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# **Joint Submission to CODESA WORKING GROUP 1 AND WORKING GROUP 3**

**Joint submission by organisations which form part  
of the Independent Broadcasting and Film Industry**

**Includes memoranda on:**

- 1. A RADIO AMENDMENT ACT**
  - 2. A BROADCASTING AMENDMENT ACT**
  - 3. AN INDEPENDENT FILM COMMISSION**
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We, as organisations who form part of the Independent Broadcasting and Film Industry, wish to make the following joint submission to Working Groups 1 and 3 of the Convention for a Democratic South Africa (CODESA).

This submission deals with:

- the control and regulation of the broadcasting and film industry under an interim government during the transition period;
- the role of television, radio and film in the creation of a climate for free political participation and expression during the transition period.

It is our belief that any new broadcasting legislation should be agreed upon by CODESA before it is enacted by parliament.

In preparing the three memoranda that follow, cognisance has been taken of the Viljoen Task Group Report, the ANC's proposal for a non-partisan Media Commission, the Democratic Party and National Party proposals on broadcasting as well as submissions made by broadcasting and media groups. Our memoranda seek to promote the establishment of a new, rational broadcasting system which, we believe, addresses the major aspirations of all the above submissions.

The memoranda also seek to give legislative effect to an important consensus document, namely the "Proposal on the Role of Television, Radio and Film in the Creation of a Climate for Free Political Participation and Expression in South Africa", endorsed by the "Free, Fair and Open" Conference held in Cape Town, 31 January - 2 February 1992.

Memoranda I and II outline the amendments necessary to the Radio and Broadcasting Acts respectively in order to establish a non-partisan Media Commission, an interim Independent Communications Authority and to appoint a new, representative SABC board.

Memorandum III elaborates on the role an interim Independent Film Commission (IFC) could play in relation to creating a climate for free political participation and in particular, to 1.1.4(c) of Working Group 1's terms of reference, namely "the role of intensive and continuous educative and informative campaigns in respect of political tolerance, the workings of democracy and the processes of CODESA".

Our legal advisers have completed first drafts of a Radio Amendment Act and a Broadcasting Amendment Act. These documents are considerably more detailed than the three memoranda. We would be happy to make our legal advisers available to CODESA to give more detailed oral

testimony or to explain the legislative implications of appointing new broadcasting and film institutions during the transition period.

The organisations of the Independent Broadcasting and Film Industry making this joint submission are the following:

**Cassette Education Trust**

**Capital Radio Transkei (Pty) Ltd**

**The Film Allied Workers Organisation (FAWO)**

**The National Television and Video Association (NTVA)**

**The Performing Arts Workers Equity (PAWE)**

**The Personal Managers Association (PMA)**

**The South African Association of Professional Recording Studios (SA-APRS)**

**The South African Film and Television Technicians Association (SAFTTA)**

**The South African Script Writers Association (SASWA)**

# Memorandum I: A RADIO AMENDMENT ACT

## 1. New Telecommunications Dispensation

This memorandum briefly outlines the necessary amendments to the Radio Act, No.3 of 1952.

In order to obtain a new dispensation for telecommunications and other media sectors there is a need to amend and consolidate existing legislation. It is submitted that once these major changes have been agreed upon, a Radio Amendment Act dealing with the independent and democratic control of telecommunications, press and film, should be enacted.

The Radio Act should be re-named "the Communications Act" and should come into being against the background of a Bill of Rights guaranteeing freedom of expression and opinion. Accordingly, the independence of the various new telecommunication and other media structures should be entrenched in the new legislation.

## 2. Media Commission

We foresee the central facilitating mechanism of the new dispensation as being a non-partisan and independent Media Commission, the existence of which is recognised by a new Communications Act and which will be brought into being at the time that interim government arrangements are put into place.

