

<sup>3</sup> O'Regan, V. 2021. South Africa's outdated tv licence fee model may be on the ropes as alternatives mooted. *Daily Maverick*, 9 March. Available at <https://www.dailymaverick.co.za/article/2021-03-09-south-africas-outdated-tv-licence-fee-model-may-be-on-the-ropes-as-alternatives-mooted/>. Accessed on 16 August 2021

<sup>4</sup> *Business Tech*. 2021. DSTV pushes back on controversial TV licence changes for South Africa. 17 June. Available at <https://businesstech.co.za/news/media/499005/dstv-pushes-back-oncontroversial-tv-licence-changes-for-south-africa/>. Accessed 16 August 2021. Accessed on 16 August 2021.

<sup>5</sup> *Business Tech*. 2021. Government clears path for TV licence changes in South Africa. 2 July. Available at <https://businesstech.co.za/news/media/502885/government-clears-path-for-tv-licence-changes-in-south-africa/>. Accessed on 16 August 2021.

<sup>6</sup> Department of Communications and Digital Technologies. 2020. Draft white paper on audio and audio-visual content services policy framework: A new vision for South Africa 2020. *Government Gazette* 43979. Available at [https://www.gov.za/sites/default/files/gcis\\_document/202010/43797gon1081.pdf](https://www.gov.za/sites/default/files/gcis_document/202010/43797gon1081.pdf). Accessed on 16 August 2021.

The stated objectives of the Bill, as expressed in an attached memo and the Parliamentary Monitoring Group brief, are in sum as follows:

- “Once passed into law, the Bill will result in the repeal of the current Broadcasting Act, 1999 (Act 4 of 1999). It seeks to strengthen the efficiency of the operations of the public broadcaster. The Bill proposes, amongst other changes, the streamlining of the Board of the SABC [...], which will strengthen its responsibilities and accountability. It also proposes reforms in the SABC’s funding model and the TV licensing system.”<sup>7</sup>
- alignment with the provisions of the new Companies Act 71 of 2008 (the CA)<sup>8</sup>
- alignment with certain provisions of the Public Finance Management Act 29 of 1999 (the PFMA)<sup>9</sup>
- give effect to the recommendation of the Ad Hoc Committee on the SABC Board Inquiry by the National Assembly<sup>10</sup>
- amend in accordance with recommendations by the SABC itself (unspecified as to which areas particularly)<sup>11</sup>
- give effect to the judgements of the judiciary in three notable matters:<sup>12</sup>
  - *Mpofu v South African Broadcasting Corp Limited (SABC) and Others*<sup>13</sup>  
(Mr Mpofu had contended in essence that only the Minister could remove him from his executive position. The Court rejected this argument, and made clear, via analysis of the former Act, that such power vested in the Board.)
  - *Mashangu Ronnie Lubisi v SABC, SABC Board, Minister of Communications & Others*<sup>14</sup>  
Mr Lubisi had been a member of the Board and chairperson of the audit committee. He alleged that he had been removed (along with another auditor Board member) by his fellow Board members for insisting that the PP report’s remedial actions be implemented. Ironically, the Board’s stated reason for the dismissal was that Mr Lubisi had not disclosed a conflict of interest as a Board member.<sup>15</sup>
  - *SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation SOC Limited and Others; SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation SOC Limited and Others*<sup>16</sup>  
This judgement is crucial to the overall tenor of the submissions made herein below. The Court dealt pertinently with the role of the executive (the Minister) in his mandate as

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<sup>7</sup> Parliamentary Monitoring Group. 2021. *South African Broadcasting Corporation (SABC) Bill*. Available at <https://pmg.org.za/call-for-comment/1081/>. Accessed on 16 August 2021.

<sup>8</sup> Section 1.6(a) of *Memorandum on the Objects of the South African Broadcasting Corporation SOC Ltd Bill 2021*.

<sup>9</sup> Section 1.6(b) *supra*.

<sup>10</sup> Section 1.6(c) *supra*.

<sup>11</sup> Section 1.6(d) *supra*.

<sup>12</sup> The judgements are not properly cited in the memo and author hereof has assumed that the judgements herein referred to are the cases to which the memorandum properly refers by virtue of the content and dates of same.

<sup>13</sup> *Mpofu v South African Broadcasting Corp Limited (SABC) and Others* (2008/18386) [2008] ZAGPHC 413.

<sup>14</sup> *Mashangu Ronnie Lubisi v SABC, SABC Board, Minister of Communications & Others* Case No: 78709/15 (apparently unreported).

<sup>15</sup> Parliamentary Monitoring Group. 2016. *Hearings: Lubisi; Mokhobol Mavuso*. Available at <https://pmg.org.za/committee-meeting/23827/>. Accessed on 16 August 2021.

<sup>16</sup> *SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation SOC Limited and Others; SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation SOC Limited and Others* (81056/14) [2017] ZAGPJHC 289

regards the SABC and emphatically rejected the executive's attempts to centralise power and essentially appoint executives unilaterally.

The stated objectives above are welcomed and arguably represent good intentions. That the words *responsibility* and *accountability* are patently present is encouraging, and particularly that the legislator appears to have taken note of the judiciary's rulings in response to the mayhem that the SABC is engulfed in.

**However, good intentions amount to mere lip service when consequent action is not taken.**

As with all state-owned enterprises, the SABC is in dire straits. Despite posting its first monthly profit for five years in April,<sup>17</sup> public opinion regarding the public broadcaster and the state of its affairs remains negative and concerned. The well-publicised retrenchment of 621 staff members,<sup>18</sup> and particularly the allegedly disproportionate effect thereof on the Afrikaans radio station *Radio Sonder Grense* and its staff<sup>19</sup> rankled with AfriForum members and Afrikaans-speaking people.

The Bill is not a radical overhaul of SABC. Were it not for the controversies noted above, the public may not even have taken note of its introduction. It is highly doubtful whether the stated objective of streamlining will necessarily lead to an increase in operational efficacy and prevent political meddling and patronage networks from taking place.

