

A REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO 23 OF 2013/2014

"When Governance and Ethics Fail"

A REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, SYSTEMIC CORPORATE GOVERNANCE DEFICIENCIES, ABUSE OF POWER AND THE IRREGULAR APPOINTMENT OF MR. HLAUDI MOTSOENENG BY THE SOUTH AFRICAN BROADCASTING CORPORATION (SABC)

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‘When governance and ethics fail, you get a dysfunctional organization. Sadly those in charge cannot see that their situation is abnormal. That has been the case at the SABC for a long time...’

Former member of the SABC Board

Executive Summary

- (i) *“When Governance and Ethics Fail”* is my report as the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 23 of 1994 (the Public Protector Act).
- (ii) The report communicates my **findings** and what I consider to be appropriate **remedial action** following an investigation into a complaint lodged on 11 November 2011 by Ms Phumelele Ntombela-Nzimande, who requested an investigation into allegations relating to various corporate governance failures in the management of the affairs of the South African Broadcasting Corporation (SABC) by its management Board, financial mismanagement at the SABC involving the spiralling of financial expenditure, undue interference by the Minister and Department of Communications and alleged maladministration with regard to her own exit from the SABC.
- (iii) Shortly after the investigation commenced, Ms Charlotte Mampane a former Senior Executive at the SABC and several other former SABC employees, lodged a substantially similar complaint which included further allegations. The further allegations included the irregular appointment of Mr Hlaudi Motsoeneng to the position of the Acting Chief Operations Officer (COO) by the SABC despite not having a matriculation (matric) certificate and the required qualifications; Mr Motsoeneng’s gross fraudulent misrepresentation of facts by allegedly declaring himself to be in possession of a matric certificate obtained at Metsimantsho High; the purging of staff by the latter and the former Acting Group Chief Executive Officer (GCEO), Mr. Robin

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Nicholson, the subsequent unprecedented escalation of the SABC’s salary bill, attributed primarily to Mr Motsoeneng’s purging of senior and qualified SABC officials by the latter and the former Acting Group Chief Executive Officer (GCEO) Mr Robin Nicholson, an unprecedented escalation of the SABC’s salary bill, attributed primarily to Mr Motsoeneng’s purging of senior officials, irregular employee appointment and irregular salary increments including Mr Motsoeneng’s own 3 salary increases taking his remuneration increments, package from R1.5 million per annum to R2.4 million per annum in a single year.

- (iv) As the investigation drew towards a conclusion, the investigation team was approached by a whistle-blower on 20 May 2013, who alleged that the SABC had irregularly appointed a Chief Financial Officer (CFO) whose recruitment had allegedly been initiated and facilitated by a senior official of the Department of Communications on the then Minister’s instructions.
- (v) On analysis of the complaints the following eight (8) issues were considered and investigated:
 - (a) Whether the alleged appointment and salary progression of Mr. Motsoeneng, the Acting Chief Operations Officer, were irregular and accordingly constitute improper conduct and maladministration;
 - (b) Whether Mr. Motsoeneng fraudulently misrepresented his qualifications to the SABC, including stating that he had passed matric when applying for employment;
 - (c) Whether the alleged appointment(s) and salary progression of Ms. Sully Motsweni were irregular and accordingly constitute improper conduct and maladministration;

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- (d) Whether the alleged appointment of Ms Gugu Duda as CFO was irregular and accordingly constitutes improper conduct and maladministration;
 - (e) Whether Mr Motsoeneng purged senior officials at the SABC resulting in unnecessary financial losses in CCMA, court and other settlements and, accordingly, financial mismanagement and if this constitutes improper conduct and maladministration;
 - (f) Whether Mr Motsoeneng irregularly increased the salaries of various staff members, including a shop steward, resulting in a salary bill increase in excess of R29 million and if this amounted to financial mismanagement and accordingly improper conduct and maladministration;
 - (g) Whether there were systemic corporate governance failures at the SABC and the causes thereof; and
 - (h) Whether the Department and former Minister of Communications unduly interfered in the affairs of the SABC, giving unlawful orders to the SABC Board and staff and if the said acts constitute improper conduct and maladministration.
- (vi) The investigation included research and analysis of relevant laws and other applicable regulatory prescripts, correspondence, sourcing and analysis of corporate documents, telephonic and face to face interviews with current and former officials of the SABC and the Department of Communications (DOC), former Board Members of the SABC and the former Minister of Communications.
- (vii) In arriving at the **findings**, I have been guided by the standard approach adopted by the Public Protector South Africa as an institution, which simply

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involves asking: What happened? What should have happened? Is there a discrepancy between what happened and what should have happened? If there is a discrepancy, does the conduct amount to improper conduct or maladministration and, in this case, also abuse of power?

- (viii) As is customary, the “what happened” enquiry is a factual question settled on the assessment of evidence and making a determination on a balance of probabilities. I must indicate though that we rely primarily on official documents such as memoranda and minutes and less on *viva voce* evidence. The question regarding what should have happened on the other hand, relates to the standard that the conduct in question should have complied with. In determining such standard I was guided, as is customary, by the Constitution, national legislation and applicable policies and guidelines, including corporate policies and related sector and international benchmarks. Key among corporate policies, were the general SABC Articles of Association and the Broadcasting Act 4 of 1999. The benchmarks considered included guidelines contained in the King III Report on corporate governance.
- (ix) Principles developed in relevant previous Public Protector Reports, referred to as *touchstones*, were also taken into account as customary and in pursuit of consistency. A key report relied on in regard to corporate governance is the report titled *“Not Above Board”*, report no 2 of 2013/14 dealing with findings and remedial action relating to allegations of maladministration by the Eastern Cape Gambling Board relating to the irregular appointment of the Chief Executive Officer.
- (x) I also took into account submissions made by relevant parties, including former employees, the current SABC Board and the complainants, following the Provisional Report being made available to them.

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- (xi) In compiling their responses to the Provisional Report, all implicated recipients were assisted by their attorneys. Ms Pule, MP and DOC Acting Deputy Director General (DDG) Mr. Themba Phiri, were assisted by Malan and Mohale Attorneys. Mr Mngqibisa was assisted by F R Pandelani Incorporated Attorneys. Mr Motsoeneng was assisted by Majavu Incorporated Attorneys. Ms Duda was assisted by Ndlovu and Sedumedi Attorneys Incorporated while the SABC was assisted by Mchunu Attorneys.
- (xii) It must be noted upfront that the arguments presented by some of the respondents, including Mr Motsoeneng, the current chairperson of the SABC Board and Mr Mngqibisa, in response to my Provisional Report, are, with respect, premised on a misunderstanding of the issues investigated and the laws regulating the operations of my office.
- (xiii) If we take the issue regarding the matric certificate, for instance; the issue was not whether or not the SABC Board and management knew that Mr Motsoeneng did not have a matric certificate on appointment to various posts at the SABC. The issue was simply whether or not Mr Motsoeneng had fraudulently misrepresented his qualifications to get a job he was not entitled to as the job required a matric certificate. An ancillary issue was whether it could be reasonably concluded that he had something to do with the disappearance of his human resources file and records. The propriety of changing the advert for the COO post with the effect doing away qualification requirements while Mr Motsoeneng was the acting incumbent was also a source of concern.
- (xiv) The other issue misunderstood by the current SABC Board, whose submission I have since been advised, was prepared by a lawyer on the instructions of the current Chairperson, Ms Zandile Tshabalala and to the exclusion of the rest of the Board, involves failure to appreciate the distinction between jurisdiction and discretion. In the body of the report, I explain that there is no bar on my handling a matter that is older than 2

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years and that the requirement is that if I am requested to investigate a matter that is older than 2 years, the Complainant must furnish me with compelling reasons why I should consider the request favourably. It is not for me to convince the respondent that I have compelling reasons to accept an investigation as argued. If that were the case the discretionary power would shift to the respondent. In any event the main complaint related to alleged on going systemic governance problems and harassment of senior staff by Mr Motsoeneng allegedly because some of them question his qualifications or alleged fraudulent misrepresentation about same. For example, the first complainant, Ms Ntombela-Nzimande alleged that her contract was terminated prematurely because she had raised several corporate governance issues with the then Acting GCEO, Mr Nicholson. She alleged that many of the issues she had raised related to the alleged irregular employment and subsequent conduct of Mr Motsoeneng.

- (xv) The current Board Chairperson, and Mr Motsoeneng also argued that the provisions of section 9 of the Public Protector Act preclude me from “investigating matters that have become litigious”.
- (xvi) In the body of the report I point out that the objections are primarily due to a failure to understand the relevant provisions of the Constitution and the Public Protector Act. Suffice to say that section 182(3) of the Constitution and section 6(6) of the Public Protector Act, prohibit the review of court decisions. There is no bar on investigating matters that were not canvassed in or decided by a court of law. In this regard, it must be noted that employment matters are generally taken to court on the basis of employee rights violations. Issues of maladministration or governance failure are rarely canvassed and if mentioned, that would be done as ancillary issues. I have clarified that the investigation did not investigate alleged unfair labour practices. It was simply confined to testing the allegation that Mr Motsoeneng systematically purged senior and qualified officials in a manner

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that flouted legal and corporate procedures resulting in the loss of millions of Rand, and that the Board allowed this to happen or actively participated.

- (xvii) I am satisfied that the complaints lodged regarding the propriety of various actors at the SABC were correctly lodged in accordance with section 182 of the Constitution and sections 6 and 7 of the Public Protector Act, and, accordingly, fall within my remit.
- (xviii) Other odd arguments made by Mr Motsoeneng and the submission ostensibly made on behalf of the current SABC Board, are fully addressed in the body of the report. I must indicate that, in this regard, I found it rather discouraging that the current SABC Board appears to have blindly sprung to Mr Motsoeneng’s defence on matters that precede it and which, in my considered view, require a Board that is serious about ethical governance to raise questions with him. In fact at times the submission made on behalf of the Board appeared more defensive on his behalf than himself. This is the case on the alleged fraudulent misrepresentation of his qualifications. The submission appeared to be unconcerned over the allegation that:

“Mr Motsoeneng committed an act of gross fraudulent misrepresentation of facts by declaring himself to be in possession of a matriculation certificate obtained at Metsimantsho High School in Qwaqwa”

- (xix) In contrast, **Mr Motsoeneng admitted**, during his recorded interview, **that he had falsified his matric qualifications and blamed Ms Swanepoel, whom he said** gave him the application form **to fill in anything** to get the job. On the completed application form availed by one of the Complainants, Mr Motsoeneng indicated that he passed Standard 10 (‘matric’) in 1991 at the age of 23 years and indicated five(5) symbols he had purported to have obtained in this regard.

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- (xx) Mr Motsoeneng further conceded during his interview, as did other Members of the erstwhile board during their recorded interview, that there were systemic corporate governance lapses in the SABC, although Mr Motsoeneng took no responsibility for any of such lapses, blaming everything on the Board, fellow executives and the Department of Communications. There was a general admission that a culture of expediency and ‘quickie gains’ had dominated Board and management decisions.
- (xxi) During my informal meeting with the SABC Board Chairperson, Mrs Tshabalala, on Friday 14 February 2014, she graciously acknowledged that the submission she forwarded in response to the provisional report was prepared by her lawyer who had been assisting the SABC prior to her appointment as she was not familiar with the issues then and that she had considered it unnecessary to involve the current Board Members, as members would not have been privy to the issues.
- (xxii) I must indicate that, I would not recommend a similar approach in the future. As the Chairperson of the SABC Board is not an Executive Chairperson, board decisions should be made by the Board. Furthermore, the issues raised in my provisional report needed to be brought to the attention of the current Board for it to apply its mind to the corporate governance and ethical challenges it was stepping into. During our meeting I shared my views on the role of a non-executive chairperson with Ms Tshabalala, who did not object to such views.
- (xxiii) The essence of the allegations investigated was that there was systemic corporate governance failure at the SABC at the core of which was a expediency, acutely poor human resources management and a dysfunctional Board, all of which was said to be primarily due to manipulative scheming by the SABC’s Acting COO, who allegedly lacked

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the requisite competencies for the post and manipulated, primarily new Boards and GCEOs to have his way and to purge colleagues that stood in his way.

(xxiv) My findings are the following:

(a) Regarding the alleged irregular appointment and salary progression of Mr. Hlaudi Motsoeneng, I find that:

- 1) The allegation that the appointment of Mr Motsoeneng as the Acting COO was irregular is substantiated. By doing allowing Mr Motsoeneng to act without requisite qualifications and for a period in excess of three (3) months without the requisite Board resolution and exceeding the capped salary allowance, the SABC Board acted in violation of the SABC’s 19.2 Articles of Association which deals with appointments, SABC Policy No HR002/98/A-Acting in Higher Scale and Chapter 5 of the Broadcasting Act, which regulates acting appointments and this constitute improper conduct and maladministration.
- 2) The former SABC Board’s Chairperson, Dr Ben Ngubane further acted irregularly when he ordered that the qualification requirements for the appointment to the position of COO be altered to remove academic qualifications as previously advertised, which was clearly aimed at tailor making the advert to suit Mr Motsoeneng’s circumstances. This constitutes improper conduct maladministration and abuse or unjustifiable exercise of power.
- 3) The allegation that Mr. Motsoeneng’s salary progression was irregular is also substantiated in that Mr Motsoeneng received

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salary appraisals three times in one year as, hiking his salary as Group Executive Manager: Stakeholder Relations from R 1.5 million to R2.4 million. His salary progression as the Acting Chief Operations Officer concomitantly rose irregularly from R122 961 to R211 172 (63% increase) in 12 months and was in violation of Part IV of SABC's Personnel Regulations and SABC Policy No HR002/98/A-Acting in Higher Scale and this constitute improper conduct and maladministration.

- 4) While I have accepted the argument presented by Mr Motsoeneng, the current GCEO and the chairperson of the current Board that salary increases at the SABC are negotiated without any performance contracts or notch increase parameters, I am unable to rule out bad faith in Mr Motsoeneng in the circumstances that allowed 3 salary increases in one fiscal year resulting in Mr Motsoeneng's salary being almost doubled. My discomfort with the whole situation is exacerbated by the fact that all were triggered by him presenting his salary increase requests to new incumbents who would have legitimately relied on him for guidance on compliance with corporate prescripts and ethics. It cannot be said that he did not abuse power and/or his position to unduly benefit himself although on paper the decisions were made by other people. The approval of Mr Motsoeneng's salary increments by the GCEO's and the Chairperson of the Board at the time, Dr Ben Ngubane was, accordingly, irregular as it was in violation of Part IV of SABC's Personnel Regulations and SABC Policy No HR002/98/A-Acting in Higher Scale and constitutes improper conduct, abuse of power and maladministration.
- 5) The SABC Human Resources Department failed to keep proper records regarding Mr Motsoeneng's documentation and other

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Human resources matters dealt with in this report and this constitutes improper conduct and maladministration.

- 6) The SABC Board's failure to exercise its fiduciary obligations in the appointment and appropriate remuneration for the Acting Chief Operations Officer for the SABC was improper and constitutes maladministration.

(b) Regarding Mr Motsoeneng's alleged fraudulent misrepresentation of his qualifications to the SABC when applying for employment including stating that he had passed matric, I find that:

- 1) The allegation that Mr Motsoeneng committed fraud by stating in his application form that he had completed matric from Metsimantsho High School is substantiated. By his own admission during his interview, Mr Motsoeneng provided stated in his application form that he had passed standard 10 (matric), filled in made-up symbols in the same application form and promised to supply a matric certificate to confirm his qualifications. He did so knowing that he had not completed matric and did not have the promised certificate. His blame of Mrs Swanepoel and the SABC management that stating that they knew he had not passed matric, is disconcerting. If anything, this defence exacerbates his situation as it shows lack of remorse and ethical conduct. Mr Motsoeneng's conduct regarding his matric results has been unethical continuously since 1995. The conduct is improper and constitutes a dishonest act as envisaged in 6(4)(a)(ii) and (iii) of the Public Protector Act.

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- 2) The allegation that Mr Motsoeneng was appointed to several posts at the SABC despite having no qualifications as required for such posts, including a matric certificate, is substantiated and this constitutes improper conduct and maladministration.
- 3) Mr Motsoeneng would have never been appointed in 1995 had he not lied about his qualifications. He repeated the matric misrepresentation in 2003 when he applied for the post of Executive Producer: Current Affairs to which he, accordingly should never have been appointed.
- 4) I am also concerned the Mr Motsoeneng's employment file disappeared amid his denial of ever falsifying his qualification and that at one point he used the absence of such information to support his contention that there was no evidence of this alleged fraudulent misrepresentation. The circumstantial evidence points to a motive on his part although incontrovertible evidence to allow a definite conclusion that he indeed cause the disappearance of his employment records, particularly his application forms and CV could not be found.
- 5) The SABC management and Human Resources unit failed to exercise the necessary due diligence or risk management to avoid the misrepresentation and/or to act decisively when the misrepresentation was discovered. He also failed to ensure information as required by law. This constitutes improper conduct and maladministration.

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(c) Regarding the alleged irregular appointment(s) and salary progression of Ms Sully Motsweni, I find that:

- 1) The allegation of irregularities in the appointment of Ms Sully Motsweni to the position of General Manager: Compliance and Operation and Stakeholder Relations and Provinces on 30 June 2011 to 31 January 2012; Head: Compliance and Operation on 01 February 2012 to date; Acting Group Executive: Risk and Governance on June 2012 to date and subsequent salary increments taking her from R960 500.00 per annum to R1.5 million per annum are substantiated. The HR records show that Ms Sully Motsweni's appointments and salary progressions were done without following proper procedures and was in violation of sub-section G3 of DAF and Part IV of the Personnel Regulations was irregular and therefore this constitutes abuse of power and maladministration.

(d) Regarding the alleged irregular appointment of Ms Gugu Duda as the Chief Financial Officer (CFO), I find that:

- 1) The allegation regarding Ms Gugu Duda being irregularly appointed to the position of CFO, through the interference of the Department of Communications, is substantiated.
- 2) Ms Duda, who was appointed to the position of CFO during February 2012, was not an applicant for the position, which was advertised. Interviews were conducted with shortlisted applicants and a recommendation was made by the SABC Board to the Minister of Communications, Ms Pule as the shareholder. Mr Phiri, from the Department of Communications, and Mr Motsoeneng, from the SABC orchestrated the appointment of Ms Duda long

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after the recruitment and selection process had been closed. Ms Duda was interviewed on 07 February 2012, without having applied for said post. The interview occurred after the submission of the Board's recommendation, of the appointment of a legitimately selected candidate, Mr Daka, to Ms Pule on 31 January 2012, which, recommendation was rejected by her.

