



**Office of the Group Company Secretary**  
29<sup>th</sup> Floor, Radio Park, Henley Road  
Auckland Park, 2094  
Private Bag X1, Auckland Park, 2006  
Johannesburg, Gauteng, South Africa  
Tel +27 11 714-2153, Fax +27 11 714-3219  
[www.sabc.co.za](http://www.sabc.co.za)

**TO: THE SABC BOARD**

**REPORT PREPARED FOR THE SABC BOARD BY THE SPECIAL COMMITTEE:  
ALLEGATIONS BY MS MAGOPENI AGAINST MR MAKHATHINI**

**1. INTRODUCTION**

1.1 The Special Committee constituted by Professor Saths Cooper, Ms Jasmina Patel, and Mr Jack Phalane (Chair) was mandated by the SABC Board to inter alia:

1.1.1 evaluate the allegations made by Ms Magopeni against Mr Makhathini, so as to determine whether the allegations constitute a prima facie act of misconduct, and, if so,

1.1.2 investigate the merits and veracity of the allegations;

1.1.3 make a determination based on the investigation conducted; and

1.1.4 make recommendations to the SABC Board on the steps to be taken by the SABC Board.

1.2 This document (“the Report”) sets out the outcome of the evaluation by and deliberations of the Special Committee and the Special Committee’s recommendations to the SABC Board.

**South African Broadcasting Corporation SOC Limited:** Registration Number: 2003/023915/30

**Non-Executive Directors:** Mr B E Makhathini (Chairperson); Ms M Mohlala-Mulaudzi (Deputy Chairperson); Prof S Cooper; Adv M B B Lekalakala; Mr D M Maimela; Mr M G Markovitz; Mr D K Mohuba; Ms J Patel; Mr J H Phalane; Ms M B Papayya; Dr M Socikwa

**Executive Directors:** Mr M T Mxakwe (Group Chief Executive Officer); Mr I Plaatjes (Chief Operations Officer); Ms Y van Biljon (Chief Financial Officer); **Company Secretary:** Ms L V Bayi

- 1.3 This Report:
- 1.3.1 Only deals with the allegations made by Ms Magopeni against Mr Makhathini in terms of the letter from Ms Magopeni dated 6 January 2022 (“the Grievance Letter”);
  - 1.3.2 Must be read together with the relevant documents referred to in paragraphs 3 and 4 below, which documents are enclosed herein;
  - 1.3.3 Is based on the allegations contained in the Grievance Letter, the response from Mr Makhathini as set out in his affidavit dated 2 February 2022 and Magopeni’s reply as set out in her affidavit dated 16 March 2022;
  - 1.3.4 Is intended for the sole purpose of assisting the SABC Board to determine whether the allegations against Mr Makhathini constitute misconduct as contemplated in section 15 of the Broadcasting Act No. 4 of 1999.

## 2 METHODOLOGY

- 2.1 As part of the investigation, the Special Committee considered and analysed, inter alia:
  - 2.1.1 The Grievance Letter, the response to the Grievance Letter received from Mr Makhathini and the reply received from Ms Magopeni. The Grievance Letter, Mr Makhathini’s response and Ms Magopeni’s reply were in an affidavit format;
  - 2.1.2 The Editorial Policy of the SABC, the Report of the Commission of Inquiry into Interference in the Decision-making in the Newsroom of the

SABC of 25 February 2019, the SABC Grievance Procedure and the Broadcasting Act No 4 of 1999.

2.2 The Special Committee sent Mr Makhathini's affidavit to Ms Magopeni for her response. Ms Magopeni failed to submit her reply by the date set by the Special Committee. The date was extended and Ms Magopeni still failed to submit her reply. Two days after the expiry of the extended date, the Special Committee received a letter from Ms Magopeni's attorneys requiring certain information (mainly the Special Committee's Terms of Reference and the Procedure to be followed by the Special Committee in the matter) before she could decide whether or not she will cooperate with the Special Committee. The letter from Ms Magopeni was sent on the eve of the last day of the extended date but was only received by the SABC Company Secretary two days after the expiry of the extended date. The Special Committee procedure was explained to Ms Magopeni on 27 January 2022, Ms Magopeni never raised any further questions regarding the Special Committee procedure and she never met the initial date and the unrequested extended date for the submission of her reply. It was clear from the letter received from her attorneys that her cooperation in the matter was not guaranteed (and if anything, her cooperation was conditional) as she was no longer an employee of the SABC.

2.3 After considering the foregoing, on 15 March 2022 the Special Committee advised Ms Magopeni's attorneys that it will be finalising the matter without Ms Magopeni's reply. On 16 March 2022 the Special Committee received Ms Magopeni's affidavit. In her affidavit, Ms Magopeni states that the Special Committee "directed" her to submit her affidavit in response to Mr Makhathini's affidavit by 17 February 2022 and the Special Committee extended the date for submission of her affidavit to 4 March 2022. Ms Magopeni has not seen it fit to explain why she never submitted her affidavit on time. The Special Committee is aware of a statement that was released by Ms Magopeni to the media on 1 March 2022, which statement deals with some of the issues covered in her

affidavit, however she decided to only submit her affidavit to the Special Committee on 16 March 2022.

2.4 The Special Committee is disappointed by the manner in which Ms Magopeni has dealt with this matter and her clear disregard of a process that was set up by the SABC Board, which process was intended to deal with a grievance that she lodged. Her non co-operation with the Special Committee has directly resulted in the matter taking longer than it should have.

2.5 It should also be noted that Ms Magopeni states in her affidavit that she has elected not to be part of the investigation relating to the complaint that was lodged by the SABC with the Independent Electoral Commission as she is no longer an employee of the SABC. Owing to her indication that she is under no legal obligation to assist the Special Committee, the submission of the affidavit by Ms Magopeni and the aforesaid statement indicate that there is no guarantee that Ms Magopeni will cooperate with the Special Committee and her cooperation appears capricious.

2.6 In light of the issues raised in the Grievance Letter and the manner in which Ms Magopeni has dealt with the Special Committee's requests, the Special Committee opted to rely on the information referred to in paragraph 2.1 to dispense with this matter and determined that conducting interviews would take the matter no further.

2.7 The Special Committee reconciled itself with the fact that the investigation was never intended to be a commission of enquiry and/or a disciplinary hearing as the SABC Board does not have any such powers in relation to the matters forming the subject of this investigation. Accordingly, the scope of the Special Committee's investigation was limited to an inspection and analysis of the documentation and information obtained during the investigation.

- 2.8 It may be possible that information and/or documentation exists which was not provided to the Special Committee at the time of this Report and which may come to the Special Committee and/or the SABC Board's attention after the release of this Report. Any such documentation and/or information which is brought to the Special Committee and/or the SABC Board after the release of this Report will require a qualification of the Special Committee's findings and recommendations as set out in this Report.

### 3 **TIMELINES AND COMMENTS**

Below is a table setting out timelines and comments in regard to the grievance lodged by Ms Magopeni in terms of her initial letter of 29 November 2021, which was subsequently replaced by Ms Magopeni's grievance letter of 6 January 2022 ("the Grievance Letter").