Indeed, the Bill largely retains the status quo and general internal structures inherited from the former Act. **The reform is not drastic, or even truly significant.**

While the Bill is currently far from disastrous, it does in the view of AfriForum **represent a significant missed opportunity for sorely needed, meaningful and structural reform.**

Stated essentially: Despite doing away with many of the most ludicrous proposals relating to television licence fees, **the Bill does not do enough to achieve its own stated objectives as regards structural reform, at a time when drastic, radical reform has never before been so crucial.**

## General overview and comparison with former Act

It is apparent that much of the text in the Bill is taken word for word from the former Act. The Bill is shorter and in some respects less comprehensive than the former Act. The following sections remain largely the same in meaning and substance and have not been altered to any noteworthy extent:

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<sup>17</sup> Cronje, J. 2021. *SABC makes first monthly profit in five years as advertising revenue grows*. News24, 2 Jun 2021. Available at <https://www.news24.com/fin24/companies/sabc-makes-first-monthly-profit-in-five-years-as-advertising-revenue-grows-20210602>. Accessed on 16 August 2021.

<sup>18</sup> SABC. 2021. *SABC concludes its retrenchment process and moves to new structure*. Available at <https://www.sabc.co.za/sabc/sabc-concludes-its-retrenchment-process-and-moves-to-new-structure/>. Accessed on 16 August 2021.

<sup>19</sup> Bester, C. 2020. *Managing the SABC into the ground – A long term exercise in venality and stupidity*. 19 November. News24. Available at <https://www.news24.com/news24/columnists/guestcolumn/opinion-managing-the-sabc-into-the-ground-a-long-term-exercise-in-venality-and-stupidity-20201119>. Accessed on 16 August 2021.

- *Preamble*<sup>20</sup>

- *Definitions*

While there are omissions when compared to the former Act, presumably the majority of those that were removed are related to the promulgation of the ECTA and its overarching role in communications regulation, which does not deal with the SABC specifically as the Bill does.

- *Objects of Act*

While largely retaining the objects of the former Act, the Bill has done away with some significant sections.

In particular, and unexpectedly, the Bill has deleted section 2(c) of the former Act, which deals with the “ownership and control of broadcasting services through participation by persons from historically disadvantaged groups”, as well as section 2(h), which deals with the objective of ensuring “fair competition in the broadcasting sector”. AfriForum welcomes these deletions in pursuit of a simpler, more focused, goal-orientated broadcaster.

AfriForum further welcomes the unchanged commitment to multilingualism and promotion of **all** South African languages and cultures that form part of the objectives of both the former Act and the Bill.

- *Charter of Corporation*

- *Objectives of Corporation*

- *Organisation: Public service*

- *Organisation: Commercial service*

- *Executive Committee*

- *Removal from office*

While this short section remains largely the same, the legislator inserted section (c), which allows for the Minister to recommend removal in addition to the National Assembly. The difficult relationship between the executive and the National Assembly is discussed fully below.

- *Resolution for removal of member, dissolution of board and appointment of interim board.*<sup>21</sup>

- *Disqualification*

- *Disclosure of conflict of interests*

- *Rights and obligations*

- *Amendment of corporation licence*

- *Regional television services*

- *Accounts*

- *Auditing*

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<sup>20</sup> While remaining largely similar in tenor and purpose, the preamble of the Bill now pertinently acknowledges the SABC’s status as a state-owned company, the government being the sole shareholder, and the minister as shareholder representative.

<sup>21</sup> AfriForum notes that the quorum of an interim Board has been reduced from six to five members.

- *Staff of corporation*
- *Regulations*

One significant change to this section is that the Independent Communications Authority of South Africa (ICASA) – and not the Minister – is now authorised to make regulations as regards the amount of television licence fees and the period of validity for these licences. AfriForum welcomes this amendment.

Indeed, much of AfriForum’s criticism is directed precisely at the fact that several crucial sections **have not been amended and/or substituted to address the issues set out herein.**

While AfriForum appreciates the efforts made towards strengthening accountability in the newly inserted sections, it bears mentioning that sections such as *Auditing, Accounts* and *Disqualification* did **not prevent the flaunting of their provisions and the implosion of fiscal responsibility at the SABC**, and yet remain unchanged in this Bill.

## Submissions

The vital importance of a functioning, independent public broadcaster cannot be understated. The SABC is the only source of entertainment and, more pertinently, political information for the majority of South Africans, many of whom are impoverished and poorly educated. Without a source of quality and independent news, the democratic heart of South Africa is severely compromised. From such a defect does much of South Africa’s ancillary woes flow.

AfriForum submits that any legislative reform that does not effectively and robustly address the Zumafication of state-owned enterprises and the institutional gaps that allowed for state capture is a **wasted opportunity.**

All state policy and legislative action should have as a central point of focus the plugging of accountability gaps to ensure that looting, mafia politics and patronage can never again take root.

The crises that have plagued the SABC since the early 2000s are well-documented, and the public broadcaster is no exception to the abovementioned Zumafication. The scandals are so numerous that even the most ardent of political commentators would be hard-pressed to recall all of them at a single sitting. Cumulatively, the circus of corruption and mismanagement has rendered the public broadcaster at times completely incapable of exercising its constitutional mandate.

These issues are well-publicised and the state well aware of them. Several reports and inquiries were concluded and published, chief among which:

- the Public Protector’s Report No 23 of 2013/14 *When governance and ethics Fail* (the PP report)<sup>22</sup>

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<sup>22</sup> Public Protector of South Africa. 2014. *A report of the Public Protector In terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 and section 8(1) of the Public Protector Act, 1994.* Available at [https://www.gov.za/sites/default/files/gcis\\_document/201409/when-governance-fails-report-exec-summary17feb2014.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/when-governance-fails-report-exec-summary17feb2014.pdf). Accessed on 16 August 2021.