- 3) The conduct of the SABC management, particularly Mr Motsoeneng and the Board, in the appointment of Ms Duda, as the CFO of the SABC, was in violation of the provisions of section 19.1.1 of the Articles of Association and Broadcasting Act and accordingly unlawful. The appointment was grossly irregular and actions involved constitute improper conduct, maladministration and abuse of power.
 - 4) Although I could not find conclusive evidence that Ms Pule personally ordered that Ms Duda's CV be handed over to the SABC and that the Board interview her against the law as alleged, there is sufficient evidence that suggests an invisible hand from her direction and that of Mr Mngqibisa, to which we can legitimately attribute this gross irregularity. In any event, if we accept that Ms Pule was not involved as per her denial, it is unclear why she would have speedily approved the appointment as she did, when the irregularities were obvious. The conduct of Ms Pule as Minister of communications was accordingly improper and constitutes maladministration.
- (e) Regarding Mr Motsoeneng's alleged purging of senior staff members of the SABC resulting in unnecessary financial losses in CCMA, court and other settlements, which amounts to financial mismanagement, I find that:**

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- 1) The allegation that Mr Motsoeneng purged senior staff members leading to the avoidable loss of millions of Rand towards salaries in respect of unnecessary and settlements for irregular terminations of contracts is justified in the circumstances SABC human resources records of the circumstances of termination and Mr Motsoeneng’s own account show that he was involved in most of these terminations of abuse of power and systemic governance failure involving irregular termination of employment of several senior employees of the SABC and that the SABC lost millions of Rand due to procedural and substantive injustices confirmed in findings of the CCMA and the courts. Some of these matters were settled out of court with the SABC still paying enormous amounts in settlements. The fact that the evidence shows Mr Motsoeneng’s involvement in most of this matters and the history of conflict between him and the majority of the employees and the former employees makes it difficult to rule out the allegation of purging. Even if purging is discounted, recklessness appears to have been endemic supporting the narrative on the culture of expediency.

- 2) SABC records show that Mr Motsoeneng played the following role in the dismissals:

Direct involvement

- (aa) Mr Motsoeneng directly initiated the termination of the employment of Messrs Bernard Koma, Hosia Jiyane, Sello Thulo, Montlennyane Diphoko and Mesd Mapule Mbalathi and Ntswoaki Ramaphosa who participated in Mr Motsoeneng’s disciplinary hearing held in Bloemfontein.

Advice to the board

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- (aa) Mr Motsoeneng advised the Board not to renew the employment contracts of Mesd Ntombela-Nzimande and Mampane.

History of conflict

- (aa) Mr Motsoeneng had a dispute with Ms Duda before her suspension as well as an altercation with Ntombela-Nzimande, who later alleged with the corroboration of others that Mr Motsoeneng influenced the premature termination of her employment contract.
- (bb) Although one or more witnesses pointed a finger at Mr Motsoeneng regarding the termination of the employment of Dr Saul Pelle, Ms Ntsiepe Mosoetsa, Ms Cecilia Phillips, Ms Sundi Sishuba, Ms Lorraine Francois, Ms Nompilo Dlamini, no credible evidence was found to back the allegation.
- (cc) Mr Motsoeneng's actions in respect of the abovementioned suspensions and terminations, where evidence clearly shows his irregular involvement, constitutes improper conduct, abuse of power and maladministration.

The results of many of the individuals in questions support the allegation that there was maladministration in the processes involved leading to avoidable financial losses as can be seen below:

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- (aa) Mr Bernard Koma was the lead witness in his disciplinary hearing received a 12 months' settlement award at the CCMA with his attorneys on condition that he withdrew his civil case against the SABC after spurious charges had been levelled against him;
- (bb) Mr Montlennyane Diphoko who had testified against Mr Motsoeneng in his disciplinary hearing, was reinstated after CCMA ruling, almost three years after SABC had terminated his contract;
- (cc) Mr Hosia Jiyane, who had testified against Mr Motsoeneng in his disciplinary hearing, endured a disciplinary process that dragged for two years before he won the case against the SABC. However, Mr Motsoeneng opposed the finding of not guilty;
- (dd) Dr Saul Pelle won his case at the Labour court for reinstatement but SABC refused to reinstate him and offered him 12 months' settlement payout;
- (ee) Ms Ntsiepe Masoetsa was reinstated after her labour dispute case against the SABC dragged for three years in the Labour court ;
- (ff) Ms Cecilia Phillips was suspended for four months without charges being brought against her by the SABC;
- (gg) Mr Sello Thulo, who had testified against Mr Motsoeneng in his disciplinary hearing, was dismissed, allegedly after Mr Motsoeneng said '...get that man out of the system';

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- (hh) Mr Thabiso Lesala received a substantial settlement award offered to him through his attorney at the CCMA and he was asked to withdraw his case as a condition of the settlement;
- (ii) Ms Charlotte Mampane's employment contract was terminated prematurely in March 2012 instead of October 2013 for being redundant. A settlement award was given to her for the remainder of her contract;
- (jj) Ms Phumelele Ntombela-Nzimande's employment contract was terminated prematurely, and she was awarded settlement payment for the remainder of 13 months of her contract;
- (kk) Ms Gugu Duda was suspended indefinitely since September 2012 to date without expeditious finalisation of the disciplinary proceedings against her;
- (ll) Ms Sundi Sishuba has been suspended for two and half years, so far no charges have been brought against her;
- (mm) Ms Loraine Francois was suspended for months but won her case at the CCMA and was reinstated to her post; and
- (nn) Ms Nompilo Dlamini won her case in the Labour court, the SABC appealed the ruling to the High court, the matter is due to be heard in April 2014.

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(f) Whether Mr Motsoeneng irregularly increased the salaries of various staff members, including a shop steward, resulting in a salary bill increase in excess of R29 million and if this amounted to financial mismanagement and accordingly improper conduct and maladministration

- 1) The allegation that Mr Motsoeneng irregularly increased the salaries of various staff members is substantiated.
- 2) Mr Motsoeneng unilaterally increased salaries of, Ms Sully Motsweni, Ms Thobekile Khumalo, a shop steward and certain freelancers without following Part IV of the SABC Personnel Regulations.
- 3) These irregular and rapid salary progressions contributed to the National Broadcaster's unprecedented salary bill escalation by R29 million.
- 4) Had the SABC Board stopped him, Mr Motsoeneng's would have also recklessly proceeded to convert contract staff members without proper financial planning in compliance with Human Resources Policies.
- 5) Mr Motsoeneng's conduct was irregular and amounts to improper conduct and maladministration.

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(g) Regarding the alleged systemic corporate governance failures at the SABC and the causes thereof, I find that:

- 1) All the above findings are symptomatic of pathological corporate governance deficiencies at the SABC, including failure by the SABC Board to provide strategic oversight to the National Broadcaster as provided for in the SABC Board Charter and King III Report.
- 2) The Executive Directors (principally the GCEO, COO and CFO) failed to provide the necessary support, information and guidance to help the Board discharge its fiduciary responsibilities effectively and that, by his own admission Mr Motsoeneng caused the Board to make irregular and unlawful decisions.
- 3) The Board was dysfunctional and on its watch, allowed Dr Ngubane to effectively perform the function of an Executive Chairperson by authorizing numerous salary increments for Mr Motsoeneng.
- 4) Mr Motsoeneng has been allowed by successive Boards to operate above the law, undermining the GCEO among others, and causing the staff, particularly in the Human Resources and Financial Departments to engage in unlawful conduct.

(h) Regarding the allegation that the Department and Minister of Communications unduly interfered in the affairs of the SABC, giving unlawful orders to the SABC Board and staff, I find that:

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- 1) The allegation that the Department and Minister of Communications unduly interfered in the affairs of the SABC, is substantiated.
- 2) Former Minister Pule acted improperly in the handling of her role as the Shareholder Representative in the SABC and Executing Authority.
- 3) Amongst her most glaring transgressions was the manner in which she rejected the recommendation made by the Board for the appointment of the CFO and the orchestrated inclusion of Ms Duda's CV. Her withdrawal of certain power from the Board was also not in line with the principles of Corporate Governance.
- 4) Her conduct accordingly constitutes a violation of the Executive Ethics Code and amounts to an abuse of power.
- 5) Mr Phiri the Acting DDG of Department of Communication, acted unlawfully in submitting Ms Duda's CV to Mr Motsoeneng for her inclusion in the subsequent interview by the Board after the selection process had been concluded and recommendations already submitted to the Minister for approval of the CFO's appointment and his conduct in this regard was improper and constitutes maladministration.
- 6) In its unlawful interference, the department of Communications was aided and abated by Mr Motsoeneng who irregularly accepted receiving Ms Duda's CV from Mr Phiri and arranged that she be interviewed as a single candidate after Ms Pule had declined the recommendation by the Board and ordered the process to start anew. The conduct of Mr Phiri, Mr Motsoeneng, the Human

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Resources Unit and that of the Board was unlawful and had a corrupting effect on the SABC Human Resources' practices. The conduct of the parties involved was grossly improper and constitutes maladministration.

(xxv) Appropriate remedial action to be taken on my findings of maladministration as envisaged by section 182(1) (c) of the Constitution is the following:

(a) Parliament Joint Committee on Ethics and Members' interests

- 1) To take note of the findings against the former Minister of Communications, Ms Pule in respect of her conduct with regard to the irregular appointment of Ms Duda as the SABC's CFO and her improper conduct relating to the issuing of unlawful orders to the SABC Board and staff.

(b) The current Minister of the Department of Communications: Hon. Yunus Carrim

- 1) To institute disciplinary proceedings against Mr Themba Phiri in respect of his conduct with regard to his role in the irregular appointment of Ms Duda as the SABC CFO.
- 2) To take urgent steps to fill the long outstanding vacant position of the Chief Operations Officer with a suitably qualified permanent incumbent within 90 days of this report and to establish why GCEO's cannot function at the SABC and leave prematurely, causing operational and financial strains.

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- 3) To define the role and authority of the COO in relation to the GCEO and ensure that overlaps in authority are identified and eliminated.
- 4) To expedite finalization of all pending disciplinary proceedings against the suspended CFO, Ms Duda within 60 days of this report.

(c) The SABC Board to ensure that:

- 1) All monies are recovered which were irregularly spent through unlawful and improper actions from the appropriate persons.
- 2) Appropriate disciplinary action is taken against the following:
 - (aa) Mr Motsoeneng for his dishonesty relating to the misrepresentation of his qualifications, abuse of power and improper conduct in the appointments and salary increments of Ms Sully Motsweni, and for his role in the purging of senior staff members resulting in numerous labour disputes and settlement awards against the SABC;
 - (bb) Ms Lulama Mokhobo, the outgoing GCEO for her improper conduct in the approval of the salary increment of Mr Motsoeneng;
 - (cc) Any fruitless and wasteful expenditure that had been incurred as a result of irregular salary increments to Mr Motsoeneng, Ms Motsweni, Ms Khumalo, a shop steward and the freelancers, is recovered from the appropriate persons;

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- (dd) In future, there is strict and collective responsibility by the SABC Board members through working as a collective and not against each other, in compliance with the relevant legislation, policies and prescripts that govern the National Broadcaster;
- (ee) A public apology is made to Ms P Ntombela-Nzimande, Ms C Mampane and all its former employees who had suffered prejudice due to the SABC management and Board's maladministration involving failure to handle the administration of its affairs in accordance with the laws, corporate policies and principles of corporate governance.
- (ff) All their HR processes pertaining to creation of new posts, appointments and salary scales and progressions are reviewed to avoid a recurrence of what happened
- (gg) The roles and relationship of the SABC Board and COO are defined, particular in relation to the role of a relationship with the GCEO to avoid the paralysis and premature exist of GCEO's while adhering to established principles of corporate governance.

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A REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, SYSTEMIC GOVERNANCE DEFICIENCIES, ABUSE OF POWER AND THE IRREGULAR APPOINTMENT OF MR. HLAUDI MOTSOENENG BY THE SOUTH AFRICAN BROADCASTING CORPORATION (SABC)

1. INTRODUCTION

1.1 *“When Governance and Ethics Fail”* my report as the Public Protector issued in terms of 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), read with section 8(1) of the Public Protector Act, 1994 (the Public Protector Act), following allegations of systemic governance failure, financial mismanagement and various forms of maladministration in the management of the affairs of the South African Broadcasting Corporation (SABC).

1.2 The report is submitted in terms of section 8(1) of the Public Protector Act 23 of 1995, to:

1.2.1. Hon. Minister of Communications – Mr Yunus Carrim;

1.2.2. The suspended Chief Financial Officer – Ms Gugu Duda;

1.2.3. Chairperson: SABC Board – Ms Zandile Tshabalala (“Ms Tshabalala”); and

1.3 To take cognizance of the report, copies are provided to the following people in terms of section 8(3) of the Public Protector Act:

1.3.1. The Complainants, Ms Phumelele Ntombela-Nzimande and Ms Charlotte Mampane;

1.3.2 The Chairpersons of the Joint Ethics Committee, the Honourable Prof Benjamin Turok and the Honourable Budang Mashile;

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- 1.3.3 Former Minister of Communications, Hon D Pule, MP;
 - 1.3.4 Former Chairperson of the Board, Dr B Ngubane;
 - 1.3.5 The Group Chief Executive Officer - Ms Lulama Mokhobo;
 - 1.3.6 The Acting Chief Operations Officer – Mr. Hlaudi Motsoeneng
- 1.4. The report relates to an investigation into a complaint of allegations of maladministration, systemic governance deficiencies, abuse of power involving, among others the irregular appointment of Mr. Hlaudi Motsoeneng, Ms Sully Motsweni and Ms Gugu Duda by the SABC, irregular termination of the employment contracts of several senior staff members, among then Ms P Ntombela-Nzimande and Ms C Mampane and financial mismanagement involving a spiralling salaries bill.

2. THE COMPLAINT

- 2.1 The investigation was conducted in pursuit of complaints lodged by former SABC employees, Ms Phumelele Ntombela-Nzimande, former Group Executive: Human Capital at the SABC ('Ms Ntombela-Nzimande') and Ms Charlotte Mampane, former Acting Chief Operating Officer at the SABC ('Ms Mampane'), between 11 November, 2011 and 26 February 2012. The essence of the complaint focused on the alleged irregular appointment and conduct of Mr Motsoeneng the Acting Chief Operations Officer (COO) and systemic maladministration mainly relating to human resources and financial management, governance failure at the SABC and irregular interference by the then Minister of Department of Communications. The Complainants' allegations included that:
- 2.1.1. Mr Motsoeneng, an employee of the SABC, was allegedly appointed to the position of the Acting COO, despite not having the requisite formal qualifications, including a matriculation (matric) certificate;

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- 2.1.2. Mr Motsoeneng received salary appraisals three times within a period of one year because of alleged nepotism, favouritism and corruption by the SABC and the SABC Board;
- 2.1.3. Since assuming duty as the Acting COO, Mr Motsoeneng had unilaterally increased the salaries of a shop steward, his personal assistant, Ms Thobekile Khumalo his own and that of Ms Sully Motsweni;
- 2.1.4. As a consequence of Mr Motsoeneng’s unilateral raise of staff salaries, the SABC salary bill increased by R29 million within three months of his appointment as the Acting COO;
- 2.1.5. Mr Motsoeneng had allegedly committed an act of gross fraudulent misrepresentation of facts by declaring himself to be in possession of a matric certificate obtained at Metsimantsho High School in Qwaqwa; and
- 2.1.6. Mr Motsoeneng had allegedly been involved in the systemic purging of approximately 14 qualified and experienced senior SABC officials without following proper disciplinary procedures in any of the suspensions and dismissals.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. Mandate of the Public Protector

- 3.1.1. The Public Protector is an independent constitutional institution established in terms of section 181(2) of the Constitution to support and strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

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- 3.1.2. Section 182(1) of the Constitution provides that the Public Protector has the power to **investigate any conduct in state affairs** or in the public administration in any sphere of government, that is **alleged or suspected to be improper** or to result in any impropriety or prejudice, **to report** on that conduct and **take appropriate remedial action**. Section 182(2) directs that the Public Protector **has additional powers** prescribed by **legislation**.
- 3.1.3. The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs; to **make findings** and; to **resolve the disputes** through conciliation, mediation, negotiation or **any other means deemed appropriate** by him or her.
- 3.1.4. Section 7(1)(b)(i) provides that the **format and procedure** to be followed in conducting an investigation shall be **determined by the Public Protector** with due regard to the circumstances of each case.
- 3.1.5. Section 6(5)(a) of the Public Protector provides that the Public Protector shall, **on his or her own initiative** or **on receipt of a complaint** be competent to investigate any alleged:
- 3.1.5.1. Maladministration in connection with the affairs of any institution in which the state is the majority or controlling shareholder or of any public entity as defined in section 1 of the Public Finance Management Act, 1999.
- 3.1.6. The SABC is a state-owned entity and its conduct amounts to conduct in state affairs, as a result this matter falls within the ambit of the Public Protector’s mandate.
- 3.1.7. Further thereto, section 7(4)(a) of the Public Protector Act provides that, for purposes of conducting an investigation, the Public Protector may **direct**

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any person to submit an affidavit or affirmed declaration to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on a matter being or to be investigated.

3.1.8. Section 7(4)(b) provides that, the Public Protector or any person duly authorised thereto by him or her may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on the matter being or to be investigated.

3.1.9. In their response to the Provisional Report I issued before finalising the investigation, the former and current Chairpersons of the SABC Board, Dr Ngubane and Ms Zandile Tshabalala as well as Mr Mngqibisa and Mr Phiri challenged my jurisdiction and powers to investigate the matter using arguments, that in my considered view show a lack of understanding of the difference between jurisdiction and discretion and the import of the provisions of section 6(9) of the Public Protector Act, which grants me discretionary power not to investigate matters that are older than two years if I am not convinced the compelling circumstances exist in favour of my undertaking of such investigation. They also showed failure to appreciate the import of the constitutional and statutory bar on my review of court decisions. In their submission, they incorrectly submitted that:

3.1.9.1. In terms of the Public Protector Act, I am not empowered to investigate complaints that are brought to my attention in relation to matters that occurred within two (2) years of such complaint being submitted and that I can only overstep this limitation if, and only if, I can show the existence of special circumstances that warrant the extension of my jurisdiction.

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- 3.1.9.2. It was further argued that I have no power to investigate matters “which have become litigious” and which are or were dealt with by the Courts of law or settled by agreement between the parties.
- 3.1.9.3. The argument purported to be based on the provisions of section 6 of the Public Protector Act saying, that I am only entitled to investigate complaints which are brought to my office within two (2) years of the conduct complained of taking place.
- 3.1.9.4. The contention that I am legally barred from investigating matters that “have become litigious”, oddly claimed to be premised on the provisions of section 9 of the Constitution and 6 despite those provisions expressly limiting the prohibition of Public Protector investigations to matters that have been decided by a court of law.