<b>Date</b>	<b>Event/Description</b>	<b>Comments by Special Committee (which includes verbatim responses)</b>
29/11/21	Formal grievance by GE: News and Current Affairs ("Ms Magopeni").	<p>Ms Magopeni specifically says that she is sending the letter "to the SABC Board Chair, Mr Bongumusa Makhathini, as my line manager Mr Madoda Mxakwe accounts to the board; Deputy Chair, Ms Mamodupi Mohlala-Mulaudzi, as the matter involves the Board Chair; Prof. Saths Cooper and Mr DK Mohuba as part of the Governance and Nominations Committee, as well as Adv M Lekalakala who chairs the HR Committee".</p> <p>It is not clear as to why the grievance letter was sent to the Governance and Nominations Committee especially by someone who is not familiar with the Board Procedure for the Recommendation to Remove a Non-Executive Director by the SABC Board ("the Procedure Document") unless the SABC Board had shared the Procedure Document with Ms Magopeni.</p>
02/12/21	Letter to Mr Makhathini from Deputy Chair – Dealing with GCEO and Chair matter separately.	
09/12/21	Letter to Mr Makhathini from Deputy Chair – Mr Makhathini is given 10 business days to respond to the allegations by Ms Magopeni.	
15/12/21	Letter from Mr Makhathini's attorneys to SABC Board.	

<b>Date</b>	<b>Event/Description</b>	<b>Comments by Special Committee (which includes verbatim responses)</b>
16/12/21	Letter to Ms Magopeni requesting her to submit her grievance in the form of an affidavit.	
21/12/21	Special Board In-Committee Meeting – Proposed that Special Committee should deal with the allegation.	
06/01/22	Formal grievance from Ms Magopeni – In an Affidavit format.	
13/01/22	Special Board In-committee Meeting established 3 member Special Committee to deal with the grievance by Ms Magopeni.	
14/01/22	Letter to Mr Makhathini’s attorneys by Prof S Cooper – The Special Committee grants extension to Mr Makhathini to respond to the allegations, advise the attorneys that a Special Committee has been formed and they will be engaged once the Terms of Reference have been finalised.	
18/01/22	Finalisation of the Terms of Reference of a Special Committee to investigate and adjudicate the grievance lodged by Ms Magopeni against Mr Makhathini.	
24/01/22	Special Committee Meeting - The allegations by Ms Magopeni show a prima facie case of misconduct.	In analysing the affidavit from Ms Magopeni, the Special Committee noted that a page was missing from the Grievance

<b>Date</b>	<b>Event/Description</b>	<b>Comments by Special Committee (which includes verbatim responses)</b>
	The Special Committee to request Mr Makhathini to respond to the allegations.	Letter/affidavit and the Grievance Letter/affidavit was not initialled by Ms Magopeni and the Commissioner of Oaths
25/01/22	Final grievance from Ms Magopeni in the form of an affidavit – signed and initialled – all pages included.	<p>In her email to the Special Committee Ms Magopeni wanted to know “when exactly is the process going to start and conclude, considering that it is meant to be finalised within 60 days from the date the submission was made (29 November 2021)”.</p> <p>The Special Committee requested Ms Magopeni to explain the basis for her statement that the process “is meant to be finalised within 60 days”.</p> <p>The Procedure Document provides that the Committee must ensure that the process is concluded within 60 days from the date on which a complaint against the non-executive director is received.</p> <p>Ms Magopeni was asked to explain her statement as she would not have known about the 60 days unless the Procedure Document was shared with her or someone familiar with the Procedure Document advised her of the period.</p>
26/01/22	Letter to Mr Makhathini to respond to the allegations.	

<b>Date</b>	<b>Event/Description</b>	<b>Comments by Special Committee (which includes verbatim responses)</b>
27/01/22	Letter to Ms Magopeni explaining inter alia, the process to be followed by the Special Committee in dealing with the matter.	<p>The Special Committee advised Ms Magopeni that as for the process, the Special Committee is mandated to inter alia: (i) evaluate the allegations made by you against Mr Makhathini, so as to determine whether the allegations constitute a prima facie act of misconduct, and, if so, (ii) investigate the merits and veracity of the allegations; (iii) make a determination based on the investigation conducted; and (iv) make recommendations to the Board on the steps to be taken by the Board.</p> <p>The Special Committee also stated that upon receipt of the response from Mr Makhathini (which response will be shared with you), the Special Committee will then determine the next steps. Before making any decision, the Special Committee needs to be reasonably satisfied that it has sufficient evidence at its disposal to make a recommendation to the Board and this is what will guide the Special Committee in determining the next steps in each stage of the process.</p>
02/02/22	Response in the form of an affidavit from Mr B Makhathini.	
03/02/22	Letter to Ms Magopeni – requesting a response within 10 business days to Mr Makhathini’s response.	Ms Magopeni did not respond within the 10 business day period. No request for extension was requested by Ms Magopeni.
18/02/22	Letter to Ms Magopeni reminding her that the	The Special Committee decided to grant Ms Magopeni an

<b>Date</b>	<b>Event/Description</b>	<b>Comments by Special Committee (which includes verbatim responses)</b>
	response was due by 17 February 2022 – extension given up to 22 February 2022.	extension to submit her response even though she had not requested an extension.
24/02/22	Special Committee Meeting - no response received from Ms Magopeni.	
25/02/22	Letter from Ms Magopeni's attorneys dated 22 February 2022 was forwarded to the Company Secretary.	<p>Although the letter appears to have been emailed to the Company Secretary on 22 February 2022, the Company Secretary never received the letter until it was forwarded to her by Group Executive: Human Resources (who was copied on the email) on 25 February 2022.</p> <p>It is clear from the letter from Ms Magopeni's attorneys that Ms Magopeni knew about the date for the submission of her response to Mr Makhathini's affidavit and the fact that the submission date had passed. Ms Magopeni's attorneys stated that Ms Magopeni "has not been advised by the Special Committee on the process to be followed in relation to her grievance". They went further to request the Special Committee to confirm the following: (i) The policy and/or terms of reference governing the grievance process; (ii) The steps to be taken by the Special Committee following the submission of Ms Magopeni's response to the affidavit of Mr Makhathini, including but not limited to whether the Special Committee will convene a</p>

Date	Event/Description	Comments by Special Committee (which includes verbatim responses)
		<p data-bbox="1211 268 2063 655">grievance hearing/meeting and whether the decision of the Special Committee in relation to Ms Magopeni's grievance is final and binding; and (iii) The Special Committee's position considering the fact that Ms Magopeni is no longer an employee at the SABC and is under no legal obligation to assist the Special Committee; and further requested that the submission of Ms Magopeni's affidavit in response to the affidavit of Mr Makhathini be postponed pending receipt of the information requested.</p> <p data-bbox="1211 724 2063 807">The Special Committee explained the process to Ms Magopeni in its letter of 27 January 2022.</p> <p data-bbox="1211 876 2063 1366">As the person who lodged the grievance, it makes no sense for Ms Magopeni not to meet the deadline for submitting her response to Mr Makhathini's affidavit and/or communicate with the Special Committee before the expiry of the initial deadline for submission of her response (i.e. 17 February 2022) and only communicated through her attorneys on 22 February 2022 at 16:26 (the extended date for the submission of her response), which communication makes her cooperation with the Special Committee conditional upon her being furnished with information that was previously provided and/or explained to her.</p>

<b>Date</b>	<b>Event/Description</b>	<b>Comments by Special Committee (which includes verbatim responses)</b>
01/03/22	Letter from Ms Magopeni's attorneys stating that pursuant to Ms Magopeni's dismissal by the SABC on 28 January 2022, Ms Magopeni's authorisation to access her email address at SABC, to which the SABC's letter of 27 January 2022 was dispatched, was terminated and as such Ms Magopeni has not had sight of the SABC's letter of 27 January 2022 and is still unaware of "the process and mandate" of the Special Committee in relation to her grievance.	The Special Committee understands that Ms Magopeni still communicated with the SABC hours after the email of 27 January 2022 was sent to her. Furthermore, the email that was sent to Ms Magopeni on 3 February 2022 using her Gmail address included (in the trail) the email of 27 January 2022. In the letter of 3 February 2022, the Special Committee specifically made reference to the letter of 27 January 2022. It is clear from Ms Magopeni's attorneys' letter of 22 February 2022 that Ms Magopeni received the Special Committee's letter of 3 February 2022.
01/03/22	The Company Secretary sent the letter that was sent to Ms Magopeni on 27 January 2022 to Ms Magopeni's attorneys.	
07/03/22	The Company secretary telephonically contacted Ms Magopeni's attorneys and thereafter resent the letter of 27 January 2022 to Ms Magopeni's attorneys. She specifically stated that to date we have not received Ms Magopeni's response to the Affidavit which was due on 4 March 2022.	
07/03/22	Email from Ms Magopeni's attorneys stating that	The Special Committee's view is that its letter of 27 January