- the Parliamentary Commission’s *Final report of the ad hoc committee on the SABC Board inquiry into the fitness of the SABC Board* (the Parliamentary Commission’s report)<sup>23</sup>
- the SABC Internal Commission’s *Report of commission of inquiry into interference in the decision-making in the newsroom of the South African Broadcasting Corporation* (“the SABC enquiry”).<sup>24</sup>

Some of the most glaring issues that have repeatedly plagued the SABC, and as substantiated by the above inquiries, are:

- board members being “deployed” by powerful political actors, as opposed to being vetted and selected in a transparent and pluralistic process by the National Assembly.<sup>25</sup>
  - The above including frequent irregular appointments at the highest level, such as those of Ms Gugu Dudu as CFO, and Ms Sully Motsweni as Acting Group Executive, among many others, in addition to frequent irregular and unilateral salary increases, among which Mr Hlaudi Motsoeneng’s notorious three salary increases in one year.
  - AfriForum in this regard notes grave concern that no attempt has been made in this Bill to control salary inflation and the enormous wage bill at the SABC currently, which was revealed to amount to between 41%–43% of expenditure in 2020.<sup>26</sup> The relevant section in the Bill, *Staff of Corporation*, allows the SABC unfettered discretion in such matters.
- ministerial and executive interference (exceeding scope of mandate as shareholder representative), particularly during the tenure of Ms Dina Pule and Ms Faith Muthambi, the latter of whom attempted to unilaterally alter the SABC’s memorandum of incorporation (MOI) to centralise power in the executive.
- millions of rands in legal fees and settlement payments due to the frequent irregular termination of contracts,<sup>27</sup> including Mr Motsoeneng’s “purges” of senior staff who opposed him:<sup>28</sup>

The substantial amounts of money paid to SABC’s employees as settlements during protracted suspensions, terminations and/or long-drawn-out labour dispute proceedings and protracted litigations caused unnecessary and avoidable costs to the National Broadcaster, thus resulting in fruitless and wasteful expenditure. The allegation that the avoidable legal fees, settlement awards and acting allowances for persons in suspension, contributed to the National Broadcaster’s unprecedented salary bill escalation by R29 million [...] is substantiated.

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<sup>23</sup> Parliamentary Monitoring Group. 2017. *Final Report of the Ad Hoc Committee on the SABC Board Inquiry into the fitness of the SABC Board*. Available at <https://pmg.org.za/page/https://pmg.org.za/taled-committee-report/2898?via=homepage-feature-card>. Accessed on 16 August 2021.

<sup>24</sup> SABC. 2019. *Report of commission of inquiry into interference in the decision-making in the newsroom of the South African Broadcasting Corporation*. Available at <https://www.sabc.co.za/sabc/report-of-commission-of-inquiry/>. Accessed on 16 August 2021.

<sup>25</sup> Both Thabo Mbeki and Jacob Zuma are accused of cadre deployment in this respect, as far back as 2003. See: Davis, G. 2014. *The Zumafication of the SABC*. In *The Journal of Helen Suzman Foundation* 74. Available at <https://hsf.org.za/publications/focus/state-and-nation/8.the-zumafication-of-the-sabc-g-davis.pdf>. Accessed on 16 August 2021.

<sup>26</sup> Daily Maverick. 2020. *SABC has no choice but to slash its bloated staff complement*. 17 July. Available at <https://www.dailymaverick.co.za/article/2020-07-17-sabc-has-no-choice-but-to-slash-its-bloated-staff-complement/>. Accessed on 16 August 2021.

<sup>27</sup> Charnley, I. 2009. *Dali Mpofu to receive R13.4 from SABC*. Politicsweb, 16 August. Available at <https://www.politicsweb.co.za/politics/dali-mpofu-to-receive-r134m-from-sabc>. Accessed on 16 August 2021.

<sup>28</sup> Public Protector of South Africa. 2014. *A report of the Public Protector In terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 and section 8(1) of the Public Protector Act, 1994*. P. 19. Available at [https://www.gov.za/sites/default/files/gcis\\_document/201409/when-governance-fails-report-exec-summary17feb2014.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/when-governance-fails-report-exec-summary17feb2014.pdf). Accessed on 16 August 2021.

- billions of rands in fruitless, wasteful, and irregular expenditure,<sup>29</sup> with particular emphasis on inflated contracts and payments made in the absence of contracts, as well as contracts and payments towards family members and other persons in service of the state.<sup>30</sup>
- enormous bailouts, the bills for which are footed by the taxpayer and the conditions which accompany such bailouts not being adhered to timeously.

**Consequently, the view of AfriForum is that any meaningful reform must directly, effectively and forcefully address the issues set out above.**

AfriForum deals below with the most significant and pertinent changes to the legislative regime on a point by point basis. Each submission is discussed with reference to the changes to, updates of and insertions to the Bill.

**As a general recommendation, underpinning what is to follow below, AfriForum echoes the frequent calls of the public and civil society for stronger oversight mechanisms and a stronger role for Parliament in same, as well as for stricter enforcement attached to any conditions set on state bailouts.**

### **A. Cadre deployment and political interference not sufficiently tackled**

The issue of interference by the Board and unclear demarcation of roles between the Board and executives was mentioned by Ms Dlamini again as Dr Ngubane had unexpectedly attended a Bid Committee meeting where he informed her she could not tell the Board to whom it should award tenders to.<sup>31</sup>

It should not be possible for one or a few powerful individuals to disrupt the SABC's functioning and damage its financial well-being to such a disastrous extent, as was the case with the appointments of among others Adv. Dali Mpfu, Dr Ben Ngubane, and Mr Hlaudi Motsoeneng.

What follows herein should be viewed in the context that the individuals who populate the governance of the SABC are the critical problem, not necessarily the governance structures themselves. Therefore, attention should be focused on those structures and procedures that allow for such individuals to be appointed and/or create as much chaos as they have done.

The incompetence and ill-suited nature of board members in recent years is demonstrated by the following quotes:

- by the Parliamentary Commission:<sup>32</sup>

The Committee is of the view that had the Board members been properly inducted into their new roles upon taking office, and received training with regard to their respective roles and responsibilities, many of the challenges may have been averted.

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<sup>29</sup> For example, spending R1.2 million on 100 bulletproof vests. See:

- Majazi, Z. 2021. SABC crisis: The Public Broadcaster is sitting on its solutions. Daily Maverick, 24 January. Available at <https://www.dailymaverick.co.za/opinionista/2021-01-24-sabc-crisis-the-public-broadcaster-is-sitting-on-its-solutions/>. Accessed on 16 August 2021.