The establishment of this Media Commission is required as an interim measure in order to provide a selection panel to appoint a number of new broadcasting and media structures. These new boards and structures should include: an Independent Communications Authority (ICA); the board of the SABC; new boards for state-owned TBVC broadcasters (after agreement at CODESA on the re-incorporation of the TBVC states); the office of the Broadcasting Ombudsman; and the board of an interim Independent Film Commission (IFC).

It is important to note that while there is broad consensus on the establishment of an independent regulatory body and the selection of a new SABC board, there is still however disagreement on the method of facilitating their appointment. We submit that our conception of a Media Commission of eminent persons could well be the solution.

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We envisage that the enabling section of the Communication Act, establishing the Media Commission, could be along the following lines:

"Media Commission. — (1) the Media Commission, consisting of ten eminent South Africans, shall be established with the approval of CODESA as soon as is practical after the commencement of this Act. This commission shall:

- (a) appoint members of the board of the South African Broadcasting Corporation as provided for in section 4 of the South African Broadcasting Corporation Act;
- (b) appoint members of the Independent Communications Authority executive;
- (c) facilitate the appointment of an interim Independent Film Commission (IFC)
- (d) hold all its meetings in public, wherein it may inter alia consider the nominations of prospective appointees and require such appointees to appear at such hearings;
- (e) appoint a chairperson and a vice chairperson for a period of three years for the SABC board;
- (f) appoint a chairperson and a vice chairperson for a period of three years for the ICA executive;
- (g) appoint the Broadcasting Ombud who shall monitor the conduct of the SABC board and the ICA executive and shall conduct investigations into the operations of these bodies following complaints by the public concerning abuse of power or unfair, insensitive, capricious, harsh, discourteous or unduly delayed treatment of any person. The Broadcasting Ombud shall:
  - (i) make the findings of investigations public;
  - (ii) submit a report to the Attorney General if prosecution is recommended;
  - (iii) report to the Media Commission if the dismissal of a member of the SABC board or the ICA executive is recommended
- (h) be funded by such revenues as deemed necessary by CODESA or any interim government structure.

(2) Nominations for members of the SABC board, the ICA executive and the Broadcasting Ombud shall be received by the Media Commission: Provided that such nominations shall not include:

- (a) persons who have a direct financial interests in any broadcasting-related matter, except insofar as such persons declare such financial interest and agree to divest themselves of such interest
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in a manner which satisfies the Commission, or;

- (b) who are office bearers of a political party or political organisation, except insofar as such persons declare such political involvement and agree to resign their positions in a manner which satisfies the Commission."

We believe that the Media Commission should be an interim structure in the sense that it will be brought into existence by an interim government. We accordingly see its lifespan as limited. If the new broadcasting and media dispensation proves successful and workable, the first democratically elected government will in all probability be encouraged to maintain this new system, subject to a periodic re-appointment of the Media Commission and the various boards.

### **3. New structures appointed by the Media Commission**

#### *3.1 Independent Communications Authority (ICA)*

The current broadcasting regime grants unfettered discretion to various Ministers of State to regulate and divide the electromagnetic spectrum as they deem fit. As a result, the SABC has over the decades become far more than a licenced public broadcaster and has become a *de facto* co-regulator of the broadcasting spectrum. On the other hand, the various Ministers have gathered to themselves enormous powers in relation to the allocation of licences and other broadcasting rights.

Our submission is that the ICA must be charged the regulation of broadcasting and telecommunications and should have jurisdiction throughout South Africa (including the TBVC states). The ICA should accordingly take over the function of licencing public, commercial and community broadcasters. The ICA should also begin the process of establishing an independent signal distribution entity.

This would entail amending all provisions in the various Acts that provide for broadcast regulation and would lead to a transfer of these powers and others to the ICA.

