



**Complaint to the  
Independent Communications Authority of South Africa**

**20 February 2007**

**Summary of Complaint**

1. The Freedom of Expression Institute (FXI) hereby lodges a complaint with the Independent Communications Authority of South Africa (ICASA), on the grounds that the South African Broadcasting Corporation (SABC) has failed to comply with the following statutes:
  - 1.1 The Constitution of the Republic of South Africa Act 108 of 1996 (“Constitution”);
  - 1.2 the Broadcasting Act 4 of 1999 (as amended, “Broadcasting Act”)
  - 1.3 the Independent Communications Authority of South Africa Act 13 of 2000 (as amended, “ICASA Act”)
2. This complaint makes reference to the findings of the Commission of Enquiry into blacklisting and related matters, conducted by Zwelakhe Sisulu and Advocate Gilbert Marcus, assisted by Professor Guy Berger, published in October 2006 (“Report”).
3. This Commission was precipitated by an on-air clash between SAFM radio anchor John Perlman and the SABC's spokesperson, Kaizer Kganyago following a report in the Sowetan newspaper alleging the existence of a blacklist of political commentators. Perlman refuted the

SABC's statement, denying the existence of the blacklist, and asserted that the blacklist existed, citing his actual experience in the newsroom.

4. While not being a trial or a vehicle for enquiring into labour disputes, it is significant that the Commission based its findings on undisputed evidence. Therefore the outcomes of the Commission are of relevance to ICASA as they point to violations of the SABC's licence conditions and the Act. What is also of relevance to ICASA, we submit, is the SABC's conduct after the completion of the report, as we believe aspects of its conduct to be in violation with South Africa's Constitution, the Broadcasting Act and SAFM's licence conditions.
5. We have waited for the SABC to implement the recommendations of the Commission. We are now of the view that we have waited in vain. Ideally, once the Board was made aware of the Commission's findings, they should have taken corrective action immediately, and publicly announced what these steps were to be. This would have instilled public confidence in the SABC's commitment to making right the wrongs pointed out in the Commission's report, and may have made this complaint unnecessary.
6. Instead, we are concerned at what appears to be the SABC's lack of appropriate response to the Commission's findings. There is no information in the public domain of action being taken on the measures proposed by the Commission. Instead, according to media reports, attempts have been made to issue Perlman with a written warning. There is no indication of whether action is being taken against the person responsible for excluding commentators, the Managing Director of News and Current Affairs, Dr. Snuki Zikalala.
7. If the media reports are true, then it means that disciplinary steps have been taken against Perlman for supporting the provisions of the SABC's Charter and acting in accordance therewith. This, in turn, means that the SABC Board and management are unwilling to act in

ways that befit a public broadcaster, and instead confirms the SABC's shift towards a state broadcaster.

8. The SABC has been beset by other resignations as well, including Nikiwe Bikitsha, Jimi Matthews, Lerato Mbele, and Mandlakazi Mpahlwa. The SABC has denied that Bikitsha's resignation is connected to the blacklisting report (The Star, 1/02/2007). However, the SABC should also accept that one of the consequences of the Commission having found the SABC's media release denying the existence of the blacklisting report misleading by omission, is that the public will not take what the SABC says on the issue at face value.
9. Taking all these factors into account, the FXI submits that there are sufficient grounds to merit ICASA exercising its discretion to direct this complaint to the Complaints and Compliance Committee (CCC) of ICASA, as these resignations, especially that of Perlman, strongly suggest that the SABC's own staff are losing confidence in the SABC. The FXI, too, is losing confidence in the ability of the SABC to address the Commission's findings, hence this complaint to ICASA.
10. On 29 June 2006, the Chief Executive Officer of the SABC, Adv. Dali Mpofu, appointed a Commission of Enquiry into allegations of blacklisting of political commentators in the SABC News and Current Affairs division.
11. The Commission was mandated to establish the following:
  - 11.1 Whether undue banning or blacklisting of commentators had taken place;
  - 11.2 If the SABC's statement of 20 June 2006, denying the existence of the blacklist, was in conformity with the factual situation;
  - 11.3 What the source of perceived low morale in the newsroom was;