<sup>30</sup> Parliamentary Monitoring Group. 2017. *Final report of the Ad Hoc Committee on the SABC Board Inquiry into the fitness of the SABC Board*. Paragraph 6 in toto. Available at <https://pmg.org.za/page/https://pmg.org.za/tables-committee-report/2898?via=homepage-feature-card>. Accessed on 16 August 2021.

<sup>31</sup> *Id.*, at paragraph 7.3.6 in toto.

<sup>32</sup> *Id.*, at para 22.2.6.

- from a 2011 University of Johannesburg seminar paper presented by Kate Skinner of the SOS, published even **before** Mr Motsoeneng’s reign of terror:<sup>33</sup>

From the start, political battles in the ruling party began to play themselves out in the SABC. The board was seen to be aligned to the then President Thabo Mbeki, who made the appointments immediately after his presidential defeat at the ANC’s Polokwane conference in December 2007. Management, although initially supportive of Mbeki, realigned themselves to the president-in-waiting, Jacob Zuma. An antagonistic relationship then developed immediately between the board and management. Early in 2008, a board memorandum outlining problems with CEO Dali Mpofu was leaked to the media, and by March parliament declared a vote of no confidence in the board, accusing members of leaking the memo. Although the declaration of ‘no confidence’ had no direct legal effect, the board was further weakened politically. It was clear ANC MPs had distanced themselves from the board, feeling that it had been imposed on them. Throughout 2008, the board continued its battles with SABC management and the CEO in particular, suspending Mpofu and re-suspending him after he was legally reinstated.

The Bill should thus logically make ample provision for the prevention of such deployment and to destroy the perception that the ANC is somehow intrinsically tied up with the affairs of the SABC. It has not done so.

The dispersal of power among the branches of governance is imperative and should in this Bill be set out clearly, comprehensively and emphatically. **Unilateral policymaking should be nigh on impossible.**

International best practice and common sense dictates that the Board, which is appointed by the National Assembly and the President – and therefore (in theory) by the public – should be completely insulated from executive and other political influence.

The Board is aptly described as “the fundamental base of corporate governance in the SABC”, bearing full fiduciary responsibility towards stakeholders, by the Parliamentary Commission.<sup>34</sup>

Specifically, the question of a “divided” Board (where the Board is intractably separated along political allegiances or lines) should be addressed, as well as the situation where a resolution or act of the Board may be voided by virtue of a lack of quorum.

The legislator has attempted to improve and “streamline” corporate governance by reducing the number of board members from 12 to 9, as well as by abolishing the executive position of COO.

Importantly – and encouragingly – it has also inserted sections 11(3)(a)–(c) under *Composition of the Board*. This new article is a step in the right direction and imposes a responsibility on the National Assembly and the President to ensure that the Board is selected in a manner that facilitates public participation, and that the shortlist of proposed candidates is published “in two local newspapers” and the *Government Gazette*.

However, AfriForum’s view is that this is **insufficient to address the problems outlined above and that more can and should be done.**

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<sup>33</sup> University of Johannesburg. N.d. *The South African Broadcasting Corporation – the creation and loss of a citizenship vision and the possibilities for building a new one*. Available at <https://www.uj.ac.za/faculties/humanities/sociology/Seminars/2011/Skinner%202011%20Broadcasting.pdf>. Accessed on 16 August 2021.

<sup>34</sup> Parliamentary Monitoring Group. 2017. *Final report of the Ad Hoc Committee on the SABC Board Inquiry into the fitness of the SABC Board*. Paragraph 5.3.3. Available at <https://pmg.org.za/page/https://pmg.org.za/tailed-committee-report/2898?via=homepage-feature-card>. Accessed on 16 August 2021.

The selection process remains open to abuse and ultimate power remains with the parliamentary majority and the executive. The novel criteria for the process can all too easily become a rubberstamping exercise.

AfriForum submits that the majority in parliament should not be entitled to select the majority of the Board by virtue of sheer numbers, as has been the case in the past.

The nomination and appointment of Board members should be overhauled and allow for a process with clear, stipulated mechanisms for public participation and a clause that voids any appointment not subject to the same. It remains too easy under the present model for the executive branch of government to *de facto* appoint Board members with questionable integrity and allegiances.

That the Bill has not gone far enough in this regard is easily demonstrated by the fact that the supremacy of the Board in the governance of the SABC **was already stated in section 13(11) of the former Act.**<sup>35</sup> Despite this provision, the SABC still descended into chaos between the branches of governance. Clearly, the provisions must be reinforced and clarified.

By way of just one example it can be illustrated that political party membership should result in automatic disqualification/ineligibility for Board selection: The name of the ANC and a perceived lack of loyalty to it, and the notion that the ANC controls the SABC, crops up all too often in the media when reporting on the SABC Board's mudslinging matches.<sup>36, 37, 38</sup>

It is furthermore lamentable and inexplicable that section 16 (*Disclosure of conflict of interests*) was retained unchanged in its entirety. AfriForum is of the view that, given the extreme culture of nepotism and patronage among state institutions, any conflict of interest should automatically and without exception disqualify any person from appointment to the Board.

That the above features prominently in the irregular expenditure of the SABC is evidenced by the following quotation of the Parliamentary Commission (own emphasis):<sup>39</sup>

The Auditor-General reported findings on awards to persons in the service of the state and their close family members. **Although these are not prohibited**, compliance with the legislation and policies was tested to ensure that conflicts of interest did not result in contracts being unfairly awarded or unfavourable price quotations being accepted. The findings were as follows:  
- two awards to the value of R716,690 were made to officials who did not submit declarations of interest;

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<sup>35</sup> De Vos, P. 2018. *Why Communications Minister is legally obliged to respect SABC's independence and work with its board.* inceConnect, 12 June. Available at <https://www.inceconnect.co.za/article/pierre-de-vos-why-communications-minister-is-legally-obliged-to-respect-sabc-s-independence-and-work-with-its-Board>. Accessed on 16 August 2021.