3.2 Investigative Powers

- 3.2.1 Mr Mngqibisa and Mr Phiri contended that an implicated person has a right to cross-examine witnesses who appeared before me and implicated them. They argued that such right is entrenched section 7(9)(a) and (b)(ii) of the Public Protector Act which empowers an implicated person, who has been subpoenaed under section 7(4), to “question” witnesses who gave adverse evidence against him or her and made reference to decided cases dealing with the importance of the right to cross-examine in disputed hearings.
- 3.2.2 The Supreme Court of Appeal (SCA) judgement in the ***Natal Joint Municipal Pension Fund v Endumedi Municipality 2012(4) SA 593 (SCA)***, was mentioned by one of the parties, who highlighted the principles set out in the SCA decision with regard to affording an implicated person the right to cross-examine any person who has given adverse evidence against him or her. They correctly argued that the Public

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Protector must be absolutely certain of the facts upon which he or she pronounces and if necessary seek corroboration of same. They further argued that in conducting the investigation, I had not asked for all relevant information that had a bearing on the matter under investigation and as such, I cannot make a determination on whether or not the pieces fit together.

3.3. Evaluation of the arguments on investigative powers and jurisdiction

3.3.1 I must indicate that while I agree fully on the right to a fair hearing as a fundamental component of administrative justice, I could not quite comprehend some of the peculiar points the parties were attempting to make.

3.3.3 I could only conclude that some of the odd arguments regarding the perceived gaps in the investigation process stem from the misconception of the mandate, powers and functions of the Public Protector as enshrined in section 182 of the Constitution and section 6 and 7 of the Public Protector Act.

3.3.4 Let us start with the issue of jurisdiction. There seems to be a misconception that I as Public Protector I have the duty to persuade implicated parties that I have compelling reasons to investigate a matter reported to me after two years of the conduct complained of occurring.

3.3.4 It is important to note that the provision in the Public Protector Act that such arguments rely on, is section 6, which deals with “*Reporting matters to the Public Protector*” and *additional powers of the Public Protector*”. The specific subsection, section 6(9) provides that:

“Except where the Public Protector in special circumstances within his or her discretion, so permits, a complaint or matter referred to the

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Public Protector shall not be entertained unless it is reported to the Public Protector within two years from the occurrence of the incident or matter concerned."

- 3.3.5 It really is unclear where the parties that argued that I had to persuade them that special circumstances exist, base their argument. A correct interpretation of the Act should clearly appreciate that the section is an empowering rather than limiting clause. It empowers the Public Protector as an Ombudsman to say no if she or he deems it fit. This is an essential part of the independence of the Public Protector.
- 3.3.6 In any event, the main complaint regarding systemic governance failure at the SABC involving human resources and financial mismanagement with Mr Motsoeneng allegedly at the centre of corporate governance failure and related organisational dysfunctionality, was lodged within less than two years of occurrence of the alleged acts as such acts were said to be on-going. The same applies to the alleged interference of the former Minister and the Department of Communication as the said interference was alleged to be continuous. The allegation regarding Mr Motsoeneng not having the correct qualifications was though old, a continuous problem as he continued to rise and allegedly continued to harass and purge those that raised this as a concern.
- 3.3.7 In any event, even if such matters could be successfully argued to be older than 2 years, it is my discretion to determine if it would be a worthwhile investment in good governance to investigate. In the case of the SABC, which has been reported widely regarding alleged corporate governance failure, primarily involving human resources and financial mismanagement, I would be remiss in my duties as Public Protector, if I chose to look the other way in the face of complaints being lodged with my office. Indeed in terms of section 6(4)(a) of the Public Protector Act, I

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could even investigate without a complaint in terms of section 182 of the Constitution and section 6(4)(d) of the Public Protector Act.

3.3.8 The complaints lodged regarding the management of corporate affairs at the SABC were, accordingly, correctly lodged in accordance with section 182 of the Constitution and sections 6 and 7 of the Public Protector Act, and accordingly fall within my remit.

3.3.9 I now turn to submissions made by the current SABC Chairperson and Mr Mngqibisa, among others, regarding fair procedure.

3.3.4 Section 7(1)(b)(i) of the Public Protector Act provides that the format and procedure to be followed in conducting an investigation shall be determined by the Public Protector with due regard to the circumstances of each case.

3.3.5 In exercising the powers conferred on me by section 7(1)(b)(i) of the Public Protector Act, I determined the format and procedures to be utilised in conducting the investigation of the matter.

3.3.6 The parties are right that everyone is entitled to due process. They are further right in arguing that evidence, particularly in the form of *viva voce* evidence, must be verified and/ or corroborated. In our case we primarily rely on documentary evidence such as minutes, memoranda and court papers. Witness statements are primarily used to guide the fact finding mission. Evidence is always corroborated as can be seen in the sections dealing with evidence and evaluation of evidence. In fact although as an Ombudsman, I am entitled to make findings on the balance of probabilities, a rigorous process, which relies primarily on evidence corroborated by official records, is employed primarily when dealing with conduct failure.

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3.3.7 I am aware, however, that the confusion arises from different interpretations of Section 7(9) of the Public Protector Act, which provides that:-

“9(a) if it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances.

(b)(i) If such implication forms part of the evidence submitted to the Public Protector during an appearance in terms of the provisions of subsection (4), such person shall be afforded an opportunity to be heard in connection therewith by way of giving evidence;

(ii) Such person or his or legal representative shall be entitled, through the Public Protector, to question other witnesses determined by the Public Protector, who have appeared before the Public Protector in terms of this section.”

3.3.8 As an Ombudsman office, our processes are inquisitorial and not adversarial and all parties are allowed ample opportunity for them to present their side of the story from the beginning to the end of the investigation. As indicated in the introduction, all implicated parties, including Mr Phiri, Dr Ngubane and the entire erstwhile SABC Board were sent correspondence indicating allegations against them allegations and asked for responses at the beginning of the process and later interviewed during the investigation. A provisional report, with intended findings was sent to them in a process of further presenting them with an opportunity to tell their side of the story before I finalise my findings on what I consider probably happened and the wrongfulness thereof. In an effort to enhance

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due process, the provisional report indicated where each party was being implicated and on the basis of what evidence and advised that, on the evidence I had then, I was considering adverse findings against them.

- 3.3.9. Dr Ngubane, Mr Phiri and other recipients of the Provisional Report were therefore afforded ample opportunity to respond to the contents of the Provisional Report and the intended findings that might be made against them. They used the opportunity, with the assistance of their legal representatives.
- 3.3.10. The last issue I wish to deal with is the contention that I have no power to investigate matters “which have become litigious” and which are or were dealt with by the courts of law or settled by agreement between the parties.
- 3.3.11. While it is clear from section 182(3) of the Constitution that I may not investigate court **decisions**, the mere fact that a matter is a subject matter or aspects thereof are the subject matter of judicial proceedings does not preclude me from considering an investigation into such a complaint. What is understood by investigating court decisions is that I may not look at actual decisions or judgement of a court of law in the manner that a superior court would do in terms of review or appeal proceedings.
- 3.3.12. It is also worth noting that the mere fact that the allegations that are before me are also a subject matter of a civil or criminal proceeding does not warrant an assumption that my investigation would interfere with such proceedings because the *‘two processes involve separate sets of charges,*

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*are decided against separate standards and result in two separate outcomes- even if they concern the same alleged act of impropriety*¹.

3.3.13. It is common cause that parties to a matter are only concerned with issues relating to the matter involving them. The relief sought only relates to the specific issue at court, in this instance the resolution of a labour dispute. My role as a Public Protector is primarily concerned with maladministration while courts primarily focus on rights infringed. I only deal with rights in the context of prejudice that may have been suffered due to maladministration. The issues considered in the context of proper conduct or maladministration, transcend legality, concerning themselves with good governance and ethical governance.

3.3.14. The constitutional mandate of my office is to strengthen democracy and to serve the general **public interest** by helping to improve the quality of administration and of service rendered to the citizens by the state including state owned enterprises such as the SABC and holding such entities accountable to the Constitution. In the SABC matter, no court proceeding had ever dealt with allegations of systemic governance failure primarily involving human resource, financial mismanagement and a dysfunctional board. Addressing issues of systemic corporate governance failures by state owned enterprises is in the public interest. I accordingly would have been in dereliction of duty if I had chosen to look the other way.

3.3.15. It will therefore be a discretionary matter for me to decide if I would accept a complaint for investigation where the matter is also the subject of judicial proceedings and where allegations of bad administration are an issue.

¹ Public Service Accountability Monitor, The President, the Public Protector and the *sub judice* myth in the Zuma Affair <http://www.psam.org> accessed on 19 March 2013.

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4. THE ISSUES CONSIDERED BY THE PUBLIC PROTECTOR

On analysis of the complaints and allegations, the following eight (8) issues were considered and investigated:

- 4.1. Whether the alleged appointment and salary progression of Mr. Motsoeneng, the Acting Chief Operations Officer, were irregular and accordingly constitute improper conduct and maladministration;
- 4.2. Whether Mr. Motsoeneng fraudulently misrepresented his qualifications to the SABC, including stating that he had passed matric when applying for employment;
- 4.3. Whether the alleged appointment(s) and salary progression of Ms. Sully Motsweni were irregular and accordingly constitute improper conduct and maladministration;
- 4.4. Whether the alleged appointment of Ms. Gugu Duda as CFO was irregular and accordingly constitutes improper conduct and maladministration;
- 4.5. Whether Mr Motsoeneng purged senior officials at the SABC resulting in unnecessary financial losses in CCMA, court and other settlements and, accordingly, financial mismanagement and if this constitutes improper conduct and maladministration;
- 4.6. Whether Mr Motsoeneng irregularly increased the salaries of various staff members, including a shop steward, resulting in a salary bill increase in excess of R29 million and if this amounted to financial mismanagement and accordingly improper conduct and maladministration;

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- 4.7. Whether there were systemic corporate governance failures at the SABC and the causes thereof; and
- 4.8. Whether the Department and former Minister of Communications unduly interfered in the affairs of the SABC, giving unlawful orders to the SABC Board and staff and if the said acts constitute improper conduct and maladministration.

5. THE INVESTIGATION

The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act.

Scope of the investigation

- 5.1.1 The scope of the investigation was limited to the items listed in paragraph 4 above.
- 5.1.2 The timeline of the investigation was limited to November 2011 to November 2013.

5.2 Methods of gathering evidence and nature of source documents / information

5.2.1 Interviews and Meetings

Interviews and meetings were conducted with the following persons:

On 11 March 2013 meetings were held with:

- 5.2.1.1 Ms Dina Pule – former Minister of Communication;
- 5.2.1.2 Other 9 members of the SABC Board;
- 5.2.1.3 Ms Lulama Mokhobo – Group Chief Executive Officer: SABC;

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- On 15 March 2013 meetings were held with;
- 5.2.1.4 Dr Ben Ngubane – Chairperson of the SABC Board;
 - 5.2.1.5 Mr Lerato Nage – Former Acting Chief Financial Officer: SABC;
 - 5.2.1.6 Ms Gugu Duda – Suspended Chief Financial Officer: SABC;
 - 5.2.1.7 Mr Itani Tseisi – Former Group Executive: Risk and Compliance;
 - 5.2.1.8 Mr Thabiso Lesala – Former Head: Human Resources, SABC;
 - 5.2.1.9 On 19 March 2013 a meeting was held with Ms Phumelele Ntombela-Nzimande – Former Group Executive: Human Capital, SABC;
 - 5.2.1.10 On 21 March 2013 a meeting was held with Ms Loraine Francois – Head: SABC Group Internal Audit;
 - 5.2.1.11 On 20 May 2013 a meeting was held with Ms Phoebe Malebane - Former Chief Finance Controller for the SABC; and
 - 5.2.1.12 On 19 July 2013 a meeting was held with Mr. Hlaudi Motsoeneng-Acting Chief Operations Officer.
 - 5.2.1.13 The investigation team met on various dates with other SABC former employees including Mr Bernard Koma, Ms Charlotte Mampane and Ms Nompilo Dlamini.
 - 5.2.1.14 After I issued the provisional report, my investigation team also met with Mr Nicholson on 14 January 2014.

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5.2.2 Correspondence

The original complaints were contained in letters dated 26 February 2012 and 29 March 2012 from the Complainants to the Public Protector. The following correspondence was entered into and related information analysed.

- 5.2.2.1. Letter dated 13 March 2013 from the Public Protector to His Excellency President JG Zuma.
- 5.2.2.2. Letter dated 5 April 2012 from Dr Ben Ngubane, Chairperson of the SABC Board to the Public Protector.
- 5.2.2.3. Letters dated 4 April 2012; 4 June 2012; 12 June 2012; 28 August 2012 and 3 September 2012 from Ms Lulama Mokhobo – Group Chief Executive Officer: SABC to the Public Protector.
- 5.2.2.4. Letter dated 15 July 2013 and 29 July 2013 from Mr. Hlaudi Motsoeneng- Acting COO to the Public Protector.
- 5.2.2.5. E-mails dated 29 January 2013; 30 January 2013; 11 February 2013 and 15 July 2013 from Ms Theresa Geldenhuys – SABC Company Secretary to the Public Protector.
- 5.2.2.6. Letter dated 28 March 2012 from Ms Ntombela-Nzimande – former Group Executive: Human Capital, SABC and E-mails dated 4 April 2012; 18 April 2013 and 12 June 2013 to the Public Protector.
- 5.2.2.7. Letters dated 28 March 2012; 10 December 2012; 6 February 2013 and 12 June 2013 from Ms Mampane – former Chief Operating Officer: SABC to the Public Protector.
- 5.2.2.8. E-mails dated 18 September 2012 and 13 March 2013 from Mr Koma–former Manager: News Resources, SABC to the Public Protector.
- 5.2.2.9. E-mails dated 12 October 2012; 18 October 2012; 20 May 2013 and 21 May 2013 from SpencerStuart Recruitment Agency to the Public Protector.

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5.2.3 Documents

Corporate documents such as Human Resources files or records, memoranda, correspondence, minutes of meetings, Board resolutions, salary advices and emails were obtained and analysed. Documents relating to the following were also obtained and analysed:

- 5.2.2.1 The composition of the SABC Board;
- 5.2.2.2 The authority to appoint Executive members at the SABC;
- 5.2.2.3 The appointment(s) and salary progression of Mr. Hlaudi Motsoeneng;
- 5.2.2.4 The appointment(s) and salary progression of Ms Sully Motsweni; and
- 5.2.2.5 The appointment of Ms Gugu Duda; and
- 5.2.2.6 Various e-mails, letters, minutes and transcripts.
- 5.2.2.7 Various documents relating to the labour disputes including the CCMA arbitration awards and settlements.

5.3 Compliance with the obligation of the Public Protector to follow due process

5.3.1 All parties were afforded an adequate opportunity to answer to allegations directed at them, advised on the right to legal assistance and those who chose to be assisted by lawyers, allowed to utilise such assistance. In this regard all recipients of the Provisional Report were assisted by lawyers in the compilation of their responses thereto.

5.3.2 The investigation further complied with the stipulation in the Public Protector Act that if it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall, in terms of section 7(9)(a) of the Public Protector Act, afford

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such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances.

5.3.3 Affected parties were also afforded an opportunity to respond to the contents of the Provisional Report of the Public Protector pertaining to the matters investigated to ensure fairness and transparency.

6. EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

6.1. Mr. Hlaudi Motsoeneng’s appointments and removal as Acting COO

6.1.1. Appointment as Executive Manager – Stakeholder Relations in the office of the GCEO

Evidence received from the Complainant

6.1.1.1. As part of her complaint Ms Ntombela-Nzimande submitted a document which she had drafted, which was addressed to the GCEO, titled *“Request approval to create and fill the position of an Executive Manager (Stakeholder Relations): Office of the Group CEO on the establishment of the Group Chief Executive Officer”*

6.1.1.2. According to the document, the purpose was to obtain approval to create and fill the position of Executive Manager (Stakeholder Relations) – Office of the Group CEO (Scale 120) with a gross pensionable remuneration of R500 000 per annum. Funding for the position would be obtained from the budget of the Group CEO – Cost Centre 1713. Ms Ntombela-Nzimande drafted and signed the request on 23 July 2010 and Mr Solly Mokoetle ('Mr Mokoetle') as GCEO approved it on 22 July 2010. From this it seems as if the approval was authorised prior to the request being issued.

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Response received from SABC

6.1.1.3. In response to a request for information from my office dated 4 June 2012, the SABC provided a document titled *“Enhancing of Capacity in the GCEO’s Office – Reasons for Submission: Appointment of an Executive Manager: Stakeholder Relations Office of the GCEO (Date 27/07/2010)”*.

6.1.1.4. This document indicated that the purpose of the motivation was for *the implementation of the appointment of Executive Manager: Stakeholder Relations in the office of the GCEO. The motivation further indicated that the position of Executive Manager: Stakeholder Relations had become necessary and was critical to the success of the GCEO and the SABC at large, as it would provide critical support to the office of the GCEO and effectively manage external stakeholders on news-related matters and give support to the regions.*

6.1.1.5. The GCEO's (at that point Mr Solly Mokoetle) decision was to appoint Mr Motsoeneng in the position of Executive Manager: Stakeholder Relations. On 28 July 2010 Mr Mokoetle's recommended this motivation and on 29 July 2010 Dr Ngubane as SABC Board Chairperson approved the appointment.

6.1.1.6. On 30 July 2010, Mr Mokoetle, the then GCEO sent a letter to Mr Motsoeneng advising him that with effect from 1 August 2010, he would be appointed as Executive Manager: Stakeholder Relations (Scale 120) with a gross pensionable remuneration of R500, 000.00 per annum. An employment contract, dated 29 July 2010, which preceded the offer, was signed between Mr Motsoeneng and Mr Mokoetle and Dr Ngubane on behalf of the SABC.