- 11.4 Whether practice in the division was in line with international best practice.
12. In summary, the Commission found that particular individuals had been excluded from news and current affairs programmes on grounds that were not objectively defensible. The Commission also found that the SABC media statement of 20 June 2006 did not accurately reflect the factual position on blacklisting and that Perlman's position on the matter was 'in conformity with the factual situation'. The Commission also found a tendency on the part of Zikalala to micro-manage decision-making, and that his interventions in relation to the excluded commentators were 'counter-productive and destructive of good morale'. The Commission also found that the draft guidelines on the use of commentators, that had not yet been adopted by the Board, were inadequate and not in line with international best practice.
13. The report states (at paragraph 5.59)
- “what does emerge is undoubtedly a worryingly narrow view of the range of permissible perspectives and qualities of what defines an individual as being approachable for comment and analysis...In turn this situation restricts the range of views available to South Africans who depend on the SABC to provide them with the information upon which they make their democratic choices”.*
14. As the public broadcaster, the SABC functions according to a statutory mandate, and in addition has specific licence conditions. These documents outline the SABC's public service mandate. In terms of the Charter, contained in the Broadcasting Act, the SABC must offer a plurality of views from a South African point of view, and must provide a reasonable opportunity for viewers and listeners to receive a variety of points of view on matters of public concern. The SABC must also meet the highest standards of journalism. It is expected to provide fair

and unbiased coverage, be impartial and balanced, and exercise independence from government and other interests.

15. The exclusion of commentators in the manner described by the Commission's report violates these requirements as it has led to a reduction of the diversity of viewpoints on SABC services and interfered in an unreasonable manner with the right of the public to receive diverse views. Numerous incidents also point to a pro-government bias on the part of Zikalala, in turn impacting negatively on the independence from government of the News and Current Affairs division. The indecisiveness of the SABC in responding to these violations cast a pall on the leadership of the SABC Board.
16. Since the release of the report, the SABC's response has been at best intransigent, at worst contradictory, with Mpfu indicating in the *City Press* (10/06) that both Perlman and Zikalala had a case to answer flowing from the Commission's findings. This was in spite of the fact that the Commission vindicated Perlman. He has subsequently resigned, and other resignations have taken place for undisclosed reasons. In *Die Beeld* (05/02/2007), SABC spokesperson Kaizer Kganyago, stated that Mpfu "shall decide when he decides" on the second phase of the investigation into blacklisting. No public statement has been made about the concrete steps being taken by the SABC to address the problems identified in the Commission's report. These factors are bound to contribute to a further decline in staff morale, which has already been affected negatively by the blacklisting report (according to the Commission's report), as these are indications that the SABC is responding inappropriately to the report.
17. This complaint shall argue that the SABC has failed to comply with the following statutes:
  - 17.1 The Constitution;
  - 17.2 the Broadcasting Act; and

17.3the ICASA Act

18. This complaint shall argue further that the SABC has failed to comply with the following policy documents and codes of conduct:

18.1 the SABC's licence conditions; and

18.2 the BCCSA Code of Conduct re: news programming.

19. With respect to paragraph 18.2 above, while the SABC Board is responsible for the Editorial Policies and the BCCSA for the BCCSA Code of Conduct, these documents do set norms and standards for news and current affairs broadcasting and their contents should therefore be taken into account in considering this complaint.

20. With respect to the allegations in the Report regarding Paula Slier, the SABC has violated the following statutes and/or policy documents:

20.1 s.10 (1)(d) of the Broadcasting Act;

20.2 s.4.2.3.4 of SABC licence conditions; and

20.3 SABC Editorial Code and Editorial Policies.

21. With respect to the allegations in the Report regarding Sipho Seepe, the SABC has violated the following statutes and/or policy documents:

21.1 s.10(1)(d) of the Broadcasting Act;

21.2 s.4.2.3.5 of SAFM's licence conditions;

21.3 s.6(8) of the Broadcasting Act; and

21.4 s.2 of the SABC Editorial Code of Practice.