<sup>36</sup> Leshilo, T. 2015. Trio to fight SABC expulsion. *IOL*, 29 March. Available at <https://www.iol.co.za/news/south-africa/trio-to-fight-sabc-expulsion-1838429>. Accessed on 16 August 2021.

<sup>37</sup> The SOS Coalition and Media Monitoring Africa. 2020. *SABC crisis this is a watershed moment for independent public broadcasting.* News24, 19 November. Available at <https://www.news24.com/news24/columnists/guestcolumn/opinion-sabc-crisis-this-is-a-watershed-moment-for-independent-public-broadcasting-20201119>. Accessed on 16 August 2021.

<sup>38</sup> A senior SABC journalist invited Ace Magashule to force the ANC to intervene in the Board. See: Davis, R. 2020. *SABC on the blink after a week of chaos.* Daily Maverick, 21 November. Available at <https://www.dailymaverick.co.za/article/2020-11-21-sabc-on-the-blink-after-a-week-of-chaos/>. Accessed on 16 August 2021.

<sup>39</sup> Parliamentary Monitoring Group. 2017. *Final report of the Ad Hoc Committee on the SABC Board Inquiry into the fitness of the SABC Board.* Paragraph 6.2.5. Available at <https://pmg.org.za/page/https://pmg.org.za/tabled-committee-report/2898?via=homepage-feature-card>. Accessed on 16 August 2021.

- awards to the value of R150,7 million were made to close family members, partners and associates of the SABC; and
- two awards to the value of R3,5 million were made to persons in the service of other state institutions.

Section 16 in the Bill as well as the former Act merely requires that any such conflict of interest must be disclosed by the relevant board member and that, where this has not been disclosed during a meeting, the proceedings of the meeting are void.

While AfriForum is aware that such failure to disclose is a ground for removal in terms of section 14, the point remains that conflicts of interests should be a proactive issue, not a reactive one.

**Persons with such conflicts should not be allowed anywhere near the Board in the first place.**

Removal on such a ground is dependent on 1) the ability of the National Assembly to become aware of such conflict, and 2) a protracted and time-consuming process.

Failure to address this policy will undoubtedly result in further looting and corruption. AfriForum is aware that total disqualification is drastic and out of step with international practice but repeats its considered belief that the severity of the situation calls for an equally severe response.

The legislator could easily take their lead in this regard from the provisions of the Independent Communications Authority of South Africa Act 13 of 2000, which regulates ICASA, and explicitly states at section 6:

a person may not be appointed as councillor [sic] if he or she [...] e) is an office-bearer or employee of any party, movement or organisation of a party-political nature: (f) or his or her family member has a direct or indirect financial interest in the telecommunications or broadcasting industry; (g) or his or her business partner or associate holds an office in or with, or is employed by, any person or body, whether corporate or unincorporated, which has an interest contemplated in paragraph (f) [...]

AfriForum submits the same sentiments in relation to the newly added section 17 (*Appointment of Group Chief Executive Officer and Chief Financial Officer*) and section 18 (*Conditions of Appointment of Group Chief Executive Officer and Chief Financial Officer*).

The addition of this qualifying criteria is most welcome, specifically section 18(1), which stipulates that the appointment of the GCEO and CFO is subject to an annual performance review. It is apparently intended to increase regulation and oversight of these historically volatile positions.

Crucially, these additions expressly clarify that the Board appoints the executive positions. This issue has been raised on multiple occasions and the Parliamentary Commission heard evidence that indicated the uncertainty on this matter gave rise to abuses of process. AfriForum welcomes this development.

Unfortunately, the qualifications are simply not sufficient to address the issues in this sphere of governance. The qualifications for appointment of these positions are scant, open to abuse and leave far too much room for interpretation. The provisions should be subject to far more stringent scrutiny and evaluation, and all persons with patent political allegiances and/or conflicts of interests should be disqualified automatically.

The Bill at present does not tighten the net sufficiently to prevent further politicised appointments, particularly where the selection process of the Board itself is not tightened and altered along the lines suggested above.

AfriForum further submits that the requirements for appointment as expressed in the Bill should be more concrete and should outline exactly which qualifications are required and how many years of experience a candidate must have.

## B. Role and power of minister not sufficiently limited

The two applications are instituted in the background of systematic and repeated failures in the governance and management of the SABC. This has presented itself in the continuous turn-over of Directors of the Board with resultant financial mismanagement. The critical systemic causes of governance failures and mismanagement were found to have been caused by Ministerial interference in the governance and operations of the SABC.<sup>40</sup>

The extent of the Minister's involvement with the public broadcaster has given rise to well-publicised recent strife<sup>41</sup> and is a key pillar of the political interference which plagues the SABC.

Notably, the Bill deleted the preamble of Chapter II of the former Act, which preamble specifically refers to the Minister's authority to "act on behalf of the nation". While this is promising, the Bill certainly envisions some kind of interventionist role for the Minister, albeit limited.

The Bill has added section (h) to *Object of the Act*, which envisions the allocation of roles and assignment of tasks between the Minister and the Board. Although this is highly encouraging, the Bill does not go far enough in delineating this relationship. The section is merely a stated objective.

The legislator has inserted two new sections, specifically at *Continued existence of the South African Broadcasting Corporation* (section 4) & *Powers & Duties of Minister* (section 5).

The primary purpose of section 4 is to emphasise that the SABC continues to exist as a corporation and entity, and has the same status in terms of rights and obligations and legal personality, despite the repeal of the former Act.

**However**, the section goes further, and a section was inserted that explicitly allows for the Minister to alter the SABC's MOI unilaterally, subject only to the qualification that such amendment may not conflict with the Bill and must be aimed at "giving effect to the objectives of the Corporation".

It is unclear why the power of the Minister to amend the MOI was inserted under this section. Given that one of the most prolific debacles in the SABC's recent history involved the attempted unilateral amendment of the SABC's MOI by former Minister Faith Muthambi to allocate herself more power in the governance of the SABC, the above is evidently extremely concerning.<sup>42</sup> It

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<sup>40</sup> Paragraph 1 of the *SOS Coalition judgement in the Johannesburg High Court Para 1 SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation SOC Limited and Others; SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation SOC Limited and Others* (81056/14) [2017] ZAGPJHC 289 (17 October 2017).