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- 6.1.1.7. On 1 November 2010 the SABC concluded another employment contract with Mr Motsoeneng through the signing of an amended version to the previous contract with him, and this was signed by Mr Mokoetle the then GCEO and Mr Ron Morobe, the then Group Executive Capital Services(Acting).
- 6.1.1.8. Another contract was signed with Mr Nicholson in December 2010. However, he inexplicably appended an inaccurate date on the document inserting 10 December 2012 instead of 10 December 2010 as signed by Mr Motsoeneng. This is inexplicable because people tend not to postdate but rather to revert to the year before particularly early in the year. Though suspicious this was not pursued during the investigation.
- 6.1.1.9. On 6 and 7 December 2010, the SABC Board of Directors resolved (per resolution 2010/34/35) that Mr Motsoeneng (then Executive Manager in the Office of the GCEO: Stakeholder Relations) be delegated the responsibility of all Board communications and stakeholder engagements.
- 6.1.1.10. On 1 April 2011, yet another employment contract was concluded between Mr Motsoeneng and the SABC represented by Mr Nicholson, bringing amendments to his employment status to four times within a period of five (5) months, all of which also effected salary adjustments to Mr Motsoeneng.
- 6.1.1.11. During a meeting with me on 11 March 2013, Mr Cedric Gina (“Mr Gina”) – Member of the SABC Board indicated that when the Board started to have problems in 2010 with the performance of Mr Mokoetle– former GCEO, the Board gave Mr Mokoetle the authority to appoint people in his *“turnaround planning unit”*. Mr Mokoetle then appointed Mr Motsoeneng to his office in the capacity of Executive Manager – Stakeholder Relations in the office of the GCEO.

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6.1.2. Appointment as Group Executive – Stakeholder Relations and Regions of the SABC

6.1.2.1. Mr Motsoeneng was appointed as Executive: Stakeholder Relations and Regions – SABC (Scale 115) at a total package (CTC) of R1, 461,539.00.

6.1.2.2. This fixed term contract was for a period of 5 years (commencing on 1 April 2011) and was signed by both Mr Nicholson and Mr Motsoeneng on 1 April 2011. Mr Nicholson again inexplicably omitted to insert the year on the date, while the handwriting is similar on the contract where both signatures were appended. Again although this raises question of authenticity, the matter was not pursued during the investigation.

6.1.3. Appointment as Acting COO: SABC

Advertisement of COO’s position

6.1.3.1. According to a copy of the advertisement received from SpencerStuart, the SABC’s recruitment agency, the agency placed an advertisement on behalf of the SABC in the Sunday Times and City Press of 9 July 2006 for the filling of the vacant position of COO which became vacant in 2005 / 2006. The advertisement indicated under the heading ‘Qualifications’, that the applicant should have an “...***Appropriate academic background, preferably postgraduate qualification.***”

6.1.3.2. In 2008, an internal advertisement was once again placed for the appointment of a COO. The requirement for “***appropriate academic requirement, preferably post graduate qualification***” as per the advertisement in 2006 was removed and replaced by the following: “...***Commercially astute executive, with broad-ranging operational track record of success in broadcasting.***”

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6.1.3.3. The same internal advertisement as mentioned in the paragraph above was circulated on Thursday, 28 January 2012 with the closing date being 31 January 2012.

6.1.3.4. In reply to my questions, Ms Mokhobo, on 12 June 2012 stated that *“the SABC committed an act of forgery and uttering (sic) in changing the advertisement for the position of the COO issued in April 2008 by removing the requirement for academic qualifications so as to suit Mr Motsoeneng who is without qualification to meet the criteria for the advertised position”*:

“The advertisement was an exact replica of previous advertisements dating as far back as 2006.”

6.1.3.5. During my meeting with Ms Mokhobo on 11 March 2013, Ms Mokhobo indicated that the Chairperson of the Board indicated to her that she was not allowed to change the requirements of the advertisement and that it had to go out exactly as the one in 2008. Ms Mokhobo indicated that the Chairperson was adamant that he did not want to see any qualifications reflected in the advertisement. This sentiment was echoed by Adv Cawe Mahlali (“Adv Mahlali”) – former member of the SABC Board.

6.1.3.6. This was disputed by Dr Ngubane who indicated to me on 15 March 2013, that the advertisement had not come before the Board for approval and that it was something that was done by management.

6.1.3.7. On 30 January 2012, the Sunday Independent Newspaper reported on the alleged appointment of Mr Motsoeneng. The article stated that:

“A top supporter of President Jacob Zuma, with neither a matric certificate nor top management experience is set to land the R2m job as chief operating officer (COO) of the financially-crippled SABC. And the SABC has decided to advertise the strategic, second-most powerful post only internally, for only three working days and, according to newly appointed Group Chief Executive Officer Lulama Mokhobo, matric is not a requirement for the post.

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The requirements for the job, one of the key positions in the Broadcaster’s turn-around strategy, have been tailor-made to suit Hlaudi Motsoeneng – essentially an ANC deployee at the SABC – because he has no matric and has no managerial experience at that level, according to insiders.

He is the same man fingered by an SABC internal audit probe as having lied about having a matric certificate when he applied for a position at the broadcaster’s Bloemfontein office several years ago...”

6.1.3.8. On 30 January 2012 the Star newspaper reported that:

“In a controversial move, the SABC appears to have tailor-made the requirements for its second-most senior position to suit an applicant who failed matric, falsified his qualifications, is regarded as a firm backer of President Jacob Zuma and who enjoys the protection of SABC board Chairperson Ben Ngubane. Indications that Hlaudi Motsoeneng, the acting Chief Operations Officer, may be appointed permanently have infuriated some SABC board members and the opposition DA.

The Star understands that a decision to advertise the position internally was taken when the board met last week. New SABC Chief Executive Officer Lulama Mokhobo and the Board decided that no academic qualifications were necessary for the top job.

An advert for the post was distributed internally on Thursday, with three working days given for applications.

A board member told The Star on Sunday that the entire process of finding a new chief operations officer was “not only against the policies governing the SABC but also against good corporate governance”.

The board member said the process of appointing the chief operating officer was “fundamentally flawed”.

The matter would be raised at the board’s next meeting, sometime next week...”

6.1.3.9. This process was interrupted by the court challenge lodged by Mr Mvuso Mbebe.

Appointment of Mr Motsoeneng as Acting COO

6.1.3.10. During a meeting with me on 11 March 2013, Mr Gina indicated that after Ms Mampane vacated her position as Acting COO, but the position remained vacant for a considerable time.

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- 6.1.3.11. At that stage, Dr Ngubane made a recommendation that Mr Motsoeneng should be considered for the position of Acting COO. The understanding at that stage was that Mr Motsoeneng would only act for a couple of months (approximately 2 -3 months) until such time as the recruitment process for a new COO was completed.
- 6.1.3.12. A special Board meeting was convened on 14 November 2011 where it was resolved to appoint Mr Motsoeneng as the Acting COO with effect from 18 November 2011 until such time that the Chief Operating Officer is appointed.
- 6.1.3.13. However, when interviewed by me, the Board members indicated that the resolution by the Board was to appoint Mr Motsoeneng for a period of 2-3 months in line with the SABC’s Acting in Higher Scale Policy.

Salary progression of Mr Motsoeneng

- 6.1.3.14. According to the SABC payroll records a copy of the memorandum motivating the salary increase dated 8 November 2011 written and signed by Mr. Thabiso Lesala was sent to Dr Ngubane requesting an increase in the total remuneration package of Mr Motsoeneng as his package was well below the average of the rest of the Group Executive members of the SABC and recommended that his package be increased to R1,7 million per annum. This was approved by Dr Ngubane and as of December 2011, Mr Motsoeneng’s salary was increased.
- 6.1.3.15. A second memorandum motivating the salary increase, dated 27 March 2012, was submitted to Dr Ngubane by Mr Lesala wherein he once again requested an increase in the total package of Mr Motsoeneng as to narrow the gap between his salary package and that of the other executives at the SABC. The motivation contained a recommendation that Mr Motsoeneng’s salary be increased from R1.7 million per annum to

R2.4 million which was more in line with his roles and responsibilities at the SABC.

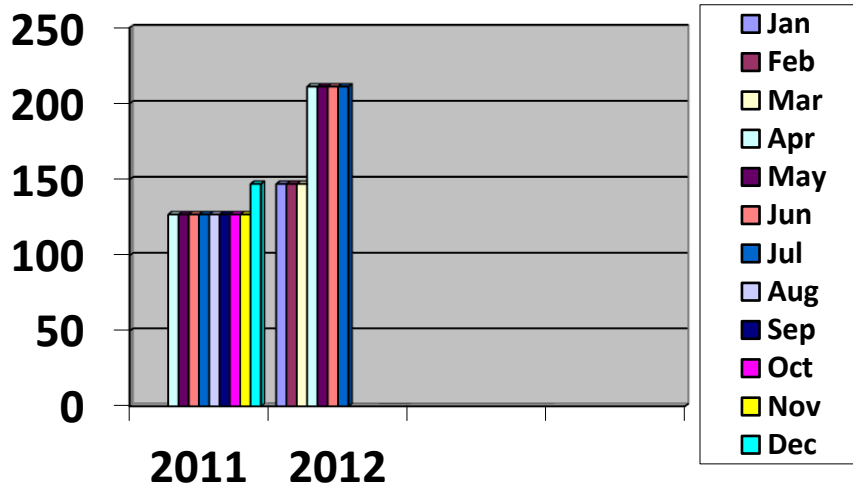
6.1.3.16. The memorandum request/motivation was supported by Ms Mokhobo and approved by Dr Ngubane as Chairperson of the Board of Directors.

6.1.3.17. Documents extracted from the SABC payroll system indicate that Mr Motsoeneng’s salary increased by 66.33% from a total monthly cost of R126,961.14 to R211,172.58 during the period 1 April 2011 and 1 April 2012 (12 months). For the period 18 November 2011 to 28 February 2013, whilst being employed as acting COO, Mr Motsoeneng received an additional R115,033.33 as acting allowance.

6.1.3.18. The table and graph below indicate a summary of Mr Motsoeneng's salary progression (reflected per designation) for the period April 2011 to April 2012 as obtained from evidence.

Date	Designation	Monthly Total Cost
Apr 2011	Executive: Stakeholder Relations and Regions	R126,961.14
May 2011	Executive: Stakeholder Relations and Regions	R126,961.14
Jun 2011	Executive: Stakeholder Relations and Regions	R126,961.14
Jul 2011	Executive: Stakeholder Relations and Regions	R126,961.14
Aug 2011	Executive: Stakeholder Relations and Regions	R126,961.14
Sep 2011	Executive: Stakeholder Relations and Regions	R126,961.14
Oct 2011	Executive: Stakeholder Relations and Regions	R126,961.14
Nov 2011	Acting COO & Executive: Stakeholder Relations and Regions	R126,961.14
Dec 2011	Acting COO & Executive: Stakeholder Relations and Regions	R147,062.68
Jan 2012	Acting COO & Executive: Stakeholder Relations and Regions	R147,062.68
Feb 2012	Acting COO & Executive: Stakeholder Relations and Regions	R147,062.68
Mar 2012	Acting COO & Executive: Stakeholder Relations and Regions	R147,062.68
Apr 2012	Acting COO & Executive: Stakeholder Relations and Regions	R211,172.58

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Mr Motsoeneng’s alleged misrepresentation of qualification

6.1.3.19. According to HR recruitment documents submitted by the SABC including Mr Motsoeneng’s CV and an undated application for employment Mr Motsoeneng commenced with his employment at the SABC on 1 March 1995 when he was appointed as a Trainee Journalist. Mr Motsoeneng's curriculum vitae ('CV') state that he occupied the following positions during his tenure at the SABC:

Period	Position
March 1995 – January 1999	Trainee Journalist
February 1999 – June 2000	Journalist
July 2000 – May 2003	Specialist Producer (Lesedi FM)
June 2003 – March 2007	Executive Producer (Lesedi FM)
May 2007 – March 2008	Media Liaison Officer (Free State Government)
April 2008 – October 2009	Manager: Special Projects
November 2009 – July 2010	Acting Regional Editor: Free State & Northern Cape News
August 2010 – March 2011	Executive Manager: Stakeholder Relations in the office of the GCEO
April 2011 – to Date	Group Executive: Stakeholder Relations & Regions of the SABC
November 2011 – to Date	Acting COO

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6.1.3.20. Attached to the complaint from Ms Mampane was an “Application for Employment” completed by Mr Motsoeneng.

6.1.3.21. On the completed application form Mr Motsoeneng, indicated that he passed Standard 10 (‘matric’) in 1991 at the age of 23 years with the following subjects:

Subject	Symbol
English	E
South Sotho	E
Afrikaans	E
Bibs (<i>sic</i>)	E
History	F

6.1.3.22. On the application form that Mr Motsoeneng completed, he only noted five (5) subjects completed and not the usual six (6). During the interview, **Mr Motsoeneng admitted falsifying his matric qualification and blamed a Mrs Swanepoel, whom he said gave him the application form to fill in anything**, in other words to make up the symbols from the top of his head, which he did. With regard to the matric certificate, the form says ‘outstanding’, giving the impression that the certificate exists and would be submitted in due cause. A copy of a transcript of the interview held with Mr Motsoeneng on 19 July 2013 with me is annexed to the report. Below is an extract from the transcript:

“Adv Madonsela : *But you knew ... you are saying to me you knew then that you had failed, so you ... because when you put these symbols you knew that you hadn’t found ... never seen them anywhere, you were making them up. So I’m asking that in retrospect do you think you should have made up these symbols, now that you are older and you are not twenty three?*

Mr Motsoeneng: *From me ... for now because I do understand all the issues, I was not supposed, to be honest. If I was ... now I was clear in my mind, like now I know what is wrong, what is right, I was not supposed to even to put it, but there they said, “No, put it”, but what is important for me Public Protector, is everybody knew and even when I put there I said to the lady, “I’m not sure about my symbols” and why I was not sure Public Protector, is because I go, a sub, you know I*

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remember okay in English I think it was “E”, because it was you know after ... it was 1995.

If you check there we are talking about 1991, now it was 1995 and for me I had even to go to ... I was supposed to go to school to check. Someone said, “No, no, no, you know what you need to do? Just go to Pretoria”.

At that time Public Protector, taxi, go and then check, they said, “No, you fail”, I went and (indistinct). That one is ... and people who are putting this, Public Protector ... and I’m going to give you ... I know it is Phumelele and Charlotte and this people when SABC were charging me, they were my witness.

Mr Madiba : *I think if ... I want to understand you correctly.*

You say you were asked by the SABC to put in those forms ... I mean to put in those ...

Adv Madonsela : *To make up the symbols.*

Mr Madiba : *To make up the symbols. Do you recall who said that to you?*

Mr Motsoeneng : *Marie Swanepoel.*

Mr Madiba : *Marie Swanepoel?*

Mr Motsoeneng : *Yes.”*

6.1.3.23. A letter dated 27 March 1996 written and signed by Mr Paul Tati (‘Mr Tati’) – SABC Human Resources Consultant was sent confirming a conversation between the two of them during which Mr Motsoeneng undertook to write the outstanding subjects towards obtaining his matric certificate during October 1996. Again this gives the impression that he had written and passed the 5 stated in his application.

6.1.3.24. Another letter dated 12 October 1999, was also sent to Mr Motsoeneng by Ms. H. Mofokeng (‘Ms Mofokeng’) – SABC Human Resources Consultant: Free State, referring to the letter of Mr Tati of 27 March 1996. Ms Mofokeng again requested Mr Motsoeneng to hand in a copy of his matric certificate.

6.1.3.25. A further letter dated 4 May 2000, was sent to Mr Motsoeneng by Mr Tati confirming that numerous reminders to produce his matric certificate were sent to him, but that it was still outstanding. In this letter, Mr Tati insisted that the certificate be submitted by no later than 12 May 2000. Mr Tati further draw Mr Motsoeneng ’s attention to the fact that in 1995 he

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indicated on his application for employment that his highest standard passed was standard 10 (matric).

- 6.1.3.26. In an undated response, Mr Motsoeneng acknowledged receipt of Mr Tati's letter of 4 May 2000 and indicated that he was still not in possession of the said certificate. He undertook to provide it as soon as he received it. A handwritten note on Mr Motsoeneng's letter by one “M Swanepoel” indicated a date of “15/5 at 8:30”.
- 6.1.3.27. According to the Ms Mokhobo, an investigation into Mr Motsoeneng's alleged misrepresentation was commenced on 11 August 2003, on the instruction of Group Internal Audit of the SABC.
- 6.1.3.28. A 2003 SABC Group Internal Audit into an investigation into the allegation that Mr Motsoeneng misrepresented that he had indeed misrepresented himself by stating that he passed matric in 1991.
- 6.1.3.29. The Group Internal Audit also established that when Mr Motsoeneng applied for an Executive Producer's post at Lesedi FM in 2003, the requirements for the post was a Degree or Diploma in Journalism with 8 years' experience in the production of Radio Current affairs programme.
- 6.1.3.30. The Group Internal Audit found that Mr Motsoeneng was interviewed and was appointed to the post despite not having a Matric certificate, a degree or diploma.
- 6.1.3.31. The Group Internal Audit stated that in their opinion Mr Motsoeneng had indeed misrepresented his qualifications to the SABC, and that despite numerous reminders he had failed to inform the SABC that he is not in possession of a Matric certificate.

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- 6.1.3.32. In conclusion they stated that in their opinion Mr Motsoeneng should not have been on the shortlist, as he did not meet the required education and experience criteria.
- 6.1.3.33. The Group Internal Audit Report released on 11 September 2003 revealed that the Department of Education confirmed that Mr Motsoeneng had not obtained his matric.
- 6.1.3.34. The recommendations made in the Group Internal Audit report included that management should consider instituting action against Mr Motsoeneng for misrepresenting his qualifications on his 1995 application submitted to the SABC.
- 6.1.3.35. The recommendations were never implemented by the SABC.
- 6.1.3.36. On 5 April 2012, Dr Ben Ngubane ('Dr Ngubane'), the Chairperson of the Board responded in writing to questions I raised in respect of Mr Motsoeneng's alleged misrepresentation to the SABC. In his written response Dr Ngubane stated that *“the SABC perused Mr Motsoeneng’s file and could find no evidence that he misrepresented his qualifications.”*
- 6.1.3.37. Dr Ngubane made this remark despite the findings of the 11 September 2003 Group Internal Audit report which indicated that the content of Mr Motsoeneng's application for employment was false.
- 6.1.3.38. During a meeting between the SABC Board members, myself and the investigation team on 11 March 2013, Ms Suzanne Vos (“Ms Vos”) and Prof Pippa Green (“Prof Green”) – former members of the SABC Board indicated that they were aware of the fact that Mr Motsoeneng did not have a matric certificate. The question from me was however not if he had matric, as it was common cause that he did not have, but rather if he lied about having successfully completing matric and obtaining a matric certificate.