<b>Date</b>	<b>Event/Description</b>	<b>Comments by Special Committee (which includes verbatim responses)</b>
	<p>once they receive the Special Committee’s response to their letter of 1 March 2022, they will take instructions and revert with Ms Magopeni’s position in relation to the submission of her affidavit in response to the affidavit of Mr Makhathini.</p>	<p>2022 deals with the question raised by Ms Magopeni’s attorneys and saw no merit in further engaging with Ms Magopeni’s attorneys considering that this matter had to be finalised. Ms Magopeni’s attorneys had in their letter of 22 February 2022 indicated that Ms Magopeni was under no legal obligation to assist the Special Committee and all that Ms Magopeni had to do was to respond to the substance of Mr Makhathini’s affidavit considering that Ms Magopeni is the one who lodged the grievance and should assist the Special Committee in finalising the matter. The Special Committee’s view is that Ms Magopeni’s conditions to providing a response is tantamount to a refusal to co-operate with the investigation.</p> <p>Ms Magopeni’s attorneys further stated that with respect to the Special Committee’s request that Ms Magopeni explain the basis for her statement that the grievance “is meant to be finalised within 60 days”, Ms Magopeni instructed them that in terms of the applicable grievance policy at SABC, it requires that grievances are dealt with swiftly and it was envisioned by Ms Magopeni that the decision on the grievance should be finalised within 60 days.</p>

Date	Event/Description	Comments by Special Committee (which includes verbatim responses)
		<p>The Special Committee's understanding of the SABC's grievance procedure is that: (i) the procedure is intended to give employees who feel they have been treated unfairly in their jobs the opportunity to resolve their grievances swiftly in a fair, acceptable manner; (ii) while the grievance procedure is being followed, all parties should approach the matter with a positive attitude in order to settle the grievance at the lowest possible level; and (iii) the first step in this process is a discussion of the problem between the employees and their immediate superior.</p> <p>The word "swiftly" means "happening quickly or promptly" and the timelines set out in the SABC grievance procedure do not point to 60 days.</p> <p>As already indicated, the Procedure Document (and not the SABC grievance procedure) provides that the Committee must ensure that the process is concluded within 60 days from the date on which a complaint against the non-executive director is received and the 60 day period in relation to this process can only be referred to by someone who has access to the Procedure Document or has been advised of this 60 day period by someone who has access to the Procedure Document.</p>

<b>Date</b>	<b>Event/Description</b>	<b>Comments by Special Committee (which includes verbatim responses)</b>
15/03/22	The Special Committee advised Ms Magopeni's attorneys that it will be finalising the matter without Ms Magopeni's reply.	
16/03/22	The Special Committee received Ms Magopeni's affidavit.	
18/03/22	Letter to Ms Magopeni's attorneys acknowledging receipt of replying affidavit.	
18/03/22	Letter to Mr B Makhathini's attorneys indicating that Ms Magopeni's replying affidavit is being considered.	
20/03/22	Letter to Ms Magopeni's attorneys regarding late submission of affidavit and response to her request to release her replying affidavit.	
20/03/22	Letter to Mr B Makhathini's attorneys indicating that no further information is required before finalising the report	

#### 4 ANNEXURES TO THE REPORT

The following annexures form part of the Report however will not be attached for purposes of publishing the report in order to protect private, personal and confidential information, including private, personal and confidential information of and about third parties.

Event/Description	Annexure
Formal grievance by GE: News and Current Affairs (“Ms Magopeni”).	A
Letter to Mr Makhathini from Deputy Chair – Dealing with GCEO and Chair matter separately.	B
Letter to Mr Makhathini from Deputy Chair – Mr Makhathini is given 10 business days to respond to the allegations by Ms Magopeni	C
Letter from Mr Makhathini’s attorneys to SABC Board.	D
Letter to Ms Magopeni requesting her to submit her grievance in the form of an affidavit.	E
Formal grievance from Ms Magopeni – In an Affidavit format.	F
Letter to Mr Makhathini’s attorneys by Prof S Cooper – The Special Committee grants extension to Mr Makhathini to respond to the allegations, advising the attorneys that a Special Committee has been formed and they will be engaged once the Terms of Reference have been finalised.	G
Terms of Reference of the Special Committee to investigate and adjudicate the grievance lodged by Ms Magopeni against Mr Makhathini.	H
Final grievance from Ms Magopeni in the form of an affidavit – signed and initialled – all pages included, together with covering email requesting that she be furnished with the following details: (i) what the process of adjudicating the matter by the committee entails; and (ii) when exactly is the process going to start and conclude, considering that it is meant to be finalised within 60 days from the date the submission was made (29 November 2021).	I
Letter to Mr Makhathini to respond to the allegations.	J
Letter to Ms Magopeni explaining, inter alia, the process to be followed by the Special Committee in dealing with the matter.	K

Event/Description	Annexure
Response in the form of an affidavit from Mr B Makhathini.	L
Letter to Ms Magopeni – requesting a response within 10 business days to Mr Makhathini’s response.	M
Letter to Ms Magopeni reminding her that the response was due by 17 February 2022 – extension given up to 22 February 2022.	N
Letter from Ms Magopeni’s attorneys dated 22 February 2022 was forwarded to the Company Secretary.	O
Letter from Ms Magopeni’s attorneys stating that pursuant to Ms Magopeni’s dismissal by the SABC on 28 January 2022, Ms Magopeni’s authorisation to access her email address at SABC, to which the SABC’s letter of 27 January 2022 was dispatched, was terminated and as such Ms Magopeni has not had sight of the SABC’s letter of 27 January 2022 and is still unaware of “the process and mandate” of the Special Committee in relation to her grievance.	P
The Company Secretary sent the letter that was sent to Ms Magopeni on 27 January 2022 to Ms Magopeni’s attorneys.	Q
The Company secretary telephonically contacted Ms Magopeni’s attorneys and thereafter resent the letter of 27 January 2022 to Ms Magopeni’s attorneys. She specifically stated that to date we had not received Ms Magopeni’s response to the Affidavit which was due on 4 March 2022.	R
Email from Ms Magopeni’s attorneys stating that once they receive the Special Committee’s response to their letter of 1 March 2022, they will take instructions and revert with Ms Magopeni’s position in relation to the submission of her affidavit in response to the affidavit of Mr Makhathini.	S
Email to Ms Magopeni’s attorneys stating that the Special Committee is going ahead with the investigation without her response.	T
Letter from Ms Magopeni’s attorneys together with Ms Magopeni’s Replying Affidavit.	U
Letter to Ms Magopeni’s attorneys acknowledging receipt of replying affidavit.	V
Letter to Mr B Makhathini’s attorneys indicating that Ms Magopeni’s replying	W

Event/Description	Annexure
affidavit is being considered.	
Letter to Ms Magopeni's attorneys regarding late submission of affidavit and response to her request to release her replying affidavit.	X
Letter to Mr B Makhathini's attorneys indicating that no further information is required before finalising the report.	Y

## 5 A SUMMARY OF THE CONTENTS OF MS MAGOPENI'S GRIEVANCE LETTER

5.1 The issues raised by Ms Magopeni in the Grievance Letter can be summarised as follows:

### 5.1.1 President's Interview

5.1.1.1 On 24 October 2021, Mr Makhathini called Ms Magopeni to find out what Ms Magopeni had done about coordinating the President's interview based on the earlier discussion she had with Mr Mxakwe [paragraph 3, page 5].

