



**FREEDOM OF EXPRESSION INSTITUTE: PRESS STATEMENT
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DEFENDING THE INDEPENDENCE OF THE SABC IN *SOS & OTHERS V SABC & OTHERS*

Today, the Freedom of Expression Institute (FXI), the SOS Coalition (SOS) and Media Monitoring Africa (MMA) finally got their day in court to challenge the constitutionality of certain sections of the Memorandum of Incorporation (Mol), of the SABC and the SABC Board Charter. The applicants contend that these provisions undermine the independence of the SABC by exposing it to undue political influence, which in turn threatens freedom of expression (especially freedom of the press), as enshrined in section 16 of the Constitution:

“Everyone has the right to freedom of expression, which includes—
(a) freedom of the press and other media;
(b) freedom to receive or impart information or ideas;
(c) freedom of artistic creativity; and
(d) academic freedom and freedom of scientific research.”

For the press to be truly free as mandated in s16(a), it must maintain a considerable amount of independence from external influence—especially from the government and the ruling party. The current applications to the North Gauteng High Court rests on the premise that the State (primarily through the Minister of Communications) exerts too much power over the SABC, compromising its independence, objectivity and impartiality.

The applicants have brought two cases, both of which will be heard from Tuesday 20 June 2017 to Thursday 22 June 2017.

1. In the first application (*SABC 1*, Case No: 81056/14), the applicants posit that the SABC’s governance structure, as presently defined in the Mol and the Board Charter, fails to promote the constitutionally required independence of the SABC. The Minister of Communications wields an especially strong veto power in the appointment process for Executive Directors (i.e., the GCEO, COO and CFO), such that she can effectively control these officials, if desired.
2. In the second application (*SABC 2*, Case No: 76343/15), the parties dispute the lawfulness of the Minister’s power over the removal of Board Members (especially non-executive members). The FXI and its fellow applicants contend that the SABC and the government should adhere to the procedurally robust requirements of section 15 of the Broadcasting Act, ensuring that Board members are only removed for stated good cause, to the exclusion of the unilateral procedure outlined in the Companies Act of 2008. In 2015, Hope Zinde, Rachel Kalidass and Ronnie Lubisi were removed in this improper manner.

The applicants, as represented by the FXI Law Clinic, seek to demonstrate that certain provisions of the Mol and the Board Charter are inconsistent with the Constitution and/or the Broadcasting Act. Similarly, the applicants seek an order mandating procedural requirements for the removal of Board Members as stipulated in section 15 of the Broadcasting Act.

The FXI primarily defends freedom of expression, opposes censorship, fights for equal access to information and promotes access to free press. With these goals in mind, the FXI took a particular interest in these two cases since many South Africans depend on the SABC and its programming for news and entertainment. The matters thus involves not only the freedom of



the SABC as a member of the press, but also the freedom of expression for all South Africans who rely on the public broadcaster to report, without fear or favour, on matters of public importance. The FXI is one of the applicants in the matter, and is also the instructing attorney on record in the matter.

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#SABC #SOSVSABC

About the Freedom of Expression Institute (FXI):

The FXI was formed in 1994 to promote and defend the right to freedom of expression and information. The FXI contributes to the creation of a society where everyone enjoys the right to free speech and the right of access to information and knowledge. We engage in litigation, research and civic education and advocacy. The FXI educates the public about the dangers of censorship and we collaborate with a wide range of local and international organisations. The FXI is a founding member of the SOS Coalition, which was conceived to advocate for independent and quality broadcasting services from the SABC.

For background information on the transformation of the SABC from a state to public independent broadcaster: [The Broadcasting Independence Handbook: Lessons from the South African experience](#).