The ICA should be managed by an Executive of five members and appointed in the public hearings of the Media Commission described above. The functions, powers, appointment, jurisdiction, licencing procedure and dispute procedure of the ICA should all be provided for in the Communications Act

The ICA should operate according to the provisions of a Charter, enshrined in the Act itself, guaranteeing the promotion of freedom of expression for all forms of electronic communication, diversification of ownership, a degree of separation of press and broadcasting interests and fair licencing criteria. Independent, local television production should be protected through the application of regulations governing local content and the commissioning obligations television broadcasters should have towards independent production houses.

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It is recognised that the task of the ICA as set out above will be a complex and time consuming one. Therefore, we foresee that during the interim period it is probable that the licencing of broadcasters will be very limited. However, new entrants to the broadcasting sector should be given preference in the legislation.

It is envisaged in our draft legislation, that all existing broadcasters, including those in the TBVC states, should be 'grandfathered' into the new dispensation, with the proviso that the ICA would be able to re-negotiate the terms of such licences.

### *3.2 SABC Board*

Although the new Communications Act will provide for the appointment by the Media Commission of a SABC board, the specific mandate and *modus operandi* of the board shall be governed by the South African Broadcasting Corporation Act (see memorandum on amendments to the Broadcasting Act submitted herewith).

### *3.3 New boards for state-owned TBVC broadcasters*

In a similar fashion, once the modalities of TBVC re-incorporation have been agreed upon, the Media Commission should appoint new representative boards for state-owned TBVC broadcasters.

### *3.4 Broadcasting Ombudsman*

The Communications Act should provide for the appointment by the Media Commission of a Broadcasting Ombudsman or as the government has proposed - an independent electronic communications complaints commission. This new structure should have significant powers in order to provide an effective means of public redress.

### *3.5 Independent Film Commission*

The appointment of an interim Independent Film Commission (IFC) should be facilitated by the Media Commission. The IFC is dealt with in a supporting memorandum submitted herewith.

## **4. Concluding Comments on the Radio Amendment Act**

We believe that this new broadcasting dispensation will have the effect of beginning the process of freeing up the broadcasting and telecommunications sector, whilst at the same time making it accountable to the South African public.

On the one hand, a vibrant dynamic will be encouraged to develop amongst community and commercial broadcasters as they begin to compete for licences and audience share. On the other, it will bring the public broadcaster, the SABC, under neutral and independent control, thus keeping government at a distance during the crucial interim period and hopefully setting a precedent for the future.

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# **Memorandum II: A BROADCASTING AMENDMENT ACT**

## **1. South African Broadcasting Corporation Act**

This memorandum briefly outlines the necessary amendments to the Broadcasting Act, No. 73 of 1976.

The name of the Broadcasting Act should be amended to read the "South African Broadcasting Corporation Act". This SABC Act should relate only to the control of the public broadcaster, ie the SABC, and will not relate to the regulation of other broadcasters. Such regulation should be provided for in the amended Radio Act, No.3 of 1952 which should be renamed the "Communications Act" (see memorandum on the Radio Amendment Act submitted herewith).

A number of other changes to the legislation are necessary in order to retain the SABC's character as a public broadcasting service and to make this consistent with the licencing provisions of the the new Communications Act.

## **2. The Communications Act and an Independent Communications Authority**

The regulation of the entire broadcasting sector, including the SABC, should be governed by the Communications Act - the Act that should provide for the establishment of an Independent Communications Authority (ICA). The functions, powers, appointment, jurisdiction, licencing procedure and dispute procedure of the ICA should all be provided for in the Communications Act (see memorandum on the Radio Amendment Act submitted herewith).

## **3. Media Commission**

The establishment of independent, non-partisan Media Commission is required as an interim measure, in order to provide for the new SABC board to be selected by a credible and independent selection panel consisting of eminent persons. It is envisaged that this Media Commission should have a number of functions beyond the selection of the SABC board. These functions are discussed in more detail in the memorandum on the new Communications Act submitted herewith.

## **4. Constitution of the SABC Board**

Section 4 of the Broadcasting Act, which provides for the constitution and appointment of the SABC board, should be amended to give CODESA and the Media Commission a role in the nomination of board members and to remove the government's control over this process.