22. With respect to the allegations in the Report regarding Aubrey Matshiqi, the SABC has violated the following statutes and/or policy documents:

22.1 s.10(1)(d) of the Broadcasting Act;

22.2 s.4.2.3.5 of SAFM's licence conditions; and

22.3 SABC's own Editorial Policies.

23 With respect to the allegations in the Report regarding Karima Brown, the SABC has violated the following statutes and/or policy documents:

23.3 s.10(1)(d) of the Broadcasting Act

23.4 s.4.2.3.3 of the SABC's licence conditions

23.5 s.4.2.3.5 of the SABC's licence conditions.

24 With respect to the allegations in the Report regarding Moeletsi Mbeki, Elinor Sisulu and Trevor Ncube, the SABC has violated the following statutes and/or policy documents:

24.3 s.10(1)(d) of the Broadcasting Act;

24.4 s.4.2.3.5 of SAFM's licence conditions; and

24.5 SABC's editorial policies.

25 With respect to the allegations in the Report regarding Staff morale at the SABC, the SABC has violated s.10(1)(d) of the Broadcasting Act.

26 With respect to the Special Assignment incident the SABC has violated the following statutes and/or policy documents:

26.3 s.16 of the Constitution;

26.4 s.6(3) of the Broadcasting Act; and

26.5 s.2 of the SABC's Editorial Code of Practice.

27 With respect to the SABC statement of 20 June 2006, the SABC has violated the following statutes:

27.3 s.6(8) of the Broadcasting Act;

27.4 s.2 of the SABC Code of Practice;

27.5 s.8(d) of the Broadcasting Act; and

27.6 s.35(2) of the Code of Conduct for Broadcasters.

28 With respect to the attempt to interdict *Mail and Guardian* newspaper, the SABC has violated the following statutes:

28.3 s.16 of the Constitution; and

28.4 s.13(4)(b) of the Broadcasting Act.

29 With respect to the alleged disciplining of John Perlman, the SABC has violated the following statutes:

29.3 s.16 of the Constitution;

29.4 s.6(8)(f) of the Broadcasting Act; and

29.5 s.4.2.3.3 of SAFM's licence conditions.

### **Paula Slier**

30 In terms of s.10(1)(d) of the Broadcasting Act, the public services of the SABC must provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests. This requirement is repeated in s.4.2.3.4 of the licence conditions of SABC services.

31 The report makes reference to a direct instruction from Dr. Snuki Zikalala given to all news desks, that no material or story supplied by journalist Paula Slier should be used by SABC news desks until further notice.

32 With respect to Slier, the Commission found Zikalala's reason for issuing this instruction - namely that she was biased towards Israel - was improper in that it was motivated by a political position supporting the Palestine Liberation Organisation. They argued that her exclusion was in direct conflict with the SABC's policies and Code.

- 33 It is our contention that her exclusion was also in violation of the Broadcasting Act's requirement to provide programming that was independent from political interests, including the liberation movement and (according to Zikalala) its historic support for the PLO. He therefore allowed political allegiance to govern his decision making about the use of Slier, and therefore took a non-independent and biased decision, in violation of s.10(1)(d) of the Broadcasting Act.
- 34 Zikalala's instruction on Slier is also a violation of the SABC's own Editorial Code, which states that 'we do not allow advertising, commercial, political or personal considerations to influence our editorial decision-making', and further 'the staff may not allow their professional judgment to be influenced by pressures from political, commercial or other sectional interests'. The Editorial Policy goes onto state, 'SABC reporting should be, and be seen to be, accurate, fair, impartial and balanced. Our audiences have the right to expect SABC news and current affairs programming not to reflect the personal views of editorial staff'. Clearly this was not the case in relation to the exclusion of Slier, who was excluded because of Zikalala's personal and political views.