5.1.1.2 Ms Magopeni's response regarding the co-ordination of the President interview (in his capacity as the ANC President) was that she had done nothing about the coordination of the President's interview because it would have been editorial transgression [paragraph 3, page 5].

5.1.1.3 Mr Makhathini said that the President would be making his way to the SABC after his final leg of the campaign. Ms Magopeni's response was inter alia that:

5.1.1.3.1 There was no scheduled interview with the President and there was no preparation for such by editors;

- 5.1.1.3.2 No editor had knowledge of the interview with the President and that would be a breach of editorial transparency in the SABC newsroom processes;
- 5.1.1.3.3 Radio programming staff could go ahead and do the interview if that is what Mr Makhathini wanted but SABC News was not getting involved.  
[paragraph 3, page 5]
- 5.1.1.4 Ms Magopeni states that:
- 5.1.1.4.1 Mr Makhathini said that they worked together successfully for 4 years (which is correct) but for Mr Makhathini to use this pressure and blackmail Ms Magopeni was appalling disregard of editorial governance [paragraph 3, page 5];
- 5.1.1.4.2 Mr Makhathini put immense pressure on her and bullied her to bypass newsroom process and contravene editorial governance and she refused [paragraph 3, page 6];
- 5.1.1.4.3 The frivolous charges and disciplinary process by the SABC's executive against Ms Magopeni have a direct link to Ms Magopeni's refusal to do what Mr Makhathini and Mr Mxakwe wanted [paragraph 3, page 6].
- 5.1.1.5 The Special Committee's understanding of Ms Magopeni's grievance around the President interview is as follows:

- 5.1.1.5.1 If the SABC Newsroom had undertaken the interview with the President (in his capacity as the ANC President), this would have been editorial transgression;
- 5.1.1.5.2 Since no editor had knowledge of the interview with the President, undertaking the interview would have been a breach of editorial transparency in the SABC newsroom processes;
- 5.1.1.5.3 Ms Magopeni and Mr Makhathini successfully worked together for a period of 4 years and Mr Makhathini used this successful relationship to pressure and blackmail her and this constituted disregard of editorial governance;
- 5.1.1.5.4 Mr Makhathini pressured and bullied Ms Magopeni to bypass newsroom process and contravene editorial governance, however she refused;
- 5.1.1.5.5 Ms Magopeni believes that the charges against her for the airing of the special assignment episode in contravention of the court order were frivolous and the related disciplinary process was directly linked to her refusal to do what Mr Makhathini and Mr Mxakwe wanted her to do.

5.1.2 In his response to the above, Mr Makhathini states inter alia that:

- 5.1.2.1 Ms Magopeni and he would often discuss issues and share information on a range of issues and on many occasions Ms Magopeni called him to discuss issues with him as a sounding board [paragraph 6.4, page 5].

- 5.1.2.2 He has never used his relationship with Ms Magopeni to instruct or direct Ms Magopeni on how the news should be covered or how Ms Magopeni should do her job [paragraph 6.4, page 5].
- 5.1.2.3 Ms Magopeni's attitude towards him changed after she was charged for misconduct on 25 November 2021. Prior to this date, his communications with Ms Magopeni were of a warm and respectful nature [paragraph 6.4, page 5].
- 5.1.2.4 The record of the disciplinary enquiry shows Ms Magopeni made every effort to avoid the allegations of misconduct for which she was charged and the independent third party chairperson, Advocate Nazeer Cassim SC found that "there is no merit in the criticism that the investigative process was inchoate. On the contrary, having considered the respective responses of the three affected departments, I think the CEO (Mxakwe) was fully justified in preferring charges against the Employee" [paragraph 6.6, page 6].
- 5.1.2.5 Ms Magopeni has not provided any factual basis for concluding that Mr Mxakwe and Mr Makhathini put immense pressure on Ms Magopeni and bullied her to bypass newsroom processes and contravene editorial governance [paragraph 7.3, page 7].
- 5.1.2.6 Ms Magopeni consistently raised the concern that excluding interviews done around the time of the ANC's annual January 8 statements, the President of the Republic of South Africa ("the President") never availed himself for any one-on-one exclusive interview on SABC radio or televisions platforms [paragraph 7.5, page 8].

- 5.1.2.7 Mr Makhathini's call to Ms Magopeni regarding the President's interview was triggered by a call he received from Mr Mxakwe who, after Ms Magopeni informed him that the SABC would not accede to the offer to interview the President for various procedural and operational reasons, referred the issue to Mr Makhathini in his capacity as the chairperson of the SABC Board [paragraphs 7.7 and 7.8, page 8].
- 5.1.2.8 In the context of the long-standing request to interview the President, Mr Makhathini was perplexed by Ms Magopeni's decision and it was in this context that he contacted Ms Magopeni on 24 October 2021 [paragraph 7.9, page 9].
- 5.1.2.9 During the discussion, Ms Magopeni explained to Mr Makhathini that: it would be an irregularity under the editorial policy to grant the interview and, in any event, the SABC (due to its far reaching commitments to the local elections) did not have resources to conduct the interview in Polokwane at such short notice; SABC News does not do interviews that are not requested by SABC News; and if SABC News agreed to interview the President Ms Magopeni would be audited by ICASA and be forced to interview all other political leaders [paragraph 7.10, page 9].
- 5.1.2.10 Mr Makhathini never threatened Ms Magopeni's independence during their discussion. When Ms Magopeni insisted that she stood by her decision [not to interview the ANC President], Mr Makhathini accepted Ms Magopeni's decision [paragraph 7.11, page 9].
- 5.1.2.11 Ms Magopeni has mischaracterised Mr Makhathini's reference to them having worked together successfully for four years as an

effort to pressure and blackmail Ms Magopeni into engaging in wrongdoing and an appalling disregard of editorial governance [paragraph 7.12, page 9].

5.1.2.12 Once Ms Magopeni asserted that agreeing to the request to interview the President would constitute editorial interference, that was the end of the matter [paragraph 7.13, pages 9 -10].

5.1.2.13 Mr Makhathini made one call to Ms Magopeni and to refer to the one call as an example of relentless bullying is an exaggeration, untruthful and belies the respectful and professional way their views were exchanged [paragraph 7.14, page 10].

5.1.3 In her response to the above, Ms Magopeni states inter alia that:

5.1.3.1 Mr Makhathini's contention that he had raised the issue of the President not having availed himself for any one-on-one exclusive interview on [the SABC's] radio or televisions platforms and Ms Magopeni's long standing wish to secure the President on an SABC platform:

5.1.3.1.1 Cannot be asserted by Mr Makhathini to justify his interference in respect of the interview with the President (in his capacity as the ANC President);

5.1.3.1.2 Highlights Mr Makhathini's ignorance of his obligation not to interfere in editorial matters in relation to the interview with the President;

5.1.3.1.3 Provides no lawful explanation for his interference in the editorial decision-making process, which falls outside Mr Makhathini's jurisdiction.

[paragraphs 8 and 9, pages 2 – 3]

5.1.3.2 in her telephonic discussion with Mr Makhathini,

5.1.3.2.1 She initially pointed out that the interview with the President was not in his capacity as the President of South Africa [paragraph 10, page 3];

5.1.3.2.2 She further stated that the interview was not sanctioned by the SABC's editors and that the SABC had journalists who were covering the President in the field [paragraph 10, page 3];

5.1.3.2.3 She informed Mr Makhathini that the interview with the President would be irregular as it would amount to a breach of the SABC's editorial policies [paragraph 11, page 3].