<sup>41</sup> Nkanjeni, U. 2019. Faith Muthambu to face criminal charges after SABC probe. *TimesLIVE*. 6 August. Available at <https://www.timeslive.co.za/politics/2019-08-06-faith-muthambi-to-face-criminal-charges-after-sabc-probe-everything-you-need-to-know/>. Accessed on 16 August 2021.

<sup>42</sup> See para 5.3.1.2 of the Parliamentary Commission, where it is stated that:

Evidence by most former Board members who gave evidence suggested that the Minister was at the centre of the appointment and removal of Board members, and curtailed the functions and responsibilities of the Board through amendments of the MOI which in turn impacted on the roles and responsibilities as outlined in the DAF, and in so doing contravened the Broadcasting Act.

must further be recalled on this point that the amendments effected by the former Minister effectively reduced the Board to a ratification role regarding the conduct of the executives. This issue therefore dovetails with the above points regarding clear delineations of power and emphasis on the fact that the Board retains ultimate discretion and responsibility as to the fiduciary care of the SABC.

This exact concern was at the heart of the SOS Coalition judgement (own emphasis):<sup>43</sup>

The ultimate decision-making power is that of the Board and not the Minister as a sole shareholder save where the MOI provides otherwise. The Minister contends that her role in the appointment process is legitimate because she “represents the public interest and must vet candidates on behalf of South Africans”.

In her engagement with the Board, the Minister represents the sole shareholder of the SABC – the Government of the Republic of South Africa. It is Parliament, not the Minister that represents the public interest and performs an oversight role on behalf of the public. The Constitutional Court in *Glenister II* explained the difference between parliamentary oversight and that which the Executive exercises as follows:

“Under our constitutional scheme, Parliament operates as a counter-weight to the Executive, and its committee system, in which diverse voices and views are represented across the spectrum of political views, assists in ensuring that questions are asked, that conduct is scrutinised and that motives are questioned.

Parliamentary committees comprise members of a diversity of political parties and views. No consolidated or hegemonic view, or interest, is likely to preponderate to the exclusion of other views. As importantly, parliamentary committees function in public. The questions they ask of those reporting to them aim at achieving public accountability. The Ministerial Committee, by contrast, comprises political Executives who function out of the public gaze. The accountability they seek to exact is political accountability. It is inimical to an adequately independent functioning of the DPCI.”

**The effect of section 13(11) (of the Broadcasting Act [4] of 1999) therefore is to confer on the Board the exclusive power to control the affairs of the SABC. The Minister is accordingly precluded from exercising any powers by which she may control the Directors in how they control the affairs of the SABC.**

The qualifications to this discretion (allowing the Minister to alter the MOI) are vague and capable of interpretative dispute and do not specifically state a strong role for the Board. Any attempted amendment will likely be taken to Court for adjudication at the cost of time and resources. AfriForum therefore submits that the amendment of the MOI should be subject to a far more stringent procedure that compels the participation of every branch of governance and **eliminates the Minister’s unilateral discretion.**

Additionally, the Bill contains an entirely novel section, *Powers & Duties of the Minister*. Although AfriForum welcomes any attempt at clarity and regulation of executive discretion, the section currently is **toothless, thin and weak.**

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Parliamentary Monitoring Group. 2017. *Final report of the Ad Hoc Committee on the SABC Board Inquiry into the fitness of the SABC Board*. Available at <https://pmg.org.za/page/https://pmg.org.za/taled-committee-report/2898?via=homepage-feature-card>. Accessed on 16 August 2021.

<sup>43</sup> *SOS Coalition judgement in the Johannesburg High Court Para 1 SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation SOC Limited and Others; SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation SOC Limited and Others (81056/14) [2017] ZAGPJHC 289 (17 October 2017) at paragraph 125–127.*

It allows for the Minister, in compliance with section 63(2) of the PFMA to appoint an investigator into the financial position of the SABC where there are “reasonable grounds to believe that the funds of the Corporation have been mismanaged”, and that the Minister “may” intervene based on such report when received.

AfriForum submits that such power should not be discretionary, and that the language of the section should mandate investigation upon any grounds or suspicions whatsoever. It is furthermore undesirable that any one individual bears the responsibility and/or discretion to initiate such an investigation.

If the intention of the legislator under *Power and Duties* was to provide a *numerus clausus* of the Minister’s envisioned role and capacities within the governance of the public broadcaster, **this should be stated in no uncertain terms**. At present it remains open to interpretation where else the Minister may act and in which way.

### C. Editorial independence not sufficiently protected

As noted above, the most concerning casualty of the SABC’s downfall was editorial independence. The so-called SABC 8 case is demonstrative of the culture of impunity and politically biased censorship that reigned/reigns at the public broadcaster, where journalists are victimised and intimidated, and certain political actors are sheltered from criticism. The internal SABC enquiry makes clear that many staff members were threatened and intimidated on the level of something approaching a Hollywood movie.<sup>44</sup> The death of the current affairs journalist Suna Venter is a particularly egregious and upsetting example of the mafia politics at the SABC.

The SABC 8 case was illustrative in that editorial independence forms part of the former Act’s objectives and is an ineluctable component of its regulation – yet was still summarily disposed with and negated.

It therefore seems clear and obvious that to prevent another SABC 8 situation, the Bill must insert stronger regulation as the present standard is insufficient to prevent disregard for the objectives of the legislation. **This has not been done**. The *Objectives of the Act* remain the same on this point and no further additions were added.

AfriForum is of the view that this Bill should provide for sections and mechanisms that ensure, in a practical, effective and demonstrative way:

- editorial independence
- whistle-blower protection or a whistle-blower policy and procedure
- commitment to non-partisanship.

Victimised journalists and potential whistle-blowers should not be without any recourse until the Public Protector or the National Assembly steps in, or until an enquiry is established.