### **Sipho Seepe**

- 35 In terms of s.4.2.3.5 of the licence conditions, with respect to news, information and current affairs, the licensee must 'provide a reasonable opportunity for the public to receive a variety of points of view on matters of public concern'.
- 36 S.6(8) of the Broadcasting Act requires the SABC to develop a Code of Practice that ensures that the personnel comply with certain values, including 'a high standard of accuracy, fairness and impartiality in news and programmes that deal with matters of public interest'. This requirement is captured in the Code of Practice in the following clause:

'We are committed to a high standard of accuracy, fairness and impartiality and we therefore report, conceptualize, and present news and current affairs honestly by striving to disclose all the essential facts and by not suppressing relevant, available facts, or distorting by wrong or improper emphasis'. This section also states that 'The SABC is not the mouthpiece of the government of the day...'

- 37 The SABC's own Editorial Policies state that the SABC must provide a full spectrum of opinions, perspectives and comment, which also extends to the use of guests, analysts and specialist commentators. According to the Policy on News and Current Affairs 'This requires editorial staff to choose, as participants, people who have a wide range of views, opinions and perspectives, and are drawn from all over the country'.
- 38 With respect to Seepe, the Commission found that although Dr. Zikalala had not issued a direct instruction not to use him, the fact that he expressed a concern that Seepe had disrespect for the government and disrespect for the President in particular. He then expressed an opinion characterizing Mr. Seepe's articles as 'not articles that were building this nation but articles that were undermining the President'. According to the Commission, these views would probably have been interpreted as being tantamount to an instruction.
- 39 The Commission also noted their concern at the inappropriateness of this comment, noting that 'it is not the role of the SABC to represent the Government or to improperly shield the Government from criticism'. An inferred instruction would inevitably lead to coverage that is partial to the Government, as Seepe was considered suspect because of his supposedly anti-Government views.
- 40 This inferred instruction was in violation of s.10(d) of the Broadcasting Act, requiring the SABC to provide programming that is unbiased and independent from government interests, as well as the s.4.2.3.5 of

SAFM's licence conditions obliging the licensee to ensure that the public received a variety of points of view. It also violates the requirement of s.6(8) of the Broadcasting Act, translated into s.2 of the Code of Practice, requiring impartiality in news and programming, as well as the sub-section stating that it is not the mouthpiece of the government of the day.

- 41 The inferred instruction was also in violation of the SABC's Editorial Policies in that Zikalala again allowed his personal and political views to prevail over news judgments, and could well result in a narrowing of opinion if his views were excluded from SABC services.

### **Aubrey Matshiqi**

- 42 While Zikalala did not issue a direct instruction not to use Matshiqi, he argued that the newsroom should be careful about using him because he 'does not have research capacity'. He also refused to allow Matshiqi to be used in relation to the succession debate because he considered a statement attributed to him as amounting to incitement to violence. According to Zikalala, Matshiqi was also being used too frequently.
- 43 According to the Commission, Matshiqi did have access to research facilities even prior to joining the Centre for Policy Studies. It also noted that an objective reading of his statements about prospects for a civil war in South Africa did not amount to an incitement to violence. As a result, it was not an acceptable reason to exclude Matshiqi, and even if his views were considered alarmist or extremist, they could have been counter-balanced by other views rather than being excluded entirely.
- 44 In addition, Zikalala's intervention in relation to a three day broadcast on the corruption trial of Schabir Shaik was also considered by the Commission to be in conflict with the Editorial Policy provision requiring the provision of a 'full spectrum of opinion'. According to the Commission, Zikalala said that he had sent a note at the time of the

trial, stating that Matshiqi must not bring Zuma's name up in relation to the Shaik trial, and implied that journalists should solicit views that did not make the link.

45 After this intervention, Matshiqi was taken off air and told not to return to the studio. Although Zikalala denies having given an instruction to take him off air, the Commission found that the ultimate result was that he did not return to the studio, and that Zikalala's intervention was in and of itself a direct interference with the expression of a point of view that has dominated political discourse in South Africa.

