



Independent Communications Authority of South Africa

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Monitoring and Complaints Unit
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To: The Executive Director- FXI

From: Fikile Hlongwane

Date: 06 March 2007

Per Fax: (011) 339 4109

Pages: 8 Inclusive

SABC RESPONSE

Dear Ms. Duncan

Please find herewith communiqué from the Independent Communications Authority of South Africa (ICASA).

Yours Sincerely


Fikile Hlongwane
Acting Manager: MCU



Independent Communications Authority of South Africa

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06 March 2007

The Executive Director
Freedom of Expression Institute
P.O. Box 30668
Braamfontein
2017

Per Fax: (011) 339 4109

Dear Ms. Duncan

Complaint against the SABC (Violations of the South African Constitution, Broadcasting Act and Licence conditions)

The above complaint lodged by the Freedom of Expression Institute with the Authority against the SABC on 20 February 2007 bears reference.

Please find herewith the SABC's response in respect of the aforesaid. You are requested to submit your response and or comment to the Authority by end of business on Friday 09 March 2007.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'F. Hlongwane', written over a horizontal line.

Fikile Hlongwane

Acting Manager

Monitoring and Complaints Unit- ICASA



Policy and Regulatory Affairs
Radio Park Henley Road
Auckland Park 2092
Johannesburg
Private Bag XI
Auckland Park 2008
Tel 2711 714 3926 Fax 2711 714 4508

Facsimile

Attention:	Lindisa Mabulu
Company:	ICASA
Department:	Monitoring Department
Re:	FXI Complaint
Fax Number:	011 444 1461
Date:	05 March 2007
From:	Fakir Hassen
Department:	Policy and Regulatory Affairs
Contact Number:	011 714 3728
Total Pages, including Cover:	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> If you do not receive full amount of pages, please contact sender without delay
<input checked="" type="checkbox"/> Urgent <input type="checkbox"/> Reply ASAP <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Review <input type="checkbox"/> For Your Information	

Dear Ms. Mabulu,

Please find the enclosed documentation with regards to the Freedom of Expression Institution's complaint.

Yours sincerely

Fakir Hassen
Manager: Broadcast Compliance
SABC



*Policy and Regulatory Affairs
Radio Park Henley Road
Auckland Park 2092
Johannesburg
Private Bag X1
Auckland Park 2006
Tel 2711 714 3926 Fax 2711 714 4506*

05 March 2007

Ms Lindisa Mbulu
Complaints Officer
Independent Communications Authority of South Africa
Private Bag X10002
SANDTON
2146

BY FAX : (011) 444 1461

Dear Ms Mbulu

COMPLAINT: FREEDOM OF EXPRESSION INSTITUTE

I refer to your fax of 26 February 2007 in respect of a complaint lodged with ICASA by the Freedom of Expression Institute (FXI), which alleges that the SABC has failed to comply with the following South African statutes following the Commission of Enquiry into blacklisting and related matters:

- The Constitution of the Republic of South Africa
- The Broadcasting Act No. 4 of 1999 (as amended)
- The ICASA Act, No. 13 of 2000 as amended

I also confirm that the four different e-mails attached to this complaint are, as indicated in your letter, for the information of the SABC only and we will therefore not respond to the allegations and demands therein.

At the outset, we wish to state that the SABC believes there is no validity to the complaint.

The SABC fully appreciates the right of the FXI to express its opinions on matters related to the public broadcaster, but we submit that the complainant has failed to show how any of the allegations in its complaint constitute an actual violation by the SABC of its licence conditions and statutory obligations through its broadcast material. No specific references are made to programmes broadcast which are alleged to have contravened licence conditions and statutory obligations. Instead the complaint argues that certain editorial instructions around the "blacklisting" of certain commentators would have resulted in "a reduction in the diversity of viewpoints on SABC services". But nowhere is this shown. It does not necessarily follow that because certain commentators did not appear on air, the material broadcast by the SABC and specifically SAfm was in violation of its licence conditions and statutory obligations to provide fair, impartial news and current affairs programming. While certain commentators did not appear on air, others may have instead appeared, providing a sufficiently diverse range of views. In fact, it is worth noting, that the SABC has over the last year received no other complaints regarding SAfm's compliance with those clauses of its licence conditions dealing with adherence to the Broadcasting Act in respect of balance or alleged biased information.