It bears repeating, however, that policies, rules and regulations count for very little in the face of strongman individuals who do not fear consequences to their actions. It is again stressed that **the process of appointment and selection of management is vital**.

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<sup>44</sup> Parliamentary Monitoring Group. 2017. *Final report of the Ad Hoc Committee on the SABC Board Inquiry into the fitness of the SABC Board*. Page 24–40. Available at <https://pmg.org.za/page/https://pmg.org.za/taled-committee-report/2898?via=homepage-feature-card>. Accessed on 16 August 2021.



## D. Tension between CA, the PFMA and the Bill

The Committee is of the view that the SABC conveniently used the Companies Act to subvert the Broadcasting Act in order to justify decisions which appeared to be in pursuit of undermining both Parliament's and the President's roles in the appointment of non-executive directors.<sup>45</sup>

The legislator has presciently added at *Interpretation of Act* (section 2) a clear provision that stipulates that the Bill prevails in the event of conflict between the CA and the Bill.<sup>46</sup>

The insertion of this section is welcomed and provides a deal of certainty, particularly regarding the procedures to be followed when an executive is removed from office, as was the dispute in Adv. Mpofo's case.

AfriForum welcomes the formalisation of what was widely speculated to be the *de facto* position at law.<sup>47</sup> It makes clear that the Bill, as specific legislation, supersedes the CA where the removal of directors is concerned.

It is beyond the scope of this submission to speculate on further potential tension between the CA and the Bill. AfriForum does wish to note, however, that elaboration on this point and further comment are incumbent upon the legislator. Failure to do so may lead to further litigation in future, particularly where the extent of the fiduciary duty of the Board in terms of the CA may exceed that of the duty of care prescribed by the Bill.

The PFMA is applicable to the SABC by virtue of its status as a state-owned corporation. This is noted by the Bill at section 25 (5). However, and as noted by the Parliamentary Commission, the PFMA also prescribes certain mechanisms and standards of conduct in relation to the duties of boards. It is not expressly stated in the Bill whether the provisions of the Bill trump those of the PFMA.

The PFMA is furthermore of **vital importance** in securing proper supply chain management and preventing wasteful and irregular expenditure. Its primordial importance to the proper financial well-being of the SABC cannot be understated and it is desirable that the sections in the Bill that deal with accounting and auditing expressly incorporate and harmonise the two pieces of legislation.

Supply chain management processes and the regulation thereof should also be accorded protected status and it must be expressly stated that the executive board members may not interfere with these, and that the offices responsible for SCM must be given primacy or be consulted before any resources or funds are allocated, upon penalty of misconduct. See in this regard the evidence of Ms N Dlamini before the Parliamentary Commission.<sup>48</sup>

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<sup>45</sup> Parliamentary Monitoring Group. 2017. *Final report of the Ad Hoc Committee on the SABC Board Inquiry into the fitness of the SABC Board*. Paragraph 22.1.1 in toto. Available at <https://pmg.org.za/page/https://pmg.org.za/tables-committee-report/2898?via=homepage-feature-card>. Accessed on 16 August 2021.

<sup>46</sup> It should be further noted that ECTA prevails over the Bill in the event of conflict, thus establishing the supremacy of ECTA in terms of the legislative framework.

<sup>47</sup> Parliamentary Monitoring Group. 2017. *Final report of the Ad Hoc Committee on the SABC Board Inquiry into the fitness of the SABC Board*. Paragraph 5 in toto. Available at <https://pmg.org.za/page/https://pmg.org.za/tables-committee-report/2898?via=homepage-feature-card>. Accessed on 16 August 2021.

<sup>48</sup> Parliamentary Monitoring Group. 2017. *Final report of the Ad Hoc Committee on the SABC Board Inquiry into the fitness of the SABC Board*. Paragraph 7.3. Available at <https://pmg.org.za/page/https://pmg.org.za/tables-committee-report/2898?via=homepage-feature-card>. Accessed on 16 August 2021.

Finally, AfriForum also notes the changes to *Annual Report* (Section 28), which relates to what the SABC is required to report on to the Minister and Parliament on an annual basis. AfriForum welcomes the explicit requirement of financial records having to meet the standards of the PFMA.

### Television licence fee regime and lack of forward-thinking

AfriForum is mindful of the debate that has raged in broadcasting circles in recent times regarding the funding model of the SABC at a commercial level, and the proposed role of television licencing fees in such model. Specifically, assertions by civil society that television licence fees should be scrapped entirely and replaced by a so-called “information levy” or “household levy” for every household that theoretically **could** have access to SABC broadcasts.

Contrary to the expectations of the public, and certain news reports, the Bill has virtually copy-pasted the provisions relating to television licence fees from the former Act at *Television Licenses* (Section 28). The funding model in relation to income derived from television licencing, at least at the hand of the Bill, therefore remains largely the same, subject to any regulations that may be made by ICASA in terms of section 30.

AfriForum notes that even the amount in fines and penalties remain unchanged. While this is welcome, it appears unlikely that it is a voluntary and/or conscious attempt at reducing the strain on taxpayers by the legislator.

Without proclaiming expertise in this field, AfriForum does submit that it is in general opposed to any further taxation of the public purse to make up for the shortfall caused by corruption, mismanagement and the implosion of governance at a state level. **This specifically includes opposition to any type of broad-based household levy. The taxpayer should not be forced to cough up even more money for the public broadcaster’s own failings.**

However, it appears eminently clear that the funding model debate will not disappear as the world moves forward in terms of technology and interconnectivity. It is common knowledge that many people now choose to stream their entertainment and forsake television sets and broadcast services completely. It is therefore lamentable that the Bill does not address these developments in some fashion. Although AfriForum welcomes the fact that the white paper (that did in fact address this issue) was not implemented, it submits that further legislation is inevitable and that kicking the can down the road is not helpful.

It is further lamentable that the Bill does not create certainty in one way or another by closing off any potential for creative interpretation regarding the definition of what constitutes a *television*, and therefore what may be taxed as part of a television licencing fee.

In AfriForum’s view, failing to address the issue directly may leave the door open for regulation and policy **in terms of the Bill itself, by, for example, deferring to ICASA**, to slip in the controversial proposals through the backdoor.