5.1.3.3 Clause 5.20.7 states that "No employees other than editorial staff may engage in any editorial decision making. As is the case outside election periods, editorial decision making is a legally-protected domain of designated editorial staff" [paragraph 11, page 3].

5.1.3.4 Mr Makhathini and anyone outside the SABC Newsroom is precluded from participating in the editorial decision-making process [paragraph 12, page 3].

5.1.3.5 In response to Mr Makhathini's question about the President leaving without doing the interview, she emphatically said yes [paragraph 13, page 4].

5.1.3.6 The point raised by Mr Makhathini that they had a long-standing work relationship was made by Mr Makhathini in an effort to pressurise Ms Magopeni into allowing the unscheduled interview with the President to proceed and was plainly inappropriate [paragraph 14, page 4].

#### 5.1.4 The Story Relating to the Zulu Royal Family Succession Process

5.1.4.1 Ms Magopeni states that:

5.1.4.1.1 Around the end of May and beginning of June 2021, Mr Makhathini called Ms Magopeni about a story that relates to the Zulu Royal family succession process [paragraph 3, page 6].

5.1.4.1.2 Mr Makhathini advised Ms Magopeni about what he perceived to be a single perspective narrative that was playing out in the media concerning the succession [paragraph 3, page 6].

5.1.4.1.3 Mr Makhathini referred to a court process that had ensued and stated that the story of the other side needed to be heard [paragraph 3, page 6].

5.1.4.1.4 She was not interested in why the story of the other side had to be heard but she listened to Mr Makhathini out of respect [paragraph 3, page 6].

5.1.4.1.5 Mr Makhathini sent Ms Magopeni an envelope with court papers [paragraph 3, page 6].

- 5.1.4.1.6 On 4 June 2021 Mr Makhathini sent a statement to Ms Magopeni titled “  
” via WhatsApp [paragraph 3, page 6
- 5.1.4.1.7 On 7 June 20221 Mr Makhathini sent Ms Magopeni an audio clip  
[paragraph 3, pages 6-7].
- 5.1.4.1.8 On 7 June 2021 Mr Makhathini instructed Ms Magopeni to release the statement and Ms Magopeni never did [paragraph 3, page 7].
- 5.1.4.1.9 She did not need any assistance from Mr Makhathini to do her job and she had thought that in his role and as someone who had always claimed to protect the newsroom he would lead by example [paragraph 3, page 7].
- 5.1.4.2 The Special Committee’s understanding of Ms Magopeni grievance around the Zulu Royal Family succession story is:
- 5.1.4.2.1 Mr Makhathini contacted her about this story as the other side of the family needed to be heard.
- 5.1.4.2.2 Ms Magopeni was not interested in why the story of the other side had to be heard but she listened to Mr Makhathini out of respect.

- 5.1.4.2.3 Mr Makhathini instructed her to release the statement titled “  
” and Ms Magopeni never did.
- 5.1.4.2.4 Ms Magopeni did not need any assistance from Mr Makhathini to do her job.
- 5.1.4.2.5 Ms Magopeni had thought that in his role and as someone who had always claimed to protect the newsroom he would lead by example.
- 5.1.4.3 In his response to the above, Mr Makhathini states inter alia that:
- 5.1.4.3.1 If the incident constituted what Ms Magopeni refers to as unbearable pressure on her editorial independence, Ms Magopeni would have raised the matter at the time [paragraph 7.15, page 10].
- 5.1.4.3.2 Mr Makhathini denies that his conduct was an attempt to interfere in Ms Magopeni’s editorial independence [paragraph 7.15, page 10].
- 5.1.4.3.3 Mr Makhathini shared the information with Ms Magopeni in the interest of objective journalism and the SABC and he had often brought to the attention of Ms Magopeni editorial issues or concerns raised by third parties and Ms Magopeni has never, until the grievance, raised any issue with this [paragraph 7.16, page 11].
- 5.1.4.3.4 Ms Magopeni never raised any concerns whatsoever when Mr Makhathini forwarded to her a media release

from . In his communication with Ms Magopeni regarding the media release, Mr Makhathini indicated to Ms Magopeni that the media release was still embargoed and added that “it gives [Magopeni] context” and Ms Magopeni’s reply was “Great will wait. Thanks”. In her response to Mr Makhathini, Ms Magopeni also added that there was a minor spelling error in the media release [paragraph 7.22, page 12].

5.1.4.3.5

As further evidence that Ms Magopeni was engaging with the shared material and believed it was important information, Ms Magopeni said "We speak out because wrong things flourish when those who are supposed to speak keep quiet" [paragraph 7.23, page 12].

5.1.4.3.6

Mr Makhathini shared the information on the Zulu Royal family with Ms Magopeni on a confidential basis with the expectation that the source of information would be kept confidential and the information was shared with her, as any other source would share information with a journalist, with the expectation that the source of information would remain confidential. By revealing Mr Makhathini’s identity as the source, Ms Magopeni has not only breached a fundamental principle of media independence but has also severely compromised Mr Makhathini [paragraph 7.23, page 12].

5.1.4.4

In her response to what is stated in Mr Makhathini’s affidavit, Ms Magopeni states inter alia that:

- 5.1.4.4.1 Mr Makhathini initially called her on or around June 2021 to discuss the Zulu Royal family and introduced the issue referring to the one-sided media coverage [paragraph 18, page 5].
- 5.1.4.4.2 Mr Makhathini sent her the media release statement from the Zulu Royal family after the aforesaid discussion [paragraph 18, page 5].
- 5.1.4.4.3 Ms Magopeni briefly considered the media statement which she does with all material regardless of the source and advised that there was a minor spelling error in the media statement [paragraph 19, page 5].
- 5.1.4.4.4 Once Ms Magopeni had considered the media release statement and based on her discussions with Mr Makhathini on the Zulu Royal family, she did not publish the media release statement [paragraph 37.3, page 11].
- 5.1.4.4.5 One of the basic tenets of the Editorial Policy is to ensure editorial independence and impartiality [paragraph 23, page 6].
- 5.1.4.4.6 Clause 5.3 of the Editorial Policy states that all news staff should commit to “not allow[ing] commercial, political, state, interest groups or personal considerations to influence SABC’s editorial decisions [paragraph 23, page 7].
- 5.1.4.4.7 Based on Mr Makhathini’s conduct, it is evident that Mr Makhathini sought to interfere with the editorial decision-

making process as he had taken various steps to put information before Ms Magopeni which aligned with Mr Makhathini's interests regarding the Zulu Royal family and this stands in stark contrast to the stated provisions of the SABC's News and Editorial Policy (clause 5.3 of the Editorial Policy) [paragraph 24, page 7].

5.1.4.4.8 Mr Makhathini provided the information regarding the Zulu Royal family matter with the intention to influence SABC News' position on the Zulu Royal family succession matters [paragraph 37.1, page 10].

5.1.4.4.9 With respect to Mr Makhathini's claim that he was merely an innocent source - why has he failed to fully disclose the content of Mr Makhathini's initial call to Ms Magopeni on 4 June 2021? Why has Mr Makhathini failed to put all the relevant WhatsApp messages following the call on 4 June 2021 before the Special Committee for its consideration? The only reasonable inference which can be drawn is that Mr Makhathini sought to mislead the Special Committee [paragraph 37.4, page 11].

5.1.4.5 With regard to the matter relating to the reporting of the harassment incident to the Independent Electoral Commission ("IEC"), Ms Magopeni states that:

5.1.4.5.1 She was verbally harassed by Ms Jessie Duarte at the IEC's Results Operations Centre on 2 November 2021 [paragraph 26, page 7].