It is the SABC's submission that the FXI is using the ICASA complaints provisions as a vehicle to argue its views on "the SABC's lack of appropriate response to the Commission's findings". The complainant appears more interested in understanding what steps the SABC has taken since the Commission's findings than in arguing non-compliance. The complainant states "There is no information in the public domain of action being taken on the measures being proposed by the Commission" and "We are now of the view that we have waited in vain". The SABC submits that the lodging of a complaint on alleged violation of licence conditions and statutory obligations is not the appropriate vehicle for establishing information on what steps the SABC may have taken following the Commission's findings.

Leaving aside the SABC's preliminary views on the validity of the complaint, we wish to refer the Authority to s17C(1)(a) of the ICASA Act, which states:

"A person who has reason to believe that a licensee is guilty of any non-compliance with the terms and conditions of its licence or with this Act or the underlying statutes may lodge a complaint with the Authority within 60 days (our emphasis) of becoming aware of the alleged non-compliance."

The time-frame in this provision is aligned with the time-frame laid out in s53(1)(a) of the Electronic Communications Act which requires broadcasters to keep copies of their broadcast material for 60 days.

The SABC understands that the intention of these provisions (which is longer than the 30 days previously laid out in the Independent Broadcasting Authority Act) is to allow members of the public and interested parties sufficient time to lodge complaints about broadcast material and also to ensure that such complaints are dealt with timeously. The time-frames also prevent the unreasonable situation where broadcasters would have to keep copies of broadcast material for an unspecified time, in order to answer complaints which may or may not be lodged against it.

The SABC submits that the complainant has not complied with s17C(1)(a) of the ICASA Act as the alleged non-compliance referred to in the complaint came into the public domain in October 2006. The complainant, in fact, issued public statements in this regard (attached as Annexure A), which confirm that they were fully aware and, by their own admission, concerned about the matters referred to in the complaint on 19 October 2006 already.

The complainant is also clearly aware of the provisions of s17C(1)(a) of the ICASA Act as extensive reference is made to s17 of the ICASA Act in paragraph 79 of the complaint.

The SABC also wishes to point out that another party, namely the SA Jewish Board of Deputies, was able to comply with s17C(1)(a) of the ICASA Act, in lodging a complaint which was also related to the Commission of Enquiry into blacklisting and related matters. This complaint was submitted to us on 7 December 2006, well within the prescribed 60-day period noted above, and was consequently dealt with by the Authority. The SABC submits that if it was possible for this party to lodge a complaint within the specified time-frames it should have been possible for the FXI to do likewise.

In light of the above, it is the SABC's submission that ICASA cannot entertain the complaint.



The SABC submits that it would be severely prejudiced if ICASA were to proceed to hear this complaint as:

- It would be a clear violation of the provisions of s17C(1)(a) of the ICASA Act.
- Should the SABC wish to defend this complaint by calling upon specific broadcast material, it might not be able to do so as the 60 day period for keeping copies of broadcast material would have passed.
- It would create an unreasonable precedent wherein the SABC and other broadcasters would be expected to answer complaints about offences which are alleged to have occurred, regardless of when they are alleged to have occurred.
- The SABC currently receives hundreds of written complaints a year about material broadcast on its 21 licensed services. The management of these complaints would become extremely difficult should there be no time-frame for the lodging of complaints.

The SABC also notes that the Authority has on previous occasions refused to entertain complaints on the basis that they did not comply with the legislative time-frames. The SABC submits it would be highly irregular for the Authority to deviate from that course of action in this case.

We therefore urge the Authority to dismiss the complaint.

Having argued the above, the SABC does not propose at this point to respond to the complaint in any further detail. We, however, reserve our rights to make further submissions should the Authority decide to proceed to entertain the complaint.

Kind regards

A handwritten signature in black ink, appearing to read "Fakir Hassen". The signature is written in a cursive style with some loops and flourishes.

FAKIR HASSEN
Manager: Broadcast Compliance
Policy & Regulatory Affairs

F I

PRESS STATEMENTS

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SABC 'blacklisting' report

19 October 2006

The Freedom of Expression Institute is outraged that the South African Broadcasting Corporation (SABC) has decided not to release the much-awaited report into allegations of a politically-motivated 'blacklist' implemented by the Group Executive of News, Dr. Snuki Zikalala, on SABC services. Instead they have chosen to release the findings. This blacklist is alleged to have consisted of political commentators that had made statements critical of President Thabo Mbeki's presidency.