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- 6.1.3.39. Adv Mahlali indicated that when she tried to ascertain during the Board meetings whether Mr Motsoeneng had initially lied about his qualifications when he applied to the SABC, she was suppressed by the Chairperson (with the support of the majority of the Board members) and that it was not necessary for the Board to establish the true fact. Adv Mahlali further drew my attention to the findings and verdict of the Appeals Panel of the Ombudsman for the Press Council who *inter alia* found that “the Sunday Independent was justified in saying that Mr Motsoeneng had lied about having a matric certificate. Adv Mahlali also indicated that she had information about how the Chairperson of the Board hounded and threatened the previous acting Company Secretary of the SABC – Ms Jane Mbatiya (“Ms Mbatiya”) and indicated to her that she was not allowed to hand over any information to outsiders.
- 6.1.3.40. Mr Motsoeneng lodged a complaint with the Ombudsman for the Press Council. The Deputy Ombudsman, Mr Johan Retief (“Mr Retief”) had found *inter alia* that “the Sunday Independent was justified in saying that Mr Motsoeneng had lied about having a matric certificate” and dismissed Mr Motsoeneng’s complaint.
- 6.1.3.41. Mr Motsoeneng appealed this decision by Deputy Ombudsman and on 21 June 2012, the Appeals Panel of the Press Council of South Africa sat to consider his appeal against the ruling of the Deputy Ombudsman on 17 April 2012.
- 6.1.3.42. According to the findings of the Appeal Panel, the only issue left in contention to consider was whether Mr Motsoeneng had lied about having a matric certificate. The Sunday Independent relied on the Application for Employment form, completed by Mr Motsoeneng on which he wrote that he passed standard 10.

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6.1.3.43. The Appeal Panel noted that it was common cause that he did not have a matric certificate but that the contention was that faced with the knowledge that he needed a matric to be allowed to join the SABC as a full-time staff member, lied, in writing, when he completed “10” on the Application for Employment form.

6.1.3.44. Under questioning by Ms Ethel Manyaka (“Ms Manyaka”), a member of the Appeal Panel, Mr Motsoeneng himself described how after working as a freelancer for the SABC, a number of attempts were made to appoint him to the full-time staff of the Broadcaster. He described to the Panel how the then head/regional editor of the SABC in Bloemfontein would not appoint him due to the fact that he did not have a matric.

6.1.3.45. The Panel noted that Mr Motsoeneng said that after he had again been refused appointment by the regional editor in Bloemfontein, who told him *“I am not going to appoint you because you do not have a matric”*, he was asked *“by other people”* to fill in the application form which he did. He was then appointed. Mr Motsoeneng did not dispute that he had written “10” in the space for highest standard passed, or that he had written the subjects and the symbols, or the date when he claimed to have passed standard 10.

“He knew that he was lying. He could have chosen to write “9” or “pending results” but he did not.”

6.1.3.46. The Panel also addressed new evidence submitted to them after the hearing. They were deeply disturbed by what had been submitted as it seemed to be a *“cynical attempt to cover up an inconvenient truth – to that Mr Motsoeneng lied on his 1995 Application for Employment form”*.

6.1.3.47. The Panel further noted that it was extraordinary that Mr Mohlolo Lephaka (“Mr Lephaka”) who was at the hearing but did not give

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evidence, admitted to removing the Application for Employment form from Mr Motsoeneng’s personnel file in 2003 – some eight years after it was compiled. It is even more extraordinary that Mr Lesala, the Group Executive of Human Capital Services attempted to rely on the removal of the offending evidence to assert that “*no such document was found in the files of Mr Motsoeneng*”.

6.1.3.48. According to the Panel, when Mr Lesala wrote this on 27 June 2012, he was fully aware as he had been told by Mr Lephaka in writing just five (5) days earlier “*that the Application for Employment form did indeed exist and that it had been removed in 2003 because it gave the impression that Mr Motsoeneng passed Std 10*”. What makes Mr Lesala’s denial even more puzzling is that he even refers to having received “Mr Lephaka’s enquiry”.

6.1.3.49. The Panel therefore found² that Mr Motsoeneng lied, in writing on the Application for Employment form which he completed in 1995 about whether he had passed matric and that the Sunday Independent newspaper was justified in saying that Mr Motsoeneng had lied about having a matric certificate.

6.1.3.50. An appeal headed by the Appeals Panel of the Ombudsman for the Press Council noted that it was common cause that Mr Motsoeneng did not have a matric certificate but that the only contentious issue was if Mr Motsoeneng had lied about having one.

6.1.3.51. I requested information from the SABC on 4 June 2012. In response to this request the SABC, provided two letters from SABC employees on 12 June 2012. The first letter was from Mr Alwyn Kloppers (‘Mr Kloppers’), the Manager: Regional Resources, SABC News. The second letter was from Mr Pulapula Mothibi (‘Mr Mothibi’), the Station Manager: Lesedi FM.

² www.presscouncil.org.za

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Both of them indicated that in 1995 they were aware of the fact that Mr Motsoeneng did not have a matric certificate.

6.1.3.52. They had however, felt that his appointment was the correct appointment and thus endorsed it. Mr Mothibi also indicated that they were 'awaiting his results' - 18 years after his initial appointment.

6.1.3.53. As part of the investigation conducted by me, Mr Sello David Thulo ("Mr Thulo") – former employee of the SABC in Bloemfontein, provided the investigation team with an affidavit and annexures.

6.1.3.54. In this affidavit, Mr Thulo explained that in 2003, he was one of the applicants for the position of Executive Producer – Lesedi Current Affairs and attached his CV as well as the CV's of Mr Khothule Solomon Mphatsoe, Ms Phuleng Arcilia Mokhoane and Mr Motsoeneng as being the other applicants for the position.

6.1.3.55. Mr Thulo indicates that in 2003, despite the fact that Mr Motsoeneng has only been employed by the SABC, his CV which was part of the application for the position indicated that he was *"Appointed as Head of Communications at the Department of Tourism and Economical Affairs in Northern Cape"*.

6.1.3.56. The investigation team met with Mr Robin Nicholson, the former CFO and also acting GCEO on 14 January 2014. He informed my investigation team that the SABC had embarked on a Turnaround Strategy under which they were directed to shed 48 of their Executives' positions which then meant non-renewal of contracts that were coming to an end soon.

6.1.3.57. According to him, Ms Ntombela-Nzimande and Ms Mampane fell under the category of employees whose jobs had been identified as redundant, and therefore had to be placed elsewhere or be offered exit packages.

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6.1.3.58. He further submitted that Ms Ntombela-Nzimande’s running battles with the SABC Board led to the breakdown of the relationship with them and this also became as a catalyst to the premature of her contract as it was felt that she was no longer contributing positively to the National Broadcaster.

6.1.3.59. During his interview he was asked about his role with regard to Mr Motsoeneng’s appointment and salary progression. He denied playing a role in the appointment of Mr Motsoeneng from the Free State. He stated that it was Mr Mokoetle and Ms Ntombela-Nzimande who were responsible for the said appointment. He however, acknowledged that he approved the salary progressions of Mr Motsoeneng on two occasions, 10 December 2010 and 1 April 2011.

6.1.4. Removal of Mr. Hlaudi Motsoeneng as Acting COO

6.1.4.1. According to Board Meeting minutes received by the investigation team, a special SABC Board meeting was held on 25 and 26 February 2013, which Dr Ngubane did not attend. The SABC Board resolved that, with immediate effect, Mr Motsoeneng would be removed from the Acting COO’s position and revert to his original position as Group Executive: Provinces and that Mr Mike Siluma (“Mr Siluma”) be appointed as acting COO of the National Broadcaster.

6.1.4.2. On 26 February 2013, the Deputy Chairperson of the Board – Mr Thami Ka Plaatjie (“Mr Ka Plaatjie”), advised Ms Pule on the resolution the Board had taken. However, strangely on 1 March 2013, Mr Ka Plaatjie withdrew this letter of Mr Motsoeneng’s removal as the Acting COO. This however, was without the knowledge and / or resolution from the SABC Board.

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- 6.1.4.3. On 6 March 2013, Ms Pule responded to Dr Ngubane in relation the resolution taken by the SABC Board on the removal and reinstatement of the Acting COO and suspension of the CFO.
- 6.1.4.4. In this letter, Ms Pule acknowledged the letter from the Deputy Chairperson of the Board dated 26 February 2013, informing her of the resolution taken by the Board and further addressed the subsequent letter she had also received from the Deputy Chairperson on 1 March 2013. Ms Pule indicated that she viewed the mentioned suspension, reinstatement and appointment as un-procedural and directed the Board to follow the law in dealing with the matter.
- 6.1.4.5. Subsequent to the letter from Ms Pule on 6 March 2013, Ms Mokhobo, on 9 March 2013, clarified in writing the issue raised by Ms Pule and re-affirmed the resolution of the Board of 25 and 26 February 2013.
- 6.1.4.6. During a meeting with me on 15 March 2013, Dr Ngubane indicated that he considered the meeting of 25 and 26 February 2013 as *“irregular”* as he was not there and *“the law requires a quorum is formed with a Chairperson to take any decision”*.
- 6.1.4.7. A review of the legislation however indicates that in order to form a quorum at any meeting, the Chairperson or the Deputy Chairperson must be present. As this meeting which was chaired by the Deputy Chairperson, Mr Ka Plaaitjie, the resolution taken would have been constitutional and could thus only be overturned by another resolution of the Board and certainly not by the withdrawal of the notice by Mr Ka Plaaitjie
- 6.1.4.8. Despite the resolution passed by the previous Board on 26 February 2013, Mr Motsoeneng is still working as the Acting COO of the SABC after the interim Board overturned the decision to remove him.

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6.2. The appointments and salary progression of Ms Sully Motsweni (‘Ms Motsweni’)

6.2.1. General Manager: Compliance and Operations, Stakeholder Relations and Provinces

6.2.1.1. As part of their response to my investigation the SABC provided various supporting documents relating to the employment of Ms Motsweni, including her CV. According to her CV, Ms Motsweni occupied the following positions at the SABC:

Period	Position
August 2002 – 28 February 2003	Internal Auditor (contract position)
1 March 2003 – 31 December 2005	Senior Forensic Auditor
1 January 2006 – 30 September 2007	Risk and Governance Manager
1 October 2007 – 30 June 2011	Manager: Corporate Risk
30 June 2011 – 31 January 2012	General Manager: Compliance and Operations Stakeholder Relations and Provinces
1 February 2012 – Date	Head: Compliance, Monitoring and Operations
June 2012 – Date	Acting Group Executive: Risk and Governance

6.2.1.2. According to evidence received, a memorandum for deviation from the normal recruitment processes, dated 22 June 2011 was sent by the SABC General Manager: Stakeholder Relations and Provinces, Mr Keobokile Mosweu (‘Mr Mosweu’) to the Acting Group Executive, Mr Justice Ndaba (‘Mr Ndaba’).

6.2.1.3. In this memorandum, Mr Mosweu indicated that according to the recruitment policy, all positions should be advertised, either internally or externally before being filled, but further indicated that due to the urgency of these appointments these provisions were not suitable.

6.2.1.4. Mr Mosweu indicated that certain positions were being downgraded and that approval was being sought to appoint Ms Motsweni to the position of

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General Manager: Compliance and Provincial Operations (SC 120) and Mr Abram Madue to the position of General Manager: Stakeholder Relations and Provinces (SC 120). Both these positions were in the division of Stakeholder Relations and Provinces and the incumbent would report directly to the Group Executive: Stakeholder Relations and Provinces, being Mr Motsoeneng.

6.2.1.5. Mr Mosweu signed the request on 22 June 2011 and Mr Ndaba approved it, but failed to complete the date of his approval on the request form.

6.2.1.6. On 27 June 2011 the SABC extended an offer of employment to Ms Motsweni. The offer indicated that the commencement date of her employment was 1 July 2011 with an *“All-inclusive Total Guaranteed Remuneration Package”* amounting to R960, 500.00 (p/a). The contract had a fixed end-date of 30 June 2014. Ms Motsweni accepted the offer and entered into a formal Fixed Term General Manager Service Agreement on 1 July 2011. Both the offer of employment as well as the fixed term contract entered into with Ms Motsweni was signed by Mr Motsoeneng.

6.2.1.7. During a meeting with me on 11 March 2013, Adv Mahlathi indicated that she consistently requested to be given sight of Ms Motsweni’s CV as she had concerns regarding her employment history.

6.2.2. Head: Compliance, Monitoring & Operations

6.2.2.1. According to the undated Fixed Term Agreement entered into by Ms Motsweni and the SABC which was received by the investigation team, Ms Motsweni was appointed to the position Head: Monitoring, Compliance and Operation Service for the period 1 February 2012 to 30 January 2017 at a total cost to company package of R1,500,000.00 per annum (SC120). This contract was signed by Mr Lesala in his capacity

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as Acting Group Executive: Human Capital Services (HCS) and Mr Motsoeneng in his capacity as Acting COO.

6.2.2.2. In response to my enquiries, the SABC replied and indicated that *“a need arose in the office of the Chief Operating Officer for Monitoring Compliance and Operations. Ms Motsweni was transferred to this office as General Manager Compliance Monitoring and Operations.”*

6.2.3. Acting Group Executive: Risk and Governance and the Head: Monitoring and Operations

6.2.3.1. Ms Motsweni entered into another fixed term contract for the position of Acting Group Executive: Risk and Monitoring and Head: Monitoring, Compliance and Operations as of 1 April 2012 at a total cost to company package of R1, 5 million per annum (SC 120). The contract was signed by Mr Lesala and Mr Motsoeneng as the Acting COO.

6.2.3.2. During a meeting with me on 11 March 2013, Ms Mokhobo indicated that the change in positions/designations of Ms Motsweni was effected directly by the Acting COO – Mr Motsoeneng but that it should have gone to the Group Executive Committee (“Exco”) and that it was not only a change in title. For her position to be created and filled it had to be approved by the CFO and finally approved by the Exco and that this was never the case.

6.2.4. Salary Progression of Ms Motsweni (1 January 2011 – 31 March 2013)

6.2.4.1. From the response received from Ms Mokhobo on 17 April 2013 , it was determined that during the period 1 July 2011 to 1 April 2012 (10 months) Ms Motsweni’s total monthly costs has increased with an estimated 63.67% from R79,966.88 to R130,883.02 which were approved by Mr Motsoeneng.

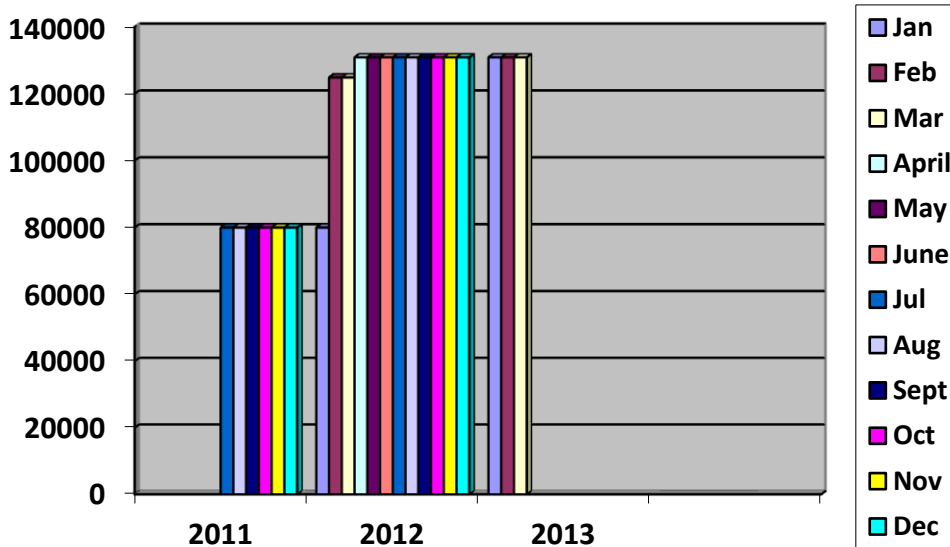
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6.2.4.2. During this period, Ms Motsweni has been appointed to three different positions (i.e. General Manager: Provincial Compliance & Operations, The Head: Monitoring, Compliance and Operations and Acting Group Executive: Risk & Governance) without applying, being short-listed or attending interviews. All three of these appointees reported to Mr Motsoeneng.

6.2.4.3. The table and graph below contain a summary of Ms Motsweni's salary progression (reflected per designation) for the period January 2011 to March 2013:

Date	Designation	Monthly Total Costs
July 2011	General Manager: Provincial Compliance & Operations	R79,966.88
August 2011	General Manager: Provincial Compliance & Operations	R79,966.88
September 2011	General Manager: Provincial Compliance & Operations	R79,966.88
October 2011	General Manager: Provincial Compliance & Operations	R79,966.88
November 2011	General Manager: Provincial Compliance & Operations	R79,966.88
December 2011	General Manager: Provincial Compliance & Operations	R79,966.88
January 2012	General Manager: Provincial Compliance & Operations	R79,966.88
February 2012	The Head: Monitoring, Compliance and Operations	R124,875.52
March 2012	The Head: Monitoring, Compliance and Operations	R124,875.52
April 2012	The Head: Monitoring, Compliance and Operations	R130,883.02
May 2012	The Head: Monitoring, Compliance and Operations	R130,883.02
June 2012	Acting Group Executive: Risk & Governance and The Head: Monitoring, Compliance and Operations	R130,883.02
July 2012	Acting Group Executive: Risk & Governance and The Head: Monitoring, Compliance and Operations	R130,883.02
August 2012	Acting Group Executive: Risk & Governance and The Head: Monitoring, Compliance and Operations	R130,883.02
September 2012	Acting Group Executive: Risk & Governance and The Head: Monitoring, Compliance and Operations	R130,883.02
October 2012	Acting Group Executive: Risk & Governance and The Head: Monitoring, Compliance and Operations	R130,883.02
November 2012	Acting Group Executive: Risk & Governance and The Head: Monitoring, Compliance and Operations	R130,883.02
December 2012	Acting Group Executive: Risk & Governance and The Head: Monitoring, Compliance and Operations	R130,883.02
January 2013	Acting Group Executive: Risk & Governance and The Head: Monitoring, Compliance and Operations	R130,883.02

Date	Designation	Monthly Total Costs
February 2013	Acting Group Executive: Risk & Governance and The Head: Monitoring, Compliance and Operations	R130,883.02
March 2013	Acting Group Executive: Risk & Governance and The Head: Monitoring, Compliance and Operations	R130,883.02



6.3. The appointment of Ms Gugu Duda (‘Ms Duda’)

6.3.1.1. The allegation from a former employee of the SABC on 20 May 2013 was that Ms Duda was irregularly appointed as CFO of the SABC due to the interference of the former Minister and Department of Communications at a point where the selection and recruitment process had been finalised and a recommendation made by the SABC board to the Minister.

The evidence received from SpencerStuart revealed that:

6.3.1.2. On 4 August 2011, an internal advertisement was circulated within the SABC for the position of CFO. This was followed up by an external advertisement placed by SpencerStuart in the Sunday Times of 19 October 2011.