- 5.1.4.5.2 On 21 November 2021, she addressed a letter to Mr Makhathini and Mr Mxakwe in which she detailed the harassment incident and requested that the SABC lodge a complaint with the IEC [paragraph 30, page 8].
- 5.1.4.5.3 The SABC lodged a complaint with the IEC on 26 November 2021 [paragraph 30, page 8].
- 5.1.4.5.4 She is aware that the complaint is currently being investigated by the IEC and she has elected not to be part of the investigation process as she is no longer an employee of the SABC [paragraph 31, page 8].
- 5.1.4.5.5 In her WhatsApp message to Mr Makhathini of 2 November 2021 she states that “Jessie Duarte has just confront[ed] me at the ROC. I am going public with this. I will not be intimidated. If they want me out, they must say so” [annexure “PM3” to Ms Magopeni’s affidavit].
- 5.1.4.5.6 In her letter to Mr Mxakwe and Mr Makhathini of 21 November 2021, she deals with this incident of harassment and intimidation of SABC News journalists and raises specific issues in the letter as part of several incidents of editorial bullying, intimidation, harassment of SABC News journalists by senior party officials [annexure “PM4” to Ms Magopeni’s affidavit].
- 5.1.4.6 She agrees that the SABC News Room did have a great degree of independence because she has been the shield to protect it from interference from the SABC’s executive and Board

members, including Mr Makhathini and various external stakeholders [paragraph 35.2, page 9].

5.1.4.7 She agrees that prior to the incidents recorded in her grievance, she had a good working relationship with Mr Makhathini at the SABC however the nature of their previous work relationship cannot be relied on by Mr Makhathini to justify his misconduct [paragraph 35.3, page 9].

5.1.4.8 Based on her refusal to allow the unscheduled interview with the President (in his capacity as the ANC President) and Ms Magopeni's public statement regarding Mr Makhathini's and Mr Mxakwe's interference in a Morning Live interview, the SABC wrongfully used the incident involving the airing of an interdicted episode to target her [paragraph 35.5, page 9].

5.1.4.9 She first raised the point of the disciplinary charges being used to pursue a predetermined outcome in her response to the letter of intent to charge her on 19 November 2021, which was 10 days before the grievance was lodged [paragraph 25.5, page 9].

## **6 ANALYSIS OF THE SUBMISSIONS**

### **6.1 President's Interview**

6.1.1 In analysing the Grievance Letter, Ms Magopeni has used the following terms: editorial transgression; breach of editorial transparency; disregard of editorial governance; by-passing of news processes; and contravention of editorial governance, in setting out her grievance against Mr Makhathini in regard to the President's interview. Unfortunately, Ms Magopeni used these words loosely and without

expounding on the meaning of each of these terms, how and where these terms are encapsulated in the SABC policies and procedures and more importantly how Mr Makhathini transgressed these policies, procedures and processes.

6.1.2 Ms Magopeni states that Mr Makhathini put immense pressure on her and bullied her to bypass process and contravene editorial governance. Not much detail is given by Ms. Magopeni as to how Mr Makhathini has put immense pressure on Ms Magopeni to bypass process and contravene editorial governance. In response to this, Mr Makhathini states that he made one call to Ms Magopeni and to refer to the one call as an example of relentless bullying is an exaggeration, untruthful and belies the respectful and professional way their views were exchanged.

6.1.3 The issue is not necessarily on the number of calls made by Mr Makhathini to Ms Magopeni (though this may assist in working out any pressure exerted) but whether Mr Makhathini had put immense pressure on Ms Magopeni to bypass process and contravene editorial governance. As indicated, Ms Magopeni has not set out in any detail what constitutes process and editorial governance and how Mr Makhathini has put immense pressure on her to bypass such process and contravene editorial governance.

6.1.4 A critical point is that it appears from the submissions that even after what transpired between Ms Magopeni and Mr Makhathini during the call, Ms Magopeni retained and exercised the right to decide not to go ahead with interviewing the President. In response to Mr Makhathini's question about the President leaving without doing the interview, Ms Magopeni exercised her prerogative and emphatically said that the President will leave without doing an interview and in fact, no interview was granted by the SABC.

- 6.1.5 Ms Magopeni states that during her call with Mr Makhathini, she initially pointed out to Mr Makhathini that the interview with the President was not in his capacity as the President of South Africa. It begs the question as to whether the capacity in which the interview was to be conducted was relevant and whether things would have turned out differently if the call was made by Mr Makhathini on the basis that the interview was to be conducted by the President in his capacity as the President of South Africa. If the view by Ms Magopeni is that the interview, regardless of the President's capacity, would have amounted to breach of the SABC's editorial policies, the initial response by Ms Magopeni to Mr Makhathini should have been that interview and/or Mr Makhathini's engagement in the matter (i.e. the act of contacting Ms Magopeni regarding the matter) would amount to breach of the SABC's editorial policies regardless of the capacity of the President.
- 6.1.6 With regard to the President's capacity (i.e. whether the interview was going to be in his capacity as the ANC President or the President of the Republic of South Africa), other than the statement that the President was in his final leg of the campaign there does not appear to be any indication that the interview had to be conducted with the President strictly in his capacity as the President of the ANC and that questions about his presidency as the President of the Republic of South Africa could not be asked.
- 6.1.7. It appears that Mr Makhathini's involvement in this matter was as a result of a call that was made to him as events were unfolding. There is no information to suggest that he in any way pre-planned to be involved in the matter and/or to instruct Ms Magopeni to act one way or the other. He dealt with the matter as it arose.

- 6.1.8 The Special Committee has not been furnished with any information that suggests that Mr Makhathini did anything about the matter or to Ms Magopeni relating to the matter after Ms Magopeni's decision not to interview the President. Mr Makhathini states that he accepted Ms Magopeni's decision and he never threatened Ms Magopeni's independence. This should bring an end to the allegation of bypassing editorial process and contravention of editorial governance unless such processes had the effect that Mr Makhathini could not engage with Ms Magopeni on any editorial issues. This does not appear to be the case as Ms Magopeni engaged with Mr Makhathini in respect of the Zulu Royal family succession issue without raising any concerns with Mr Makhathini.
- 6.1.9 Ms Magopeni states that she believes that the charges against her for the airing of the special assignment episode in contravention of the court order were frivolous and the related disciplinary process are directly linked to her refusal to do what Mr Makhathini and Mr Mxakwe wanted her to do.
- 6.1.10 Whether or not the charges are frivolous is the subject matter of a labour process. The chairperson of the disciplinary hearing instituted against Ms Magopeni stated that in his view, "there is no merit in the criticism that the investigative process was inchoate. On the contrary, having considered the respective responses of the three affected departments, [he] thinks the CEO was fully justified in preferring charges against [Ms Magopeni]. The content of the interdicted report, properly rested within the domain of the News department under the leadership of Ms Magopeni and she was, in the result, properly charged and given the opportunity to deal with the allegations against, scrutinise such and put up her own version".

6.1.11 With the information made available to the Special Committee, the chairperson of the disciplinary hearing's view is that Ms Magopeni was properly charged and this counters Ms Magopeni's view that the charges were frivolous. Furthermore, there is no direct link between the charges and Ms Magopeni's refusal to undertake the interview with the President. No reference is made to the President's interview in the charges against Ms Magopeni and the Special Committee is not aware of any charges proffered against Ms Magopeni for any activities relating to the President's interview. It should be noted that the date on which the President's interview was to take place is 24 October 2021 and the date on which the special assignment episode was aired is 26 October 2021 and as such, if there were any charges against Ms Magopeni relating to the President interview, these could have been proffered before or as part of the charges relating to the airing of the Special Assignment episode. Furthermore, the Special Committee has not been furnished with any information that shows that Ms Magopeni had at any stage before she was charged formally (or informally) raised her grievance with the SABC or that she raised the matters raised in her grievance letter before the date of the grievance (29 November 2022).