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An amended section 4 could be structured along the following lines:

"4. Constitution of the board. - (1) The board shall consist of:

(a) such members not exceeding fifteen but at least five, as the Media Commission may determine.

(b) the director-general of the corporation referred to in section 9.

(2) Nominations for members of the board shall be referred to the Media Commission mentioned in subsection 3: Provided that such nominations shall not include-

(a) persons who have a direct financial interests in any broadcasting-related matter, except insofar as such persons declare such financial interest and agree to divest themselves of such interest in a manner which satisfies the Commission, or;

(b) who are office bearers of a political party or political organisation, except insofar as such persons declare such political involvement and agree to resign their positions in a manner which satisfies the Commission.

(3) the Media Commission, as provided for in section 3 of the Communication Act, shall be established with the approval of CODESA as soon as is practical after the commencement the Communication Act. This commission shall appoint the board, including the chairperson and vice chairperson, in accordance with the procedure set out in section 3 of the Communication Act.

(4) Whenever the chairperson of the board is absent or unable to perform his functions, the vice chairperson may exercise or perform any power or function of the chairperson;

(5) Every appointment of a board member shall be notified in the *Gazette*;

(6) The Minister or any government official shall not interfere with the decisions of the Media Commission and the board;

(7) Upon the commencement of this Act, the existing board shall remain in office until the appointment of a new board in accordance with the procedure set out in subsection (4)".

#### **5. Ministerial involvement**

Sections which allow for Ministerial interference with the SABC's board and its policy-making functions should be amended throughout the Broadcasting Act. These amendments would essentially increase the decision-making power of a new SABC board. A provision explicitly prohibiting political interference with the operation and decisions of the SABC board should be inserted into the Act.

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**6. Public broadcasting**

Public broadcasting should be defined in the Act in order to distinguish the SABC from commercial broadcasters. The insistence upon a public broadcasting definition is based upon a perceived need to preserve the corporation's public service integrity.

**7. SABC chairperson**

The exception allowing the SABC chairperson to also serve as the director-general should be removed throughout the Act. We feel that this is an unhealthy provision and would concentrate too much power in the hands of one person at the SABC.

**8. SABC and licencing**

All the SABC's licencing powers should be transferred to the ICA and no licence should be granted to the SABC for an "indefinite period" as it is now provided for. The SABC should be "grandfathered" into the new dispensation and then be licenced by the ICA which may impose certain licence conditions on the corporation.

**9. Privatisation**

Section 13(l)(A) which allows for 'creeping privatisation of the SABC should be amended.

**10. Funding the SABC**

As the Amending Act will provide only interim solutions, one should not alter the SABC's financing system at this stage. However, we recommend that, in the near future, the SABC's reliance on advertising should be ended by establishing an efficient licence fee collection system, namely through a proportionate levy on electricity bills.

**11. Local content**

The Independent Communications Authority will establish the minimum percentage of local content (which will be strictly defined) and the extent of the SABC's responsibility in terms of commissioning such programming from independent producers in the industry as a whole.

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# **Memorandum III: THE APPOINTMENT OF AN INTERIM INDEPENDENT FILM COMMISSION (IFC)**

## **1. Introduction**

Film and video are mass communication media which can be effectively used as part of intensive educative and informative campaigns in respect of political tolerance, the workings of democracy and the processes of CODESA. The issue of violence could also be addressed through the medium of film and video.

Films and videos can be circulated through cinemas, on television and by a network of mobile video vans in rural areas (mobile video vans were successfully used during the Namibian transition).

Film and video can play a creative and constructive role during the negotiations period. In a population of high illiteracy, film and video are more effective information and educational media than print media. In addition, as forms of popular fiction, film and video can explore the changes taking place in South Africa in a way that helps people make sense of these dramatic changes.