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- 6.3.1.3. The agency together with the Board interviewed and assessed all selected prospective interviewees between 7 and 24 December 2011 from the applications received.
- 6.3.1.4. Out of these, four (4) candidates were shortlisted and invited for interviews on 11 January 2012.
- 6.3.1.5. The recommended candidate's name, Mr Msulwa Daca's name was submitted to the former Minister Pule for his appointment as the CFO through a submission made in the form of a memo by Dr Ngubane.
- 6.3.1.6. In a letter dated 31 January 2012 from Hon D Pule to Dr Ngubane, Ms Pule informed Dr Ngubane that she did not approve the recommendation sent to her office and requested the Board of the SABC to re-start the recruitment process.
- 6.3.1.7. The recruitment process was not restarted. Instead, a fifth candidate, Ms Duda, was interviewed on 7 February 2012 by the same Board members at SpencerStuart's offices for the position of CFO. The interview panel comprised the following:
- (i) Dr Ben Ngubane (Chairperson);
 - (ii) Mr Sembie Danana;
 - (iii) Mr Lumko Mtimde;
 - (iv) Ms Pippa Green;
 - (v) Mr Cedric Gina;
 - (vi) Mr Hlaudi Motsoeneng; and
 - (vii) Ms Clare O'Neil
- 6.3.1.8. The candidates were scored as follows:

Name	Total Score	Average Score
Hunadi Manyatsa	59	8.4
Patrick Malaza	114	16.3
Msulwa Daca	117	16.7
Precious Sibiyi	86	12.3
Gugu Duda	81	11.6

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Name	Total Score	Average Score
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- 6.3.1.9. On the same date, the SABC Board again resolved that Mr Msulwa Daca, Ms Gugu Duda and Mr Patrick Malaza as preferred candidates and subject to referencing and integrity checks, should be recommended to the former Minister of Communications (Ms Pule) for selection and appointment to the position of CFO. It must be noted that Ms Duda had the second lowest total and average scores, being 81 and 11.5.
- 6.3.1.10. According to a letter written by Ms Pule, on 14 February 2012 to Dr Ngubane, she confirmed that she had considered the recommendation for the appointment of the CFO which was submitted as required in terms of article 11.1.2 of the Articles of Association of the SABC. In this letter Ms Pule indicated that she had approved the appointment of Ms Duda as the CFO.
- 6.3.1.11. During a meeting with me on 11 March 2013, Prof Green indicated that the Board initially sat for interviews and thereafter sent one name to the former Minister for approval / rejection. This recommendation was rejected by the former Minister and the Board was informed to send three (3) names. After a last minute interview by the Board, three names were sent to the Minister. It is not clear why the three names from the proper process were not simply sent to the Minister without inserting and interviewing Ms Duda without re-advertising
- 6.3.1.12. During the said interview, Mr Danana – former SABC Board Member also acknowledged that the name of the person interviewed at the last minute after the then Minister had rejected the first name, was not on the initial short-listed list of names.
- 6.3.1.13. Ms Vos indicated that the Minister nominated this person to be interviewed for the position of CFO and that this person was

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subsequently appointed to the position. This was corroborated by Ms Malebane during our interview with her on 20 May 2013.

6.3.1.14. Ms Lisa Mariano of SpencerStuart in a response to our inquiry on 21 May 2013 confirmed that they had received Ms Duda’s CV from Ms Winnie Kubheka of the SABC’s HR department after requesting for same from Mr Lesala the Group Executive: Human Capital Services at the SABC.

6.3.1.15. Ms Mariano further stated that SpencerStuart had been instructed by the SABC to interview an additional candidate, which resulted in the 2nd round of interviews being conducted for one person by the Board on 7 February 2012. Ms Duda was the lone candidate for the purported second round.

6.3.1.16. Ms Malebane a former Chief Finance Controller and a former confidante of Ms Duda was interviewed by the investigation team. In her interview she revealed to the investigation team exactly how Ms Duda was recruited and interviewed by the Board. She gave first account details of how Ms Duda’s CV was submitted, various meetings held by Ms Duda with Mr Phosane Mngqibisa, and the finalisation of the first interview process for the position of the SABC CFO.

6.3.1.17. Ms Malebane also informed the investigation team how she had been continuously informed by Ms Duda of her recruitment and eventual appointment by the SABC.

6.3.1.18. Ms Malebane also outlined the different role players who, according to her, were behind the appointment of Ms Duda, namely, Mr Mngqibisa; Mr H Motsoeneng; the Chairperson of the SABC Board; some Board members and the former Minister of Communications.

6.3.1.19. According to Ms Malebane, Mr Mngqibisa ‘offered’ Ms Duda to choose from the various vacant positions in the state owned enterprises resorting

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under Department of Communications. These included the CFO position at SABC, CFO position at Post Bank and CFO of Post Office. Ms Duda then chose the SABC CFO post. Mr Mngqibisa then ‘recommended’ Ms Duda for the position of CFO to Ms Pule. Various meetings were held during the period December 2011 and February 2012.

- 6.3.1.20. According to Ms Malebane Ms Duda’s CV was submitted directly to Ms Pule who then transmitted it to Mr Phiri with an instruction to the Board to interview the said candidate.
- 6.3.1.21. Ms Malebane further informed the investigation team how Ms Duda threw a tantrum when there was a delay by the Minister to approve and announce her as the successful candidate for the CFO’s position.
- 6.3.1.22. According to her, Ms Duda’s tantrum was allegedly applauded/hailed by the Minister as this portrayed the right temperament for the position Ms Duda was to occupy.
- 6.3.1.23. Not long after the tantrum Ms Duda was informed by Mr Mngqibisa of plans to announce her appointment as the CFO at a special function in Cape Town.
- 6.3.1.24. Ms Malebane informed the investigation team that flight and accommodation arrangements were made by Mr Mngqibisa for Ms Duda to be in Cape Town where Ms Duda was announced as the SABC’s CFO.
- 6.3.1.25. Ms Malebane informed the investigation team that she was also recruited to join the SABC as the second in command (babysitter) to Ms Duda in order to assist the latter in the challenges that lay ahead as Ms Duda had never been a CFO prior to being employed by the SABC. It was confirmed through Ms Duda CV that she had never been a CFO before.

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6.3.1.26. Ms Malebane was offered a salary of R150 000 per month as the Chief Finance Controller. Ms Malebane also revealed how the initially recommended candidates for the CFO’s post were rejected by the Minister while Ms Duda’s documents were being processed. According to her, five (5) Board Members were lobbied to ensure that Ms Duda was appointed during the second round of interviews. According to Ms Malebane the recruitment agency which handles the SABC screening process is owned by one of the Board members.

6.3.1.27. According to Ms Malebane, she had been offered a 5 year contract which was then reduced to 2 years, but signed an interim 6 month contract after being assured by Ms Duda that the contract would be over-ridden by a permanent one within 2 months. However ,Ms Malebane’s contract never materialised as she was suspended by the SABC.

6.3.1.28. During our meeting and interview on 19 July 2013, the Acting COO confirmed Ms Malebane’s version verbally and later in writing, that he was the one who received Ms Duda’s CV from Mr Themba Phiri, the Acting Director General of the Department of Communications, and submitted it to the SABC’s HR office. He also admitted that this happened after interviews for the CFO had been finalised and recommendation to the Minister made. He could not explain why he violated established recruitment procedures and SABC’s own policies in submitting the CV irregularly. In fact he took no responsibility for his actions, putting the blame on the Board as the panel. Below is an extract of the interview:

“Adv Madonsela : *(Indistinct) alleged that the appointment of Ms Duda was predetermined and the interview process was just a formality, what is your comment?*

Mr Motsoeneng: *My comment Public Protector, is the panel taking responsibility on the appointment because all of us we interview her and we were happy from where I’m sitting, the panel itself, we did interview her.*

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Adv Madonsela: Right. You do remember though that you were happy, but you don't remember who else you interviewed on that day? Surely you couldn't have interviewed more than a handful of people?

Mr Motsoeneng: Yes, Public Protector, I agree with you. It is just that I don't remember exactly whether it was only Gugu that day or ... but I do remember that we did make some interviews. I will just go and check because I don't want to say there were two or three when there were not.

Adv Madonsela: So in what way was Ms Duda better than the original Mr Mbulelo person that you had initially recommended?

Mr Motsoeneng: No, to be honest Minister, the first candidate from where I'm sitting he did very well. I'm just talking about the first process that we did, the first candidates did very well. When the Minister reject and then we go back and interview Gugu and then ... because we sent the names that ... the Minister was supposed to select within those names, but what I'm saying Public Protector, here is ... I mean the panel taking responsibility on Gugu because it is us who sent Gugu's name to the shareholder.

Adv Madonsela: Well, Gugu now has become a controversial one, surely you would remember if you sent her CV? Do you remember sending her CV?

Mr Motsoeneng: Yes, Public Protector, I do remember.

Adv Madonsela: You sent her CV?

Mr Motsoeneng: Yes.

Adv Madonsela: When did you send her CV, at the beginning of the process or when the new ... when Process B commenced?

Mr Motsoeneng: I sent the CV ... I just want to double check Public Protector, but I sent ... it was not Gugu, it was other people also. It was not just Gugu alone. I did send the CV's.

Mr Madiba: Sent them to who?

Mr Motsoeneng: Sent it to HR. All the CV's that I get I send them to HR.

Adv Madonsela: Where did you get Gugu's CV?

Mr Motsoeneng: I receive Gugu's CV from Themba.

Mr Madiba: Themba Phiri?

Mr Motsoeneng: Yes, I receive Gugu's from Themba.

Adv Madonsela: Do you recall when exactly was this?

Mr Motsoeneng: That is the issue that I just need to go and check, Public Protector.

Adv Madonsela: We would appreciate it (indistinct).

Mr Motsoeneng: Yes, I will just go and check whether it was after we have closed the ... what I'm saying about the three ... the two ... the three people, I will just check.

Mr Madiba: Look, let me give him the dates Madam, so that if we don't ...

Adv Madonsela: Yes. Okay, we can give him the date.

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- Mr Madiba** : *Can you give me that ... what happened here Mister Motsoeneng, is that you conducted interviews on the 11th of January and after conducting the interviews on the 11th of January you submitted a recommendation to Minister and then on the 31st of January ...*
- Mr Motsoeneng** : *In this case ... sorry Public Protector, in this case the Board?*
- Mr Madiba** : *The Board, yes.*
- Mr Motsoeneng** : *Oh, okay.*
- Mr Madiba** : *I think the number one person that you submitted was Mbulelo(?) (indistinct) from the Eastern Cape.*
- Mr Motsoeneng** : *Yes, I remember the Eastern Cape.*
- Mr Madiba** : *Yeah and then the Minister was not satisfied.*
- Adv Madonsela** : *Okay, when did the Minister then ...*
- Mr Madiba** : *Replied on the 31st of January 2012 to Dr Ngubane. That is why I was asking you that question about telephone calls thereafter.*
- Mr Motsoeneng** : *Dr Ngubane?*
- Mr Madiba** : *Yeah.*
- Mr Motsoeneng** : *Okay.*
- Mr Madiba** : *And indicated that she did not approve the recommendation and that you have had to restart the recruitment process.*
- Adv Madonsela** : *Okay and then when did you get the CV of Ms ...*
- Mr Madiba** : *She was interviewed on the 7th of February.*
- Mr Motsoeneng** : *7th of ...*
- Adv Madonsela** : *Yeah, but when did you submit the CV to HR?*
- Mr Motsoeneng** : *That one Public Protector, is ... this is what I'm saying, I just need to remember when, because to be honest I don't remember when."*

Termination of several senior staff members' service by the SABC

- 6.3.1.29. As indicated earlier, one of the allegations was that Mr Motsoeneng was systematically purging senior staff members at the SABC who disagreed with him and getting them out procedurally at enormous expense to the Corporation in the form of settlements, paid leave or salaries paid while a suspended executive idled at home.
- 6.3.1.30. Several letters of suspension and termination of employment services of Ms P. Ntombela-Nzimande, Ms Charlotte Mampane, Mr Thabiso Lesala,

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Mr Bernard Koma, Ms Gugu Duda, and Ms Nompilo Dhlamini among others, were provided to proof the allegation.

- 6.3.1.31. The termination of a fixed contract of employment of Ms Ntombela-Nzimande through a letter dated 21 February 2011 showed that the termination of her contract was premature as it had thirteen (13) months remaining on it and for which she was paid in full.
- 6.3.1.32. Ms Ntombela-Nzimande indicated to me that her contract was terminated prematurely because she had raised several corporate governance issues with Mr Nicholson. She alleged that many of the issues she had raised related to the alleged irregular employment and subsequent conduct of Mr Motsoeneng.
- 6.3.1.33. Another termination of employment letter dated 20 March 2012 was served on Ms Mampane whose contract was set to expire on 31 October 2013.
- 6.3.1.34. Prior to receiving termination of her contract notice, a letter written by the then Deputy Chairperson of the Board, Mr Ka Platjje, dated 19 March 2012 informed Ms Mampane that the SABC Board had decided that she does not fall within the structural requirements of the SABC and therefore that she should discuss a settlement with the SABC Human Resources unit.
- 6.3.1.35. During an interview with the investigation team on 15 March 2013, Mr Lesala the former Chief of HR informed them that he reported directly to Mr Motsoeneng who in turn purportedly reported to the GCEO. However, Mr Motsoeneng did as he pleased without being reined in by the GCEO. For instance the GCEO would sign salary increments to Mr Motsoeneng despite the lack of motivation and justification for such increment from HR.

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- 6.3.1.36. Mr Lesala stated that his resignation came as a result of this constant abuse of Human Resource policies. He subsequently approached the CCMA on grounds of alleged constructive dismissal. At the CCMA a settlement agreement to withdraw the dispute, dated 31 January 2013 was entered into between the SABC and Mr Lesala. The amount of R 2,000,000 (R2 million) was paid to Mr Lesala in terms of the settlement agreement.
- 6.3.1.37. As indicated earlier Ms Duda was suspended with full remuneration and benefits five months into her commencement of contract as the SABC CFO. It must further be noted that at the time of the interview with the investigation team, Ms Duda was still receiving her full remuneration and benefits despite her suspension being affected several months ago.
- 6.3.1.38. Mr Koma informed my investigation team that he was suspended and charged by Mr Motsoeneng with spurious offences which related to allegations of irregular procurement of a fleet of vehicles from Mercedes Benz. He was then paid an undisclosed amount in settlement by SABC.
- 6.3.1.39. A suspension letter to Ms Dlamini dated 10 September 2012 from Ms Mokhobo informed Ms Dlamini of her suspension with full remuneration and benefits, pending investigations for alleged misconduct of a serious nature.
- 6.3.1.40. Ms Dlamini was interviewed by the investigation team on 26 March 2013. She stated that she was still paid her full remuneration and benefits despite having been suspended in September 2012. She further informed that the reasons for her suspension were spurious or vague.

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6.4. The irregular salary progressions of staff resulting in a salary bill increase of R29 million

6.4.1. This issue is entwined with the irregular salary increase of Mr Motsoeneng, Ms Motsweni and Ms Khumalo canvassed in 6.1 and 6.3 above. In addition to these people, other employees including freelancers, shop steward and call centre staff all contributed in the enormous increase of the salary bill of R29 million.

6.4.2. The labour dispute settlement awards canvassed in 6.5 above also contributed to the escalation of the salary bill.

6.5. Systemic corporate governance deficiencies at the SABC and the causes thereof

6.5.1. Part of the allegations raised by the complainants relate to systematic maladministration with regard human resource, financial management and governance failure.

Appointments of staff

6.5.2. In July 2013, Ms Malebane who describes herself as a former “confidante” of Ms Duda gave the investigation team a detailed written account of how Ms Duda was recruited and eventually appointed to the SABC’s CFO position.

6.5.3. During a meeting with Ms Malebane on 20 May 2013 she informed the investigation team of the very first approach she had from Mr Mngqibisa (who is referred to as Mr P) who apparently received Ms Duda’s CV from the former Minister of Department of Communications, Ms Pule and eventually gave it to Mr Phiri, the Acting Deputy Director General of the Department of Communications who then gave it to Mr Motsoeneng.

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- 6.5.4. During a meeting with me on 19 July 2013, Mr. Motsoeneng the SABC’s Acting COO admitted that he was the one who delivered Ms Duda’s CV to the SABC after he had received it from Mr Phiri.
- 6.5.5. Mr Motsoeneng further informed me that he was part of the Board members who interviewed Ms Duda but surprisingly he failed to remember whether Ms Duda was the only candidate interviewed on the said date.
- 6.5.6. Mr Motsoeneng admitted that he was responsible for Ms Motsweni’s appointments and provided reasons for the need of such an appointment to deal with Audit issues which had been picked up by the Auditor General.

Salary Progressions

- 6.5.7. The salary progressions of several officials including Mr Motsoeneng, Ms Motsweni, Ms Thobekile Khumalo, call centre staff and freelancers were authorised without following SABC policies, processes and prescripts. Mr Motsoeneng unilaterally increased salaries of these employees including his.
- 6.5.8. SABC’s records and information availed to my office show that Mr Motsoeneng, Ms Mokhobo, Mr Mokoetle, Mr Nicholson and Dr Ngubane signed for the said employees’ salary increments despite cost-cutting initiatives that had been mooted as part of the SABC Turn-Around Strategy.
- 6.5.9. The SABC’s payroll records revealed that Mr Motsoeneng’s salary was at R1, 4 million. According to Mr Lesala, Ms Makhobo then suggested that it be raised to R1,7 million and that this threshold not be exceeded. However, in four months’ time she again said that it should be increased to R2,4 million and proceeded to sign the HR motivation.

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6.5.10. Mr Lesala, the Group HR Manager put the blame on Ms Mokhobo's shoulders for failure to deal with Mr Motsoeneng.

Labour disputes settlements

6.5.11. During an interview on 15 March 2013 with Ms Lorraine Francois, the suspended and now reinstated internal auditor, informed the investigation team that the corporate governance structures at the SABC were dysfunctional. According to her, she had suggested that an external company be outsourced to review the SABC Corporate Governance practices.

6.5.12. SizweNtsaluba-Gobodo(SNG) was subsequently appointed. SNG thereafter issued a damning draft report revealing that a lot of Exco dynamics were dysfunctional and were due for management's consideration.

6.5.13. Ms Francois had apparently written to the Board for the review of SNG report on 1 November 2012. However, Mr Motsoeneng refused for the report to be released and reviewed by the Board as it implicated several Board members. Mr Motsoeneng then threatened to get rid of Ms Francois if she proceeded with release of the report.