46 Zikalala's conduct in relation to the Shaik trial did not meet the highest standards of journalistic professionalism - in violation of s.10(1)(d) of the Broadcasting Act and s.4.2.3.3 of SAFM's licence conditions - in that Matshiqi analysis of the trial was terminated for improper, and hence unprofessional, reasons. The refusal to allow Matshiqi to be used in relation to the succession debate is a direct infringement of the requirement in s.4.2.3.5 of the licence condition to 'provide a reasonable opportunity for the public to receive a variety of points of view on matters of public concern'.

47 The inferred instruction was also in violation of the SABC's Editorial Policies in that Zikalala again allowed his personal and political views to prevail over news judgments, and could well result in a narrowing of opinion if his views were excluded from SABC services

### **Karima Brown**

48 According to the Commission's report, Zikalala was unambiguous about the fact that Brown should not be used a commentator because she 'spreads untruths', although he would permit her to be used in relation to articles she had written. Zikalala also indicated that he did not favour the use of journalists and editors 'from competitor publications' for commentary.

- 49 The Commission found an instruction had been issued not to use Brown, but that Zikalala's reasons '[did] not withstand critical scrutiny' and were inconsistent.
- 50 Therefore Zikalala's instruction did not meet the highest standards of journalistic professionalism - in violation of s.10(1)(d) of the Broadcasting Act and s.4.2.3.3 of SABC's licence conditions - in that Brown was excluded for inconsistent and unjustifiable, and hence unprofessional, reasons. The refusal to allow Brown to be used, except in relation to her own articles, is a direct infringement of the requirement in s.4.2.3.5 of the licence condition to 'provide a reasonable opportunity for the public to receive a variety of points of view on matters of public concern'.

#### **Moeletsi Mbeki, Elinor Sisulu and Trevor Ncube**

- 51 The Commission found that the exclusion of Mbeki and Sisulu was not objectively defensible, and that Mr. Zikalala had informed Mr. Ncube that he could not be used for reasons that are not justifiable.
- 52 It can be inferred, then that their exclusion from SABC programmes was unfair, and would have contributed to unbalanced reporting on Zimbabwean issues in that significant opinion makers' voices would have been excluded not on the basis of newsworthiness, but on the basis of a prior and unjustifiable (and hence unprofessional) decision, in violation of s.10(1)(d) of the Broadcasting Act. Clearly the crisis in Zimbabwe is a matter of considerable public concern, and the reduction of viewpoints to exclude those commentators who - in Zikalala's view - 'bashed Zimbabwe', would constitute an unacceptable reduction of this diversity of viewpoint, and therefore a violation of s.4.2.3.5 of SAFM's licence conditions.

- 53 The inferred instruction was also in violation of the SABC's Editorial Policies in that Zikalala again allowed his personal and political views to prevail over news judgments, and would result in a narrowing of opinion if their views were excluded from SABC services

### **Staff morale at the SABC**

- 54 Apart from having to adhere to s.10(d) of the Broadcasting Act, the SABC is also compelled to protect the creative independence of its journalists. The report understands there to be a link between independence and decision-making, in that levels of decision-making must be strictly separated in order to be clear. They make reference to a standard of the World Radio and Television Council which states that 'the first way of ensuring that public broadcasting has enough autonomy is to distinguish, in its administrative structure, between two levels of management: day-to-day business on the one hand, and general policies and long-term decisions, on the other hand'. The internal independence of decision-making levels from one another is crucial to create certainty amongst employees. The separation between management and editorial functions is especially important.
- 55 The report also states that the exclusion of certain commentators suggested distrust within the news and current affairs hierarchy for those beneath them who are responsible for editorial decisions. The report states further 'where editorial autonomy at lower levels is compromised for reasons which are not objectively defensible, the working environment is compromised'.
- 56 In this regard, the Commission expressed particular concern about Zikalala's management style, which involves micro-management of the day-to-day business in a seemingly ad hoc and inconsistent manner, resulting in a downward micro management that was bound to erode staff morale as it eroded the sense of ownership of broadcasting content by executive producers, producers and presenters.