## 6.2 The Story Relating to the Zulu Royal Family Succession Process

6.2.1 It would appear from the Grievance Letter that Ms Magopeni's issues in relation to the story of the Zulu Royal family succession process is that she did not need any assistance from Mr Makhathini to do her job and that she had thought that in his role and someone who had always claimed to protect the newsroom, Mr Makhathini would lead by example to affirm its independence,

6.2.2 Ms Magopeni states that Mr Makhathini sought to interfere with the editorial decision-making process as he had taken various steps to put

information before Ms Magopeni which aligned with Mr Makhathini's interests regarding the Zulu Royal family and this stands in stark contrast with clause 5.3 of the Editorial Policy and that Mr Makhathini provided the information regarding the Zulu Royal family matter with the intention to influence SABC News' position on the Zulu Royal family succession matters.

6.2.3 It is not clear to the Special Committee as to how Mr Makhathini sought to interfere with the editorial decision-making process. From the information made available to the Special Committee, Mr Makhathini furnished information to Ms Magopeni pursuant to their discussion. Mr Makhathini and Ms Magopeni engaged on the matter however, the engagement was not part of editorial decision making process. If Ms Magopeni regarded this as part of editorial decision making process, Ms Magopeni should have at that stage advised Mr Makhathini that such an engagement violates the applicable provisions of the Editorial Policy and terminate the engagement. Ms Magopeni also did not favour the Special Committee with the WhatsApp messages she says Mr Makhathini failed to provide, as stated in 5.1.4.4.9 above.

6.2.4 Ms Magopeni makes reference to an editorial decision-making process however she does not set out the process and how such process was contravened by Mr Makhathini. In the absence of a set and clearly defined decision-making process and its scope of application, it becomes difficult to attribute fault on those who are not part (and/or not supposed to be) part of the process. The News editors are the custodians of all processes relating to editorial decision making and they need to ensure that such processes are followed prior to any editorial decision being made. This is in keeping with clause 2.2.3.2 of the Editorial Policy which provides that "SABC journalists, its programming staff, enjoy the

prerogative to make editorial decisions on programming, scheduling and publishing content”.

6.2.5 Clauses 5.3 and 5.3.2 of the Editorial Policy specifically states that the news staff should uphold the highest professionalism and ethical standards by committing to not allowing commercial, political, state, interest groups and personal interest groups and personal considerations to influence SABC’s editorial decisions. The responsibility of not allowing personal considerations to influence SABC’s editorial decisions lies with the news staff and not anyone outside the news staff.

6.2.6 According to Ms Magopeni, she was not interested in the story from Mr Makhathini, however she listened to Mr Makhathini out of respect. From the information made available to the Special Committee, there is nothing that suggests that Ms Magopeni ever communicated her disinterest in the story to Mr Makhathini; and Ms Magopeni never advised Mr Makhathini of her disapproval or dissatisfaction about how Mr Makhathini was behaving in this matter. What appears from Mr Makhathini’s and Ms Magopeni’s affidavits is that Ms Magopeni and Mr Makhathini engaged each other on this matter without any concerns or issues being raised about Mr Makhathini’s behaviour. Ms Magopeni does not explain why she did not dismiss Mr Makhathini on the basis of editorial interference in the matter when Mr Makhathini initially called her on or around June 2021 and/or why she did not report the matter at the time. Ms Magopeni confirms that she considered the media release statement, discussed the matter with Mr Makhathini, briefly considered the media statement and advised Mr Makhathini that there was a minor spelling error in the media statement, and decided not to publish the media release statement.

- 6.2.7 Ms Magopeni does not explain what she meant by what she said in her WhatsApp exchanges with Mr Makhathini i.e. "We speak out because wrong things flourish when those who are supposed to speak keep quiet". Mr Makhathini's contention is that Ms Magopeni was engaging with the shared material and believed that it was important.
- 6.2.8 Ms Magopeni states that she was instructed by Mr Makhathini to release the statement but she never did. From Mr Makhathini's affidavit, the wording used by Mr Makhathini in regard to the release of the statement is "You can now release the statement". This does not appear to be an order or an instruction, and appears to refer to the embargo on the statement. In any event Ms Magopeni never released the statement. Ms Magopeni was not prevented from exercising her prerogative not to publish the media statement. There does not appear to be any consequence flowing from Ms Magopeni's decision not to release the statement. It would appear that the matter ended without Mr Makhathini in any way taking any action against Ms Magopeni for not releasing the statement.
- 6.2.9 Mr Makhathini contends that he submitted the information to Ms Magopeni on a confidential basis (i.e. as a source). Instead of dealing with Mr Makhathini's contention that he was a confidential source, Ms Magopeni raises questions in her affidavit. The Special Committee has not been furnished with any concrete information to rebut Mr Makhathini's contention that he shared the information with Ms Magopeni on a confidential basis. Furthermore, there does not appear to be any information that shows that Mr Makhathini shared the information with Ms Magopeni in his capacity as the Chairperson or director of the SABC. If indeed Mr Makhathini submitted the information on a confidential basis and as a source, the provisions of clause 5.11.1 of the Editorial Policy will come into play i.e. "The SABC firmly upholds the principle of

journalistic freedom and sees the protection of a journalist's sources as a key element of this principle. At times, information that ought to be given to the public is available to journalists through confidential sources. If the confidentiality of such sources is not respected, it would restrict the free flow of information in a free and democratic society". If anything, the Special Committee's view is that some of the exchanges between Ms Magopeni and Mr Makhathini appear to be personal and sensitive in nature and their disclosure to the public would require the consent of the parties involved.

### 6.3 The IEC Harassment Incident

6.3.1 Ms Magopeni does not point to any form of misconduct by Mr Makhathini in this matter. The issue is about editorial bullying, intimidation, harassment of SABC News journalists by senior party officials.

6.3.2 In her text to Mr Makhathini, Ms Magopeni stated that she will not be intimidated and if "they" want her out, "they" must say so. From this text, it appears to the Special Committee that Mr Makhathini is not included in those who wanted Ms Magopeni out. If this was the case, it is the Special Committee's view that Ms Magopeni should have clearly included Mr Makhathini in those who wanted her out. Ms Magopeni's statement about "they" wanting her out was expressed after the President's interview and the Zulu Royal family matters. However, she reported this to Mr Makhathini and excluded Mr Makhathini from those who wanted her out.

## 7 SABC EDITORIAL POLICY

7.1 The key document that regulates editorial issues at the SABC is the Editorial Policy. Accordingly, all issues relating to editorial issues should be processed and dealt with in accordance with the Editorial Policy.

7.2 In terms of the Editorial Policy, SABC journalists, its editorial and programming staff, enjoy the prerogative to make editorial decisions on programming, scheduling and publishing content (clause 2.2.3.2). Accordingly, it will be a contravention of the Editorial Policy if anyone was to usurp this prerogative.

7.3 Clause 5.2.8 of the Editorial Policy provides that:

“Through the News and Editorial Subcommittee, the SABC Board shall exercise oversight to:

- a. protect the public broadcaster’s editorial and programming independence as set out in the Editorial Policies; and
- b. ensure accountability for the compliance and adherence to these Editorial Policies, taking into account that management retain operational responsibility of the policies across the Corporation.”

7.4 To the extent that there is or has been any contravention of the Editorial Policy, same should be or have been brought to the attention of the News and Editorial Subcommittee.