In order that film and video can play a role during transition, the Media Commission (See Memo 1) should facilitate the appointment of an interim Independent Film Commission to promote the production and distribution of South African films that contribute to the cultivation of free debate in the country.

The interim IFC should be seen as an interim body that is set up only for the transition period.

As an independent non-partisan body, the Independent Film Commission would also ensure that the regulation of the film industry, that is currently a function of the Ministry of Home Affairs, is placed in neutral hands during the transition. It is common cause that the government's film subsidy scheme was abused in the past to make apartheid propaganda films. An IFC, like an Independent Communications Authority for broadcasting regulation, could begin a process of research and development into the question of the future regulation of the film industry.

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## **2. Structure of the IFC**

Here is a possible structure for the interim Independent Film Commission which should be discussed further.

The Independent Film Commission could consist of four divisions:

**2.1 A Film and Video Production Division** which would be responsible for commissioning films and videos from independent film and video producers, according to specific criteria.

**2.2 A Marketing and Distribution Division** which would be responsible for circulating the films and videos on television, in cinemas and by mobile video vans.

**2.3 A Research and Development Division** which would conduct research into the future regulation of the film industry.

**2.4 An Education Division** which would investigate and develop education facilities with a particular emphasis on disadvantaged communities.

## **3. Primary Functions of the IFC**

The primary functions of the IFC would be carried by the Film and Video Production Division and the Marketing and Distribution Division.

### **3.1 Commissioning Editors**

The Film and Video Production Board would appoint Commissioning Editors for films and videos in three categories:

- a. Short Films and Videos (Fiction and Non-Fiction)
- b. Documentaries (Non-Fiction)
- c. Feature Films (Fiction)

The Commissioning Editors would operate in a similar way to Commissioning Editors in Channel Four Television in Britain or the Production Board of the British Film Institute.

#### **3.1.1 Criteria for Commissioning Films and Videos**

The criteria for commissioning films and videos would relate to:

- a. whether they could be part of informative and educative campaigns in respect of political tolerance, the working of democracy, the processes of CODESA and combatting violence.
  - b. whether they explored the changes taking place in the new South Africa in the form of popular
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fiction from a wide variety of perspectives.

### *3.2 Distribution*

The Marketing and Distribution Division would have the brief of ensuring the circulation of the films and videos produced in three sub-divisions:

- a. Television
- b. Cinema
- c. Mobile Video Vans in rural areas and townships

The Marketing Manager of the Television Sub-division would have the responsibility of negotiating for broadcasting space with the SABC, M-Net and Bop TV. The basis of this negotiation would be in terms of these television services' civic or public service obligations to their society.

Similarly, the Marketing Manager of the Cinema Sub-Division would negotiate exhibition space with Ster-Kinekor, Nu-Metro and the owners of independent cinemas. Short films could be screened as part of the supporting programme, while feature films could be screened as part of the main programme.

The Marketing Manager of the Mobile Video Vans Sub-Division would be responsible for purchasing at least two video vans for each region in the country, programming the shows and working out the route which the vans would take.

### **4. Concluding Remarks on the need for an IFC**

The value of using film and video as mass communications media during the negotiations period should not be underestimated. Like sport, film and video can also be important morale boosters as well as carriers of educational messages. The educational value of fiction films should similarly not be underestimated. The representation of how different South Africans are experiencing the changes can operate at a level of intimacy with the audience which no other communication medium can replicate. People's hopes and fears, dilemmas and desires can be explored through film in a dynamic and exciting way.

Setting up an Independent Film Commission would provide a positive and creative solution for the non-partisan communication of the changes taking place in a society moving towards democracy and peace.

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**INTERIM GOVERNMENT**



establishes in terms of a  
Radio Amendment Act

**MEDIA COMMISSION**



appoints

**New  
SABC Board**

**Independent  
Communications  
Authority (ICA)**

**Independent  
Film Commission  
(IFC)**

**Broadcasting  
Ombud**