57 These observations strongly imply that the creative independence of its own journalists was not respected: a crucial factor in the SABC being able to realize its own independence. To this end, the SABC has failed to clarify that the role of the MD: News and Current Affairs should be in the area of general policy and strategy, not editorial decision-making. In failing to clarify this, the SABC has also failed to secure the conditions that are necessary for professional journalism, in violation of s.10(d) of the Broadcasting Act.

### **The Special Assignment incident**

58 Section 16 of the Constitution guarantees the right to freedom of expression, including the right to freedom of the press and other media.

59 Arguably, inherent in section 16 is the principle that the media should not be controlled by the State and should be sufficiently independent of the State. This would apply even to the public broadcaster because the public broadcaster commands a massive share of the television and radio broadcasting arena and thus has a substantial impact on freedom of expression.

60 Section 16 precludes the State from controlling the affairs of the public broadcaster, particularly its policies, because this threatens the diversity of views essential to freedom of expression. Thus, on these issues, the SABC must be independent of the state.

61 According to s.6(3) of the Broadcasting Act, 'In terms of this Charter, the Corporation will in pursuit of its objectives and in exercise of its powers, enjoy freedom of expression and journalistic, creative and programming independence'.

62 The Commission's report cites an incident involving the current affairs programme Special Assignment, where Jaques Pauw alleged that Dr. Zikalala showed a programme on airport security to three people in the

Presidency, prior to broadcast, and the programme was screened with alteration. According to the report 'this incident suggests that Dr. Zikalala was prepared to entertain outside influence even if, in the result, no such interference in fact occurred'.

- 63 Showing a programme to individuals outside the SABC, especially from the highest office in the land, is deeply improper and opens the SABC up to political pressure to alter programmes before they are broadcast. Showing the programme could have had one objective only: to solicit approval or non-approval for its contents prior to broadcast.
- 64 This is a violation of the SABC's ability to exercise its independence, and therefore a violation of s.6(3) of the Broadcasting Act, as well as the Constitutional provision that underpins it, namely s.16.
- 65 In addition, this action is a violation of s.2 of the Editorial Code of Practice states that 'The SABC is not the mouthpiece of the government of the day'. By opening Special Assignment up to editorial influence by the President's office, it creates the basis for the SABC to become the government's mouthpiece.

#### **The SABC statement of 20 June 2006**

- 66 The statement in question was released by the SABC on 20 June 2006 and refuted the existence of a blacklist. According to the Commission's report, this statement 'did not accurately reflect the position or provide reasons that would justify the exercise of SABC power in this regard'. In other words, the SABC statement misled the public.
- 67 It is grossly irresponsible for the SABC to publish misleading information, and not even to apologise for doing so once the report's findings were made. It casts a pall over all statements made by the

SABC, as the public will not know whether to trust the veracity of the SABC's statements in future.

- 68 S.6(8) requires the SABC to develop a Code of Practice that ensures that the personnel comply with certain values, including 'a high standard of accuracy, fairness and impartiality in news and programmes that deal with matters of public interest'. This requirement is captured in the Code of Practice in the following clause:

*'We are committed to a high standard of accuracy, fairness and impartiality and we therefore report, contextualize, and present news and current affairs honestly by striving to disclose all the essential facts and by not suppressing relevant, available facts, or distorting by wrong or improper emphasis'.*

- 69 The SABC violated this s.6(8) of the Broadcasting Amendment Act, as well as s.2 of its own Code of Practice, by releasing a statement on the blacklisting matter that misrepresented the factual position, and therefore did not meet high standards of accuracy. As a result, the SABC Board has also failed to uphold the principles of freedom of expression and the right of the public to be informed.

- 70 The SABC also violated s.8(d) of the Broadcasting Act, which requires the SABC public services (including SAFM) 'to provide, in its public broadcasting services, radio and television programming that informs, educates and entertains'. As per the Commission's findings, the above-mentioned statement misinformed the public.