7.5 Clauses 11.3.1 and 11.3.2 of the Editorial Policy provide that complaints about any breach of the SABC’s Editorial Policies that are not received directly by the Policy and Regulatory Affairs department should be referred to the Broadcast Compliance Manager without delay; and in the event of a serious contravention

of any aspect of the editorial policy, or repeated infringement, the matter is referred upwards as follows: (a) Policy & Regulatory Affairs Office; (b) Executive Producer or News/Commissioning Editor; (c) Editor-in Chief.

7.6 In as much as the aforesaid clauses do not deal with complaints by the Editor-in-Chief, it is clear that any complaint about any breach of the Editorial Policy should be raised without delay. Failure to raise a breach of the Editorial Policy without delay (i.e. immediately, expeditiously or forthwith) diminishes the seriousness of the breach and is in itself a breach of the Editorial Policy. The Special Committee is not aware of Ms Magopeni having raised any breach of the Editorial Policy at the time that the incidents relating to the Zulu Royal succession and the President interview took place other than through the Grievance Letter, which was only sent after she was charged for the airing of the Special Assignment episode which was interdicted from airing by the High Court, and months later in the case of the Zulu Royal succession matter. Whatever public statement regarding Mr Makhathini's interference that Ms Magopeni says was made in a Morning Live interview cannot be sustained. It will make a mockery of any institution's processes, especially the SABC, if allegations of this nature are to be raised in the media even before they are formally raised within the institution itself and more so where there is an obligation to report such allegations without delay. Ms Magopeni has not explained this time lapse and it is the Special Committee's view that the time lapse is critical considering the requirement to report such matters without delay as alluded above. This eschewing of responsibility of the Editor-in-Chief is worrying.

7.7 It is clear from the Editorial Policy that SABC news staff will face pressure from all quarters of society. It is for this reason that clause 5.3.11 of the Editorial Policy provides that "The staff may not allow their professional judgement to be influenced by pressures from political, commercial or other sectional interests". The principle here is that the SABC news staff need to stand their ground when faced with different pressures.

7.8 Ms Magopeni also states that she agrees that the SABC News Room did have a great degree of independence because she has been the shield to protect the SABC from interference from the SABC's executive and Board members, including Mr Makhathini and various external stakeholders. Ms Magopeni does not furnish any information to show interference by Board members, including Makhathini. There is no explanation as to why she decided to only lodge a grievance against Mr Makhathini and exclude other Board members in the interference allegation if she believes that there was interference, casting aspersions against Board members generally. As the custodian of the Editorial Policy and with the requirement to ensure editorial independence at the SABC as one of the duties of the SABC Group Executive: News, Ms Magopeni was responsible for reporting interference by the Board members without any delay. This failure to do so is extremely concerning.

7.9 Clause 5.20.7 of the Editorial Policy states that "No employees other than editorial staff may engage in any editorial decision making. As is the case outside election periods, editorial decision making is a legally-protected domain of designated editorial staff". This provision deals with employees of the SABC and how decisions relating to editorial matters should be made i.e. it remains the prerogative of the editorial staff to make decisions on editorial matters. It is the Special Committee's view that the manner in which editorial decisions are made should follow a set process and it is in that process that the designated editorial staff cannot engage other employees of the SABC. The provision does not mean that editorial staff cannot talk to and/or gather information from other employees of the SABC or Board members about matters that have or may have editorial impact. It is the decision making process that cannot be outsourced to anyone outside the editorial staff.

## 8 EGREGIUS VIOLATIONS, ABUSE OF AUTHORITY AND DESTRUCTIVE CONDUCT

8.1 In the Grievance Letter, Ms Magopeni also makes reference to the outcome of an inquiry (“the Commission”) led by Dr Joe Thlooe into grave editorial policy drifts and interference. Ms Magopeni states that the Commission’s report exposed egregious violations, abuse of authority, and destructive conduct that left journalists debilitated and the newsroom dysfunctional, and that there was no way that she would have allowed that knowing the centrality of a vibrant editorially independent newsroom, and critical watchdog public service journalism to an enlightened citizenry and a sustainable democracy.

8.2 Some of the findings of the Commission (as captured in the Executive Summary of the Commission’s Report) were that:

8.2.1 The SABC suffered from the capricious use of authority and power to terrorise staff and to deflect the SABC from its mandate and its Editorial Policies.

8.2.2 The evidence shows that from the year 2012 up until the year 2017, SABC Executives took instructions from people with no authority in the newsroom. The Executives thus failed to execute their duties in terms of the Editorial Policies.

8.2.3 Certain employees of the SABC were pivotal to the execution of instructions from certain Executives and these employees succumbed because of threats of dismissal from their immediate superiors.

8.3 The Grievance Letter does not set out how the allegations against Mr Makhathini are in any way comparable to the findings of the Commission. After considering the allegations and Mr Makhathini’s response, the Special Committee is of the

view that the allegations against Mr Makhathini cannot in any way be compared to what transpired during the period that was covered by the Commission. During this period, the Newsroom took instructions and succumbed to instructions from those who had no authority in regard to editorial decisions because of threats of dismissal. The Special Committee has not been furnished with any information showing that Mr Makhathini threatened, or even bullied, Ms Magopeni. If anything, they enjoyed a cordial relationship.

## 9 RECOMMENDATIONS

- 9.1 The Special Committee does not believe that Mr Makhathini's actions in this matter constitute misconduct as envisaged in the Policy Document read together with section 15 of the Broadcasting Act No 4 of 1999. The Special Committee has not been furnished with any information that points to any contravention of the Editorial Policy and/or related documents by Mr Makhathini.
- 9.2 The Special Committee has not found anything indicating that Ms Magopeni's power to make a final decision in regard to editorial decisions was threatened, usurped or compromised in any way. In both the President's interview and the Zulu Royal Family succession matters, Ms Magopeni retained the power to make the final decision and she in fact made the final decision. Interference resides where there is pressure to comply, which the Special Committee has no evidence of.
- 9.3 The Special Committee has not established any direct link between the charges against Ms Magopeni and Ms Magopeni's refusal to undertake the interview with the President and Ms Magopeni's decision not to release the statement relating to the Zulu Royal Family succession.
- 9.4 To avoid any form of editorial problems arising from any relationship between SABC employees and SABC Board member/s, all SABC Board members need

to be cautioned about the sensitivities around editorial independence and the manner in which they engage with SABC employees about editorial issues outside SABC Board processes and procedures. SABC Board members should be sensitised and cautioned about engaging with SABC News staff on issues that are editorial in nature. If it is necessary for a Board member - in his or her capacity as a Board member - to engage with SABC employees, such engagement should be done transparently and with the knowledge of the SABC Board.

9.5 It is the Special Committee's view that the SABC needs to consider developing a clear policy or guidelines that deal with how SABC Board members should engage with SABC News in regard to editorial matters outside formal SABC processes. This will assist in ensuring that engagements between a Board member (regardless of the capacity in which the engagement is made) and SABC journalists and editors in matters that are editorial in nature are not per se regarded as interference or breach of the Editorial Policy. Notwithstanding the foregoing, SABC News editors and journalists need to strictly apply the SABC Editorial Policy regardless of who is involved. When engaging Board Members and/or any party regarding editorial issues, editors should be guided by the SABC Editorial Policy and related governance procedures and not the relationship between the editor and the person involved in the matter. Importantly, journalistic sources (whoever they may be) should not be compromised. It is established journalistic ethics to preclude divulging a source without the source's express consent, save if the source falsified information.

9.6 The SABC News employees need to be reminded of their obligations in terms of the Editorial Policy and be encouraged to report any breach of the Editorial Policy without any delay.

**PREPARED FOR THE SABC BOARD BY THE SPECIAL COMMITTEE**

Date: 21 March 2022