**While AfriForum does not submit that this is the intention of the legislator, it does submit that certainty and finality in regards to this issue would be in the best interests of all stakeholders. This may be achieved by simply defining *television set* in the Bill to include only those devices that have built-in broadcast reception capabilities, i.e. not smartphones, iPad, laptops, and the like.**

The above is crucial considering that the television licence regime refers specifically and exclusively to the use of a “television set” as creating liability for the licencing fee.

AfriForum notes finally that the overall tenor and approach of the Bill – particularly in the language used and the lack of provision for technological advancement – may necessitate new amendments and legislation in short order. Such a situation is undesirable and a waste of time and resources.

AfriForum partially echoes the sentiments of other civil society actors in this regard,<sup>49</sup> but stresses that any forward-thinking and progressive ideas can under no circumstances come at the cost of further taxation or the creation of further bureaucratic apparatuses.

**AfriForum notes that the imposition of a broad-based “information levy”, as called for by the state and sections of civil society, 1) would likely be rejected by the public in much the same way as the present television licence regime, 2) may amount to a form of double taxation and 3) would likely lead to a debacle like the e-tolls fiasco.**

### Powers of television licence inspectors in light of renewed push for collection via debt collection agencies

Having noted above that the regime relating to television licences has remained virtually unchanged as it appeared in the former Act, down to the same amounts in penalties and fines, AfriForum submits that it is an opportune time to revisit the language and regulation in so far as collection and inspection in this arena is concerned. It must be noted in this context that the SABC has in recent times embarked on a renewed push for the collection of television licence fees, following record low compliance by the public. It is apparent that, to this end, the SABC has enlisted the services of debt collection agencies.

It may be possible that the lack of any overhaul in the television licence regime indicates that the state intends to focus its energies on increasing collection rates and compliance with the already extant funding model regarding television licences. The SABC indicated last year that were it to enforce the former Act fully, up to 30% of South Africans could be jailed for non-payment, and that it currently refers non-payment cases to a list of mandated law firms for collection after 60 days of non-payment.<sup>50</sup>

Concerns regarding the ‘bullying’ actions of debt collectors were raised in 2017 already – particularly that the firms mandated by SABC were not properly registered with the appropriate authorities, and that the SABC had taken a “hands-off” approach to their work.<sup>51</sup>

If this is the case, AfriForum submits that the language and provisions of section 28 **must be revisited, despite surviving in toto from the former Act.** This is because these provisions, if enforced strictly, create genuine risks of unlawful and unconstitutional conduct on the part of the SABC, its “inspectors”, and any debt collection agencies or law firms.

AfriForum specifically notes concern regarding the following provisions of the regime, which until now appears not to have been enforced with great fervour and have thus escaped scrutiny:

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<sup>49</sup> Bird, W. 2021. The SABC Bill is not too bad if we were living in 2009. *BusinessDay*, 4 August. Available at <https://www.businesslive.co.za/bd/opinion/2021-08-04-william-bird-the-sabc-bill-is-not-too-bad-if-we-were-living-in-2009/>. Accessed on 16 August 2021.

<sup>50</sup> Sidimba, L. 2020. Poverty and fear of jailing tv owners among reasons SABC battles to collect licences fees. *IOL*, 18 September. Available at <https://www.iol.co.za/news/politics/poverty-and-fear-of-jailing-tv-owners-among-reasons-sabc-battles-to-collect-licences-fees-1f87553c-d3df-4242-a648-e2bf86d34535>. Accessed on 16 August 2021.

<sup>51</sup> Masweneng, K. 2017. OUTA challenges bullying debt collection for unpaid SABC TV licences. 25 January. *Sowetan*. Available at <https://www.sowetanlive.co.za/news/2017-01-25-ota-challenges-bullying-debt-collection-for-unpaid-sabc-tv-licences/>. Accessed on 16 August 2021.

- criminal offence not to comply with the demands of an “inspector”<sup>52</sup>  
(The section refers to such inspector producing “written authority”. It is unclear from where such written authority must derive, and what its terms must be.)
- “any person” may be appointed as an authorised “inspector”<sup>53</sup>  
(The unfettered and unqualified nature of this provision is extremely concerning and would conceivably allow for the SABC to appoint untrained persons to positions with significant power to enter private properties. Additionally, this may conceivably lead to a situation where debt collectors and private attorneys and law firms are granted such powers, which is self-evidently extremely shaky ground.)
- powers of “inspectors” to investigate overbroad and raise concerns regarding the unconstitutional invasion of privacy of private households.<sup>54</sup>  
(These powers are overbroad and insufficiently qualified given the constitutional rights of privacy and due process that may potentially be violated, particularly section (d), which empowers an inspector to demand “any information as may prescribed or necessary in order to determine whether the Act has been complied with”, as well as “enter upon any land, in so far as this may be necessary, in order to exercise a power conferred on him or her by this Act”.)

Any action taken by the state to enforce television licence collections must be approached with extreme caution, given the above. Zealous enforcement of the above provisions would likely lead to a myriad of litigation – civil (damages), criminal (disputes regarding valid defences) and Constitutional (challenges to validity of legislation).

AfriForum submits that the legislator should take cognisance hereof and amend the existing regime accordingly.

## Conclusion

AfriForum is opposed to the passing of the Bill in its present form. It has reservations about the efficacy of the Bill as an instrument of reform and is of the view that amendments to the structure and governance of the SABC could be far more wide-ranging, specifically where the role of the Minister and the selection of the Board is concerned.

Furthermore, the unchanged television licence regime may present a constitutional quandary should the state seek to enforce it strictly rather than amending it to reflect current practice.

This Bill is not disastrous, but nor is it effective. Despite some positive steps, it is, in its present form, **a missed opportunity** to take the bull by the horns and start the desperately needed process of institutional reform at SOEs.

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<sup>52</sup> Section 28(5)(b) of the Bill.

<sup>53</sup> Section 28(6) of the Bill.

<sup>54</sup> Section 28(7)(b), (d) and (f) of the Bill.