The report was put together by a semi-independent commission of enquiry, with the following terms of reference:

1. Dr. Zikalala had instructed his staff not to use four specifically named commentators because of their alleged political bias. Other names were subsequently added to the list of "excluded analysts".
2. This instruction was wrongful in that it was politically motivated since these commentators held a particular view on the African National Congress (ANC) succession debate to which the SABC was presumably opposed.

The FXI believes that there is only one way for the SABC to put public speculation about the report into allegations of blacklisting on the Corporation's services to rest, that is: to release the report in full. Half measures and summaries will not do. That is why the FXI yesterday filed an information request with the SABC, on the basis of the Promotion of Access to Information Act, asking for the report.

The SABC's Group Chief Executive Officer, Adv Dali Mpofu's response to questions this morning on the SABC's SAFM, and the statement issued by the SABC yesterday - which contains a 'summary' of the report - are completely inadequate and raise more questions than they answer. Further, in failing to release the report, the SABC is falling down at the critical moment when it comes to its commitment to transparency. There is now a public dispute about the contents of the report, with competing versions coming into the public domain: a dispute that will be laid to rest only once the public has an opportunity to engage with the contents of the report directly, and not mediated by the SABC itself. We believe that there is a strong argument in terms of the Act for the report to be released.

Significantly, Adv Mpofu repeatedly contradicts himself and his media statements. Yesterday (on the Xolan: Gwala show on SAFM and reported on the [sabcnews.com](#) website), Adv Mpofu insisted that, according to the report, there was no 'blanket ban' on commentators. This morning he said he would go to grave maintaining this position. However, this contradicts the report summary issued by the SABC yesterday. The summary says the commission found that 'the media statement stating that there were no blanket bans on the use of individual commentators "avoided the issue" and was "misleading by omission".'

Accordingly it found that SAFM presenter's John Perlman's position - who had challenged on-air the SABC spokesperson Kaizer Kganyago on the Corporation's statements refuting the existence of the blacklist - was in conformity with the actual situation.' Mr Perlman's position, according to the SABC statement was that "blacklisting" was happening "in practice". Mr Perlman specifically stated that this practice was happening "by instruction". We find it amazing that, after this, Adv Mpofu can still claim that the report found that there was no 'blanket ban' and no 'blacklisting' at the SABC.

Further, according to the SABC summary, the commissioners found that instructions were given not to use some commentators (Karima Brown and Paula Slier), others could not be used in relation to the Zimbabwe crisis (Moeletsu Mbeki, Elinor Sisulu and Trevor Ncube) there were inferred instructions in relation to others (William Gumede and Siphon Seepe) and a still-to-be-clarified finding on Yukani Mde. Yet, Adv Mpofu continues to claim there is no evidence of any blanket ban or blacklisting of certain political analysts.

Another reason why the SABC must release the full report to the public is because the SABC's own summary of the report is confusing, garbled, and even downright contradictory.

The reasons for the non-release cited by the SABC are that much of the evidence given to the Commission was given by anonymous sources, and could therefore not be tested and 'may well be contestable'. Also, that the constitutional rights of witnesses and those against whom allegations are being made, are at stake. The untestable nature of some of the evidence was perhaps inevitable with an enquiry of this nature, but the preponderance of confidential sources should not stop the release of the report. The public will read and understand untested (and untestable) allegations for what they are. Also, if this weakness applies to the report, then it applies equally to the summary, so these are not sufficient grounds to withhold the release of the report.

The public will never know what the report really says as long as we receive only an SABC interpretation of it, which confuses as much as it informs. For example, what is one to make of the SABC summary that, in relation to Yukani Mde, that there was 'no evidence to suggest that any instruction was ever given to use him as an analyst or commentator'. It is difficult to know whether this is a mistake, as the purpose of the enquiry was not to prove whether there were instructions to use particular commentators, but rather not to use commentators. In relation to Aubrey Matshiqi, it states that there was no evidence of a blanket ban, but then refers to his 'exclusion'.

It is highly inappropriate for a public institution, committed to the free flow of information, to disable the free flow of information about its own activities. The FXI calls on the SABC to have the courage of its convictions and release the report, and to deal with the consequences as they arise.

For more information, contact:

Jane Duncan, Executive Director, 082 786 3600

Na'eem Jeenah, Head: Anti-Censorship Programme, 084 574 2674

Virginia Magwaza-Setshed', 011 403-8403