- 71 S.35 of the Code of Conduct deals with comment on broadcasting services, including the SABC's. S.35(2) of the Code states that 'comment shall be an honest expression of opinion and shall be presented in such a manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to'. This provision is repeated in the BCCSA Code of Conduct.

- 72 The SABC has violated this section of the Code by proving a dishonest expression of opinion, as it was based on untrue facts.

**Attempt to interdict *Mail and Guardian* newspaper**

- 73 The provisions of paragraphs 54 – 56 are repeated herein. According to s. 13(4)(b) of the Broadcasting Act, the members of the SABC Board must, when viewed collectively, be people who are committed to fairness, freedom of expression, the right of the public to be informed and openness and accountability on the part of those holding public office.
- 74 On 14 October 2006, the SABC attempted to interdict the Mail and Guardian newspaper to compel it to take a copy of the report down from its website, which created the unprecedented situation where one media institution attempted to violate the freedom of expression of another institution. This action constituted an abuse of public resources, and amounts to a violation of the requirement of the Board to uphold freedom of expression and the right of the public to be informed, as required by s.13(4)(b) of the Broadcasting Act. The Board presided over these actions and has done nothing to distance itself from them.
- 75 In addition, the SABC is required to uphold the South African Constitution. By attacking the media freedom of another institution media (the Mail and Guardian), they have failed to uphold the Constitutional right of the newspaper to freedom of expression.

**The alleged disciplining of John Perlman**

- 76 Numerous media reports have alleged that Perlman was issued with a letter of warning, which he refused to accept. We call on ICASA to establish the veracity of these reports, as we believe that this matter is

not simply an internal disciplinary matter. If this indeed is the case, then the SABC has violated Perlman's right to freedom of expression, which supersedes the right of the SABC to reputation. The provisions of paragraphs 54 – 56 are repeated herein.

- 77 In addition, Perlman was acting in accordance with s.6(8)(f) of the Broadcasting Act, which requires staff to meet a high standard of accuracy, by correcting the official (and incorrect) SABC statement refuting the existence of a blacklist. In fact, by disciplining (and hence punishing) Perlman, the SABC would have violated s.6(8)(f) of the Broadcasting Act by acting in an unfair manner against Perlman, and punishing him for meeting his ethical obligations. In the process, they would have communicated a message to other staff that the reputation of the SABC supersedes the obligation of journalists to be accurate, even in instances where the SABC itself has misled the public.
- 78 In addition, the SABC has violated s.4.2.3.3 of SAFM's licence conditions, by frustrating Perlman's attempts to meet the highest standards of journalistic professionalism.

### **Offences and penalties**

- 79 The FXI submits that the practices set out above run counter to the letter and spirit of the Constitution, the Broadcasting Act and the ICASA Act, and cannot be condoned by ICASA. The FXI requests ICASA to take the following steps:
- 79.1 Enforce s.4(3)(d) of the ICASA Act. This would involve '[enforcing] licence conditions consistent with the objects of this Act and the underlying statutes for different categories of licences'.
- 79.2 Investigate, hear, and make a finding on the above complaint, as provided for in s.17(A) - (H) of the ICASA Act, as amended, including:

79.2.1 requiring the SABC Board and Management to provide it and the public with a full report on the actions it has taken with regard to the recommendations made by the Commission and the circumstances regarding the spate of recent resignations that have been place at the SABC.

79.2.2 requiring the input of people key to the matter by calling them as witnesses, including John Perlman on his reasons for resigning.

- 80 Direct the SABC to desist from any further contravention of the Broadcasting Act, the BCCSA Code of Conduct and its own editorial policies, in terms of section 17E(2)(a) of the ICASA Act.
- 81 Directing the SABC to take such further remedial and other steps as may be recommended by the Complaints and Compliance Committee. In our respectful view, these must include a thorough investigation of the obviously poor morale in the SABC newsroom and associated poor management practices as identified in the Commission Report, in terms of section 17E(2)(c) of the ICASA Act.
- 82 The FXI reserves the right to supplement this complaint should it deem necessary, as well as make oral argument at the hearing thereof.