6.5.14. She was subsequently summoned to the Chairperson's office on 6 November 2012 where she was given a letter of suspension with no reasons. Ms Francois then challenged her suspension at the CCMA, and this led to her reinstatement by the SABC. Ms Francois stated that the SABC has been without a strategic plan but has been changing the organogram on numerous occasions. For example, Ms Motsweni has been acting in four (4) different executive positions concurrently which in her view, point to further corporate governance failure in the SABC.

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- 6.5.15. The investigation team further established from Ms Francois that indeed several former employees were paid substantial amounts of money as labour dispute settlement awards against the SABC and/or severance packages.
- 6.5.16. However, during my interview of the SABC Board members and the Chairperson, other than blame one another, they all denied knowing about the escalation of the SABC salary bill. For instance the Chairperson and the Board when questioned and informed by me about Mr Motsoeneng's rapid salary progression up to the current one of R2,4 m per annum as well as the National Broadcaster's unprecedented salary bill escalation by R29 million, they expressed shock and ignorance of this state of affairs.
- 6.5.17. On 15 March 2013, Ms Duda also informed the investigation team that she had been suspended 5 months into her position as the CFO, and that this was after altercations with Mr Motsoeneng who had been verbally abusive towards her and Ms Mokhobo.
- 6.5.18. According to Ms Duda, Mr Motsoeneng did not take kindly to being cautioned whenever certain payments he sought to have made, were not in line with financial prescripts. For instance, she had proposed for an offset of R32 million which the SABC owed to SAFA as against the R23 million the latter owed to the former which Mr Motsoeneng clearly opposed despite it making a sound business proposition.
- 6.5.19. In his interview with me on 15 March 2013, Mr Lesala indicated that subsequent to his resignation, he instituted a constructive dismissal dispute against the SABC at the CCMA, and that a satisfactory settlement award was given to him.

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Dereliction of duty by the Board

- 6.5.20. During an interview with the investigation team on 15 March 2013, Mr Itani Tseisi the former Group Executive Risk and Governance of the SABC informed the team that Mr. Motsoeneng was very influential and verbally abusive towards SABC staff members and the SABC Board, even before he was even appointed to the position of the COO.
- 6.5.21. He indicated that Mr Motsoeneng always attended the Board meetings even before he was appointed as the Acting COO notwithstanding the fact that he was prohibited by corporate governance rules to attend such Board meetings as he was not an executive member. Mr Motsoeneng’s attendance had been suggested by the Chairperson of the Board. Ms Mokhobo was also subjected to the abusive behaviour of Mr Motsoeneng.
- 6.5.22. Ms Duda further stated that Mr Motsoeneng at times called her even at night to scream and insult her if things did not go his way. According to Ms Duda, most of the SABC Board members were compromised in their relationship with Mr Motsoeneng. For instance one of the erstwhile Board member’s daughter had been offered an advertising billboards contract by Mr Motsoeneng. The SABC Chairperson himself is said to have been at times called to Mr Motsoeneng’s office instead of it being the other way round.
- 6.5.23. In a response to my question about the resignations/termination of senior staff members of the SABC, which had allegedly been attributed to him, Mr Motsoeneng denied being responsible for the exodus of staff. But he admitted that some of it was in the best interest of the SABC despite astronomical costs being incurred in labour dispute settlements and litigation costs.
- 6.5.24. Mr Motsoeneng advised that he initiated discussions relating to his salary raise which was always motivated by HR and supported by his superior,

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the GCEO before approval by the Board’s Chairperson. Mr Motsoeneng also informed me that for the work he was doing at the SABC, he believes that he deserves what he earns and perhaps even more. When asked if this was in line with the Corporation’s policy and if he advised the Board as such, he said it was the Board’s duty to do the right thing and his right to ask for whatever he deemed he deserved.

6.5.25. The SABC Board Chairperson, the Board members and the GCEO informed me that they were not aware of such high salaries being paid to the said employees.

6.5.26. I was also informed that the SABC had “governance issues” which according to Mr Motsoeneng, were at the heart of most of the challenges the National Broadcaster was grappling with.

6.5.27. Mr Lesala informed the investigation team on 15 March 2013 that he reported directly to Mr Motsoeneng who in turn purportedly reported to Ms Mokhobo. However, Mr Motsoeneng did as he pleased without being reined in by her. For instance Ms Mokhobo would sign salary increments to Mr Motsoeneng despite the lack of motivation and justification for such increment from HR.

6.6. The Department and Minister of Communications’ alleged undue interference in the affairs of the SABC, giving unlawful orders to the Board and staff and if the said acts constitute improper conduct and maladministration

6.6.1. The alleged unlawful orders and improper conduct of the former Minister of Communications in the recruitment and appointment of Ms Duda as the CFO for SABC is discussed in detail on the issue regarding the said appointment in paragraph 6.4 above.

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6.7. Responses to the Provisional Report of the Public Protector issued on 15 November 2013.

6.7.1. A Provisional Report was issued and distributed to the complainants; other parties involved, including the former Minister of Communications, Ms. Pule.

6.7.2. The Provisional Report was distributed on the basis of confidentiality to provide the recipients with an opportunity to respond to its contents.

6.7.3. All the parties' attention was specifically directed to the provisions of section 7(9) of the Public Protector Act which provides that:

“If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may be result, the Public Protector ***shall afford such a person an opportunity to respond in connection therewith in any manner that may be expedient under the circumstances***”. (Emphasis added)

6.7.4. Subsequent to issuing the Provisional Report, the Public Protector received correspondence on different dates from various attorneys who claimed to represent the recipients of the Provisional Report.

6.7.5. The Public Protector responded directly to the recipients of the Provisional report advising them that her office allowed legal assistance and not legal representation, and that therefore she would be dealing directly with them and not through their lawyers. But that they were free to be assisted by lawyers in preparing their documents in response to the Provisional Report.

6.7.6. All except two of the recipients of the Provisional Report requested to be provided with certain audio recordings of the meetings held with the

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Public Protector and her investigation team, and this request was acceded to.

6.8. Response of the GCEO of SABC, Ms Lulama Mokhobo

6.8.1. Ms. Lulama Mokhobo, the SABC's GCEO responded to the Provisional Report on 29 November 2013. She was generally unhappy with the intended findings and remedial action in the report in so far as it related to her role in the issues investigated by the Public Protector.

6.8.2. Ms. Mokhobo commenced her inputs by clarifying the fact most of the issues investigated by the Public Protector occurred prior to her tenure as the SABC's GCEO as she properly took office on 24 January 2012.

6.8.3. According to her, much of what she is alleged to have been party to pre-dates her term and had nothing to do with her.

6.8.4. Notwithstanding the afore-going, Ms Mokhobo proceeded to make comments and clarifications of what she called “my version of the truth as I know it”.

6.8.5. Ms Mokhobo stated that when she joined the SABC as the GCEO, she found the Board whose reliance on Mr Motsoeneng, as Acting COO to act on matters that the Board classified as crucial, highly confidential and urgent, extremely high.

6.8.6. Ms Mokhobo stated that Mr Motsoeneng shared a relationship with Dr Ngubane and some Board members so close that she was frequently not aware of discussions and/or actions that were being planned.

6.8.7. Ms Mokhobo indicated that among the responsibilities that Mr Motsoeneng was entrusted with prior to 24 January 2012 and continuing beyond that were the following (list not exhaustive):

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- 6.8.7.1. Addressing and bringing closure to the Auditor General (AG) and Special Investigations Unit (SIU) findings. These had not been addressed by the previous SABC Executives.
- 6.8.7.2. Addressing the murky matters surrounding the fulfillment of a Debis Fleet Management contract which resulted in the delivery of Mercedes Benz fleet of cars for use by mainly journalists in the News department, and had generated into a scandal of massive proportions (leading to complainant Mr Koma’s disciplinary process).
- 6.8.7.3. Ensuring the removal of certain Executives (including complainant Ms Mampane) that the Board had deemed no longer suitable to continue working at the SABC.
- 6.8.7.4. Generally assisting the Board with political stakeholder and labour matters that no one seemed capable of carrying out. To this extent, Mr Motsoeneng was credited with stemming labour unrest and effectively managing Labour Unions.
- 6.8.7.5. To further illustrate the trust quotient Mr Motsoeneng had with the Board, he was delegated to act as the GCEO in the brief period between her appointment and actual assumption of office (instead of the former Acting GCEO and Group Executive of News, Mr Molefe being requested to do so).
- 6.8.7.6. Mr. Motsoeneng was therefore seen as a hero, operating at a realm far above of all other Executives, and therefore deserving of being considered as the next COO.
- 6.8.8. Ms. Mokhobo further stated that it was common knowledge that her arrival at the SABC did nothing to shift the workings of the Board and its reliance on Mr. Motsoeneng to a point where she would be given space

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and requisite levels of trust and acknowledgement, particularly that of Dr Ngubane and the Board, to do all things necessary as would be required of a normal CEO. In fact Dr Ngubane famously stated in his speech at the ANC Mangaung conference TNA breakfast show (broadcast live on December 21, 2012) that Mr. Motsoeneng had stabilized the SABC, suggesting that he did so single-handedly.

6.8.9. Ms. Mokhobo stated that it therefore came as no surprise that Dr Ngubane and Mr. Ka Platjje not only chose to declare unlawful the Board meeting that resolved to remove Mr. Motsoeneng from his role as acting COO, but also elected to resign from their positions as Chairman and Deputy Chairman respectively.

6.8.10. With regard to the appointments and promotions of Mr Motsoeneng over the period beginning in March 1995, or in the appointments, promotions and salary increases of Ms. Motsweni, Ms. Mokhobo stated that it was a well-known fact that she had played no role in that regard.

6.8.11. In conclusion, Ms. Mokhobo also referred to several documents she had attached to her comments as proof that she had played no role in most of the issues alluded to in the Provisional Report, as a result of which she requested that certain findings and remedial action linked to her should be expunged from the final report of the Public Protector.

6.9. Response of the former Chairperson of the SABC Board, Dr Ben Ngubane

6.9.1. Dr Ngubane, former Chairperson of the erstwhile SABC Board responded to the Provisional Report on 18 December 2013. In general the response was not in agreement with the contents of the Provisional Report.

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- 6.9.2. Dr Ngubane expressed his dissatisfaction in particular with regard to the findings and remedial action that the Public Protector recommended to be taken against him.
- 6.9.3. He stated that the provisional findings cover a wide period of his tenure at the SABC, and that this made it difficult for him to respond fully out of memory to accusations as those contained in the Provisional Report.
- 6.9.4. Dr Ngubane further denied that he went out of his way to act as an Executive Chairperson of the SABC Board, and that he was the point of contact of the Executive Authority with the Board, as well as being the person who managed the affairs of the Board between the Board meetings however frequent they might have been.
- 6.9.5. With regard to Mr. Motsoeneng’s salary progression, Dr Ngubane indicated that this was a recommendation from the SABC’s Human Resources department, which was effected in line with SABC’s policies, and that the progression was based on the ground that Mr Motsoeneng’s salary was far below the level then enjoyed by other related positions within the SABC.
- 6.9.6. On the issue relating to the irregular appointment and salary progression of Ms. Motsweni, Dr Ngubane stated that it occurred during the time the SABC had to implement the findings of the Auditor General and Ms. Motsweni assisted in co-ordinating a team under Mr Motsoeneng and that her appointment was done in accordance to SABC’s policies.
- 6.9.7. Dr Ngubane contended that the Public Protector in dealing with the termination of service of staff by the SABC, lumped together various employees which in his view should be treated under different categories, and that there was no evidence of termination or suspension of staff, or settlement amounts or litigation costs in the Provisional Report.

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- 6.9.8. He further contended that there was no indication of the amount which constituted fruitless and wasteful expenditure, and also the basis on which it should be refunded by the GCEO, the Acting COO and himself, and that therefore he denied any liability in that regard.
- 6.10. Response of Mr Themba Phiri, the Acting Deputy Director General of Department of Communications**
- 6.10.1. Mr Themba Phiri responded to the Provisional Report on 29 November 2013 through the signature of his attorneys, Malan and Mohale Attorneys.
- 6.10.2. Mr Phiri denied any involvement in the submission of Ms Duda’s CV to the SABC and that he was just asked telephonically about the CV by Mr Motsoeneng who by then had been expecting “something” from the former Minister, Ms. Pule.
- 6.10.3. He also denied that he acted on instructions from the Minister to the Board to interview Ms Duda as stated by Ms Malebane, and also denied Mr Motsoeneng’s statement to the Public Protector that he received Ms Duda’s CV from him.
- 6.10.4. Mr Phiri explained that he had referred Mr Motsoeneng’s telephonic enquiry to the then Minister’s PA, Ms Nthabiseng Borotho and that therefore he merely acted as a conduit to the enquiry about a CV, the underlying background to which he was not privy.
- 6.10.5. In conclusion, Mr Phiri argued that he did not act unlawfully as indicated in the Provisional Report, and that therefore the Public Protector should revisit her findings and recommendations against him for the purposes of her final report.

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6.11. Response of Mr Phosane Mngqibisa

- 6.11.1. Mr Mngqibisa responded to the Provisional Report on 10 December 2013 through the signature of his attorneys, F R Pandelani Incorporated.
- 6.11.2. Mr Mngqibisa stated that he was never afforded an audience prior to the issuing of the Provisional Report in order to exercise his right reply to the allegations or to rebut same.
- 6.11.3. Mr. Mngqibisa stated that the allegations against him by Ms Malebane were never corroborated by any of the persons interviewed, including Ms Duda during her meeting with the investigation team.
- 6.11.4. Mr Mngqibisa contended that Ms Malebane’s evidence should therefore be regarded as “hearsay” and that therefore it could not assist in proving the essential fact of linking him to the appointment of Ms Duda at the SABC.
- 6.11.5. He further stated that Ms Malebane does not herself offer any personal knowledge of the serious facts or allegations and relies on what she alleged was told by Ms Duda which the latter ought to either confirm or deny having made such utterances as alluded to.
- 6.11.6. Mr Mngqibisa finally stated that there was no basis either in fact or law upon which the Public Protector would be justified in relying on such piece of evidence or allegations made by Ms Malebane.

6.12. Response of the Complainants, former SABC employees

- 6.12.1. The Complainants responded to the Provisional Report on 28 November 2013. In general they expressed their satisfaction and appreciation to the Public Protector for the issuing of the report and also welcomed the findings and recommendations made.

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- 6.12.2. The Complainants expressed their concern that Mr Nicholson, former CFO of SABC and also acting GCEO at the time, his role in the transgressions though being mentioned, but there seemed to be no firm findings or remedial action against him.
- 6.12.3. The Complainants further stated that Mr Koma was unfairly forced out of his position based on false and unfounded reports that had been made by Mr Motsoeneng regarding the purchase of 20 Mercedes Benz vehicles from Debis Fleet Management.
- 6.12.4. The Complainants recommend that Mr Koma should be compensated for being unfairly forced out of the SABC against his will and for tarnishing his good name and emotional torture that he was subjected to.
- 6.12.5. In conclusion the Complainants recommended that Mr Motsoeneng and Mr Nicholson should be charged criminally for their offences, as such remedial action would serve as a deterrent to those in senior positions at the SABC.
- 6.13. Response of Ms. Clare O’Neil, former SABC Board Member**
- 6.13.1. Ms. O’Neil responded to the Provisional Report by e-mail on 28 November 2013. She had requested to be furnished with a copy thereof after she had read about it in the “leaked” report in a weekend newspaper article.
- 6.13.2. Ms. O’Neil expressed her dismay at what had been related to the Public Protector by Ms. Duda about the Board members being compromised in their relationship with Mr. Motsoeneng.

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- 6.13.3. She stated that she was astounded by the specific mention of her name in the Provisional Report with regard to her having a daughter to whom a billboards advertising contract have been offered by Mr. Motsoeneng.
- 6.13.4. Ms. O’Neil emphasised that not only does she not have a daughter, she does not have children and therefore this should prove categorically that Ms. Duda’s allegations are untrue and also a blatant mis-information to the Public Protector.
- 6.14. Response of Ms.Zandile Tshabalala, current SABC Board Chairperson**
- 6.14.1. Even though the Provisional Report was submitted to her for her information as Chairperson of the incoming Board, Ms Tshabalala, took the liberty to respond extensively to the Provisional Report.
- 6.14.2. Ms.Tshabalala argued that the Public Protector’s investigation has taken a number of complaints out of context when the investigation was concluded and the intended findings were formulated. For example, the Matric certificate and the fourteen employees.
- 6.14.3. Ms. Tshabalala then proceeded to deal with each of the Public Protector’s findings and conclusions, ostensibly denying the basis of each of them and the fact that they constituted improper conduct and/or maladministration.
- 6.14.4. She also mentioned the names of certain individuals and law firms who in her view should have been interviewed by the Public Protector for a broader understanding of the terms of the Government Guarantee and the Turn-around Strategy, Ms. Irene Charnley, Mr. Nicholson, Ross Alcock and Associates, Deloitte and Edward Nathan Sonnenbergs, respectively.

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- 6.14.5. On the departure of both Ms. Ntombela-Nzimande and Ms. Mampane, Ms. Tshabalala said that in line with the SABC’s policies these employees’ positions were declared redundant and settlement agreements were reached with them in respect of the remainder of their contracts, and that payments were made to them which they accepted, willingly.
- 6.14.6. On the alleged escalation of the salary bill by R29 million, Ms Tshabalala indicated that the SABC had to address the legacy of the past, in terms of which certain personnel were permanently engaged as freelancers for periods in excess of twenty (20) years. There were also issues of parity which according to her, were required to be addressed by the Board to ensure cessation of past discriminatory practices in the organisation.
- 6.14.7. According to Ms. Tshabalala, the SABC is compelled to compete for talent, and that this applied to both sourcing and retention of talent. Therefore the escalation complained of was done to ensure that the SABC has a competitive edge and within the available resources of SABC.
- 6.14.8. In conclusion, Ms. Tshabalala stated that on the basis of the above, the SABC disputed allegations of maladministration and abuse of power and expressed a view that most of the findings that the Public Protector intends making would require her office to conduct a further and more in-depth objective investigation before they are made.
- 6.14.9. My subsequent response to Ms Tshabalala’s comments on 20 December 2013 was as follows:

“I am currently studying the comments you have made in response to the specific issues contained in my Provisional Report. If warranted, I will incorporate the comments you have made in my final report once I have related these comments to my investigation.

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However, I am astonished by the response from you as the incoming Chairperson of the new Board as my investigation covered a period which preceded your tenure. Of particular surprise to me is that you say the matters were not investigated yet documents were requested and received from the SABC administration and Board, interviews were held with witnesses and the entire SABC Board with questions asked on all allegations, and the Provisional Report itself was an opportunity to engage me on each intended finding to provide evidence to the contrary.

It appears from your response that unlike the outgoing Board, Mr Hlaudi Motsoeneng and the GCEO, you appear to deny any governance failure on the part of the erstwhile Board. Even more concerning, is how the Board whose role is to guide the SABC’s ethical conduct reacts to my intended findings regarding Mr Hlaudi Motsoeneng’s dishonesty”.

7. EVALUATION OF THE EVIDENCE OBTAINED DURING THE INVESTIGATION

7.1. Regarding the alleged appointments and salary progression of Mr. Motsoeneng

7.1.1. It is common cause that in 2010, Mr Mokoetle with the approval of Dr Ngubane, created the position of Executive Manager: Stakeholder Relations in the office of the GCEO and recruited Mr Motsoeneng from the SABC’s Free State office for this position, without advertising the post or going through a selection process stipulated in the SABC’s Delegation of Authority Framework which regulates creation of new positions.

7.1.2. It is also common cause that Mr Motsoeneng did not apply, nor was he interviewed for this position, having left the SABC under a cloud following an investigation into allegations that he had committed fraud in his application for employment when he first joined the SABC in 1995 on a full time basis. On 1 August 2010, the SABC appointed Mr Motsoeneng as Executive Manager: Stakeholder Relations in the office of the GCEO (salary scale 120) at a salary of R500, 000 per annum,

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- 7.1.3. This appointment was followed by three further appointments or amendments to Mr Motsoeneng employment contract within a period of five (5) months effected by the previous GCEO Mr Mokoetle and the then Acting GCEO, Mr Nicholson, respectively.
- 7.1.4. All of these amendments or appointments although not changing his designation as the Executive Manager: Stakeholder Relations always effected an astronomical adjustment to his salary scale.
- 7.1.5. Dr Ngubane acknowledged that Mr Motsoeneng was recruited from the Free State by Mr Mokoetle to work in his office as the person responsible to deal with the unions on the issues relating to the turnaround of the SABC. The said appointment was not approved by Exco as required by the SABC’s Delegation of Authority Framework (DAF).
- 7.1.6. At the SABC Board meeting held on 14 November 2011, the SABC Board resolved to appoint Mr Motsoeneng Acting COO after the position of COO was vacated by Ms Mampane, Dr Ngubane recommended that Mr Motsoeneng be appointed to the position in an acting capacity.
- 7.1.7. During the period 1 April 2011 to 1 April 2012, Mr Motsoeneng’s total monthly cost to company salary signed for approval by Dr Ngubane, the Chairperson of the Board, increased from R126, 961 to R211, 172 (66,3%).
- 7.1.8. Dr Ngubane addressed a letter to Ms Pule on 15 November 2011 advising her on the resolution of the Board taken during its meeting on 14 November 2011 to appoint Mr Motsoeneng as acting COO until such time that the Chief Operating Officer was appointed, and this was duly approved by Ms Pule on 28 November 2011.
- 7.1.9. In reply to questions from me, Ms Mokhobo, on 12 June 2012 responded as follows to the statement that *“the SABC committed an act of forgery and uttering (sic) in changing the advertisement for the position of the COO*

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issued in April 2008 by removing the requirement for academic qualifications so as to suit who is without qualification to meet the criteria for the advertised position”:

“The advertisement was an exact replica of previous advertisements dating as far back as 2006.”

7.1.10. On 11 March 2013 Ms Mokhobo indicated that the Chairperson of the Board indicated to her that she was not allowed to change the requirements of the advertisement and that it had to go out exactly as the one in 2008. Ms Mokhobo indicated that the Chairperson was adamant that he did not want to see any qualifications reflected in the advertisement. This sentiment was echoed by Adv Cawe Mahlati (“Adv Mahlati”) – former member of the SABC Board.

7.1.11. This was disputed by Dr Ngubane who indicated to me on 15 March 2013, that the advertisement never came before the Board for approval and that it was something which was done by management.

7.1.12. During January 2013 / February 2013, the SABC placed another advertisement for the position of COO. In this advertisement the requirements for the position was indicated as “...*A relevant degree/diploma and/or equivalent qualification.*”

7.1.13. This was a watered down version of the initial advertisement placed by SpencerStuart in Sunday Times and City Press of 9 July 2006 which indicated that the requirements for the position were “*appropriate academic background, preferably postgraduate qualification*” whilst the internal advertisement only required a “*commercially astute executive, with broad-ranging operational track record of success in broadcasting.*”

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- 7.1.14. On my question to her regarding the changing of the advertisements to suit Mr Motsoeneng, Ms Mokhobo indicated that on 12 June 2012 the 2008 advertisement was *“an exact replica of previous advertisements dating as far back as 2006”*. Contrary to Ms Mokhobo’s statement, this advertisement was a watered down version of the advertisement placed in 2006 indicated that the requirements for the position were an appropriate academic background and therefore not an exact replica as indicated by Ms Mokhobo.
- 7.1.15. On 11 March 2013, Mr Gina indicated that after Ms Mampane vacated her position as acting COO, the position remained vacant for a considerable time. At that stage, Dr Ngubane made a recommendation that Mr Motsoeneng be considered for the position of acting COO. The understanding at that stage was that would only act for a couple of months (approximately 2-3 months) until such time as the recruitment process for a new COO was completed.
- 7.1.16. On 19 July 2013 Mr Motsoeneng indicated that his appointment as the SABC’s Acting COO was to persist until the appointment of a COO was made by the SABC, and he subsequently provided me and the investigation team with proof thereof in a form of a letter signed by the Chairperson of the Board on 15 November 2011.
- 7.1.17. At the same meeting he informed me that he is the one who requested for salary increments as he believed that for the good work he was doing at the SABC, he deserved the increments, and even more.
- 7.1.18. Mr Motsoeneng also informed me that the salary increments he had received were motivated for by the then Group HR Managers, Mr Morobe and Lesala and approved initially by his previous superiors, Mr S Mokoetle

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and Mr Nicholson, then later by the outgoing GCEO, Ms Mokhobo prior to being authorised by the former SABC Board Chairperson, Dr Ngubane.

7.1.19. On 14 January 2014 and subsequent to the release of the Provisional Report, my investigation team met with Mr. Nicholson the former SABC CFO and Acting GCEO in order to get clarity from him and also afford him an opportunity to be heard.

7.1.20. Mr. Nicholson confirmed his role as the Acting GCEO pertaining to Mr. Motsoeneng’s appointment/promotions and salary progression. He insisted that what he did in signing Mr Motsoeneng’s contracts and salary increments was in terms of the Delegation of Authority Framework (DAF).

7.1.21. Mr Nicholson indicated that although he did not know how much Mr Motsoeneng earned, the rapid salary increments offered to him were as a result of his effectiveness and the good work he was performing at the SABC, and were probably above board.

7.1.22. However, Mr. Nicholson failed to explain the questionable signatures on the documents he had signed with Mr Motsoeneng on 10 December 2010 and 1 April 2011 except to say that it was due to a mistake on his part when he appended his signature.

7.2 Mr Motsoeneng’s alleged misrepresentation of qualifications

7.2.1 It was established that Mr Motsoeneng does not have a matric certificate. This was established through analysis of human resource documents received from the SABC as well as admitted by Mr Motsoeneng during my meeting with him on 19 July 2013.

7.2.2 It was further established that Mr Motsoeneng did indeed misrepresent the fact that he has a matric certificate when in fact he does not have one.

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- 7.2.3 Various documents received by my office indicated that on various occasions after his appointment, he was requested to provide a copy of his matric certificate, but failed to do so.
- 7.2.4 A 2003 SABC Group Internal Audit report into the allegation that Mr Motsoeneng misrepresented that he had a matric certificate found that he did not have matric and recommended that management should consider instituting action against him. The recommendations were never implemented and no action was ever taken against.
- 7.2.5 An evaluation of two CV's submitted by Mr Motsoeneng (one in 2003 when he applied to the position of Executive Producer: Current Affairs and one supplied by the SABC upon my request) indicates that there is a discrepancy in that on the 2003 CV indicated that he was employed as Head of Communications in the Northern Cape whilst the CV supplied to me indicated that he was only employed by the SABC.
- 7.2.6 The affidavit provided by, Mr Thulo to the investigation team revealed a further discrepancy in Mr Motsoeneng's CV.
- 7.2.7 In this affidavit, Mr Thulo explained that in 2003, he was one of the applicants for the position of Executive Producer – Lesedi Current Affairs and attached his CV as well as the CV's of Mr Khothule Solomon Mphatsoe, Ms Phuleng Arcilia Mokhoane and Mr Motsoeneng as being the other applicants for the position.
- 7.2.8 Mr Thulo indicated that in 2003, despite the fact that Mr Motsoeneng had only been employed by the SABC, his CV which was part of the application for the position indicated that he was *“Appointed as Head of Communications at the Department of Tourism and Economical Affairs in Northern Cape”*.

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7.2.9 When the CV of Mr Motsoeneng was provided by the SABC upon my request, is evaluated against the CV of Mr Motsoeneng attached to the affidavit of Mr Thulo, it is clear that the position as *Head of Communications at the Department of Tourism and Economical Affairs in Northern Cape* is not reflected on the CV as supplied by the SABC. There is thus a disparity between the two CV's.

7.2.10 Dr Ngubane's insistence that there is no evidence could be found that Mr Motsoeneng misrepresented his qualifications is astounding.

7.2.11 This assertion is however contradicted by the documentation and information submitted by the SABC to me as well as Mr Motsoeneng's own admission.

7.2.12 On 19 July 2013, Mr Motsoeneng indicated that he never misrepresented his qualifications during his employment at the SABC, as it was common knowledge that he did not possess a Matric certificate.

7.2.13 However, after being shown the employment application form Mr Motsoeneng had completed at the SABC indicating the symbols he had claimed to have obtained in Matric by me, he submitted that he was asked to fill the subjects as mere compliance by Mrs Swanepoel.

7.2.14 Mr Motsoeneng finally admitted to me during our meeting on 19 July 2013, that it was wrong of him to have claimed to have a matric certificate while knowing that he had not passed the grade.

7.3 Whether the alleged appointments and salary progression of Ms Sully Motsweni were irregular and thus constitutes maladministration.

7.3.1 During her employment at the SABC, Ms Motsweni occupied various positions which started as Internal Auditor in August 2002.

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- 7.3.2 In June 2011, the SABC deviated from normal recruitment policy and indicated that due to the urgency of the appointment, approval was sought to appoint Ms Motsweni to the position of General Manager: Compliance and Provincial Operations (Scale 120)
- 7.3.3 On 27 June 2011, an offer of employment was extended to Ms Motsweni at a remuneration package of R960, 500 per annum which she accepted. This position was in the office of the Group Executive: Stakeholder Relations and Provinces, occupied by Mr Motsoeneng.
- 7.3.4 Eight months later, on 1 February 2012, the SABC appointed Ms Motsweni as Head: Monitoring, Compliance and Operation Service at a remuneration package of R1, 500,000 per annum (Scale 120). This position was also within the office of the COO which was occupied by Mr Motsoeneng.
- 7.3.5 During the period 1 July 2011 to 1 April 2012, Ms Motsweni has been appointed to three (3) different positions without applying, being shortlisted or attending interviews. All these three positions reported to Mr Motsoeneng directly.
- 7.3.6 During this period, Ms Motsweni's total monthly cost to the SABC which was approved by Mr Motsoeneng, increased from R79,966 to R130,883 (63,7%).
- 7.3.7 During a meeting with me, Ms Mokhobo indicated that this change in position of Ms Motsweni was effected directly by Mr Motsoeneng and that it should have been presented to Exco for approval.
- 7.3.8 During a meeting with me on 19 July 2013, Mr Motsoeneng indicated that when he became the Acting COO, he identified a need for a position similar to the one Ms Motsweni is occupying for the whole of the SABC, which was

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largely driven by the increased focus of Auditors on Compliance matters as identified by the Auditor-General.

- 7.3.9 Mr Motsoeneng indicated that he thought that it would be a duplication to appoint another person to strengthen compliance and monitoring. He then thought it prudent to elevate Ms Motsweni’s division to deal with corporate-wide compliance and report to his office, which then resulted in Ms Motsweni joining the Acting COO’s office with her entire division.
- 7.3.10 Mr Motsoeneng stated that as the filling of the position of General Manager: Compliance and Operations was urgent, HR applied for approval of deviation from recruitment policy in respect of the said position as well as that of General Manager: Finance.
- 7.3.11 Mr Motsoeneng further informed me that Ms Motsweni’s salary increases were motivated for by him, supported by HR division and always approved by the line Manager, the GCEO.
- 7.3.12 However, according to Ms Mokhobo, Ms Motsweni’s salary was regularly increased by the Acting COO as she has done various other things for him (i.e. *“she writes his e-mails, writes his documents and explains what is contained in there, she writes his responses, she does everything for him. So, this was a reward”*).
- 7.3.13 The SABC could not provide information relating to the internal advertisement of the above-mentioned position, applications received for the position, record of short listed candidates as well as list of candidates interviewed. It is clear that the SABC deviated from their recruitment policy in order to appoint Ms Motsweni to his office.

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7.4 Whether the alleged appointment of Ms Gugu Duda as the Chief Financial Officer was irregular and thus constitutes maladministration.

7.4.1 Information received from SpencerStuart by my investigation team on 17 November 2011 revealed that they were briefed by the Board about the recruitment of a CFO by the SABC. This information further revealed that the selection and assessment of candidates took place between 7 December 2011 and 24 December 2011.

7.4.2 After internal and external advertisements were placed for the position of CFO, four (4) candidates were invited for interviews on 11 January 2012. A presentation of shortlisted candidates was done on the same day by SpencerStuart. Ms Duda was not shortlisted with the first four candidates as she had not submitted an application for the said position.

7.4.3 A recommendation for appointment of a suitable candidate, one Mr Msulwa Daca, was made to Minister Dina Pule who on 31 January 2012, replied to Dr Ngubane and the SABC Board indicating that she did not approve the recommendation made by the Board and that the SABC had to re-start the recruitment process.

7.4.4 On 7 February 2012, SpencerStuart presented and along with other Board members interviewed an additional candidate, Ms Duda subsequent to which the Board resolved to send three (3) names in alphabetical order to the former Minister for selection and appointment of the CFO subject to further referencing and integrity checks. On 14 February 2012, Ms Pule approved the appointment of Ms Duda as CFO.

7.4.5 Former SABC Board member, Mr Danana indicated that the person who was interviewed by the Board at the last minute, Ms Duda, was not one of the initially short-listed candidates for the position, but was appointed

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subsequently as CFO after the second recommendation was submitted to the former Minister for approval.

- 7.4.6 Ms Malebane, a former Chief Finance Controller revealed to the investigation team Ms Duda’s CV was received from the former Minister of Department of Communications by Mr Mngqibisa and subsequently submitted to Mr Phiri who gave it to the SABC after finalisation of the first interview process for the position of the SABC CFO.
- 7.4.7 Ms Malebane a former “confidante” of Ms Duda also informed the investigation team how she had been continuously informed by Ms Duda of her recruitment and eventual appointment by the SABC.
- 7.4.8 Ms Malebane also revealed the different role players who were behind the events leading to the appointment of Ms Duda, namely, Mr P Mngqibisa; Mr H Motsoeneng; the Chairperson of the SABC Board; some Board members and the former Minister of the Department of Communications.
- 7.4.9 During a meeting with me on 19 July 2013, Mr Motsoeneng confirmed that, subsequent to the selection processes, he submitted Ms Duda’s CV to the SABC after he had received it from Mr Phiri subsequent to which it was submitted by Ms Wendy Khubeka of SABC HR to SpencerStuart where Ms Duda was subsequently interviewed alone.
- 7.4.10 The above evidence reveals that Ms Duda’s appointment was not in compliance with the SABC’s recruitment policy as no prior record of her submission of an application and short-listing could be supplied by the SABC to my office, except for the recommendations for approval of her appointment by the former Minister of the Department of Communications.

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7.5 Whether Mr Motsoeneng purged senior staff members at the SABC resulting in unnecessary financial losses in CCMA, court and other settlement, which amounts to financial mismanagement and if this constitutes improper conduct and maladministration.

7.5.1. My investigation established that several senior and experienced staff members were hounded out of their jobs after voicing and showing difference of opinions in how the SABC should be run.

7.5.2. These staff members' termination and/or suspensions had led to protracted and unnecessary and prolonged labour dispute proceedings and litigations involving lawyers and stretching the already overburdened budget of the SABC.

7.5.3. Consequently this inevitably led to settlement awards and offers being made by and/or against the SABC for substantial amounts of money as the SABC often refused to reinstate the employees, or allow them to work the full terms of their contracts.

7.5.4. I established from the documentation and information availed by the SABC that the termination of service of most former senior executive employees of the SABC was not procedurally and substantively fair and therefore not justified.

7.5.5. During a meeting with me on 19 July 2013, Mr Motsoeneng denied he had been behind the resignations/termination of senior executive staff members' employment.

7.5.6. Mr. Motsoeneng also failed to convince me why the premature termination of these staff members' employment contracts was preferred instead of

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allowing them to finish the remainder of their terms of contracts, except to state that it was in the best interest of the SABC to pay them off.

7.5.7. Mr Nicholson informed my investigation team that the SABC had embarked on a Turnaround Strategy under which they were directed the National Broadcaster to shed 48 of their Executives' positions which then meant non-renewal of contracts that were coming to an end soon.

7.5.8. According to him, Ms Ntombela-Nzimande and Ms Mampane fell under the category of employees whose jobs had been identified as redundant, and therefore had to be placed elsewhere or be offered exit packages.

7.5.9. Ms Ntombela-Nzimande's running battles with the SABC Board led to the breakdown of the relationship with them and this also became as a catalyst to the premature of her contract as it was felt that she was no longer contributing positively to the National Broadcaster.

7.6 Whether Mr Motsoeneng irregularly increased the salaries of various senior staff members including a shop steward, resulting in a salary bill increase in excess of R29 million and if this amounted to financial mismanagement

7.6.1 The salary progression of employees of SABC is regulated by SABC DAF. Salary progression is initiated by the line manager, supported by HR, recommended by the GCEO and approved by Exco. In addition the SABC had embarked on cost-cutting initiatives as part of their Turn-Around Strategy to contain over expenditure.

7.6.2 However, the SABC's records and information availed to my office show that the Acting COO, the GCEO's and the Board's Chairperson signed for

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the said employees' salary increments despite cost-cutting initiatives that had been mooted as part of the SABC Turn-Around Strategy.

- 7.6.3 Mr. Motsoeneng, however, denied being solely responsible for such salary increases and/or pay-outs as he always had the support of HR and approval of his superior, the GCEO. He indicated that some of the astronomical labour dispute pay-outs were in the best interest of the SABC.
- 7.6.4 My investigation team also established that indeed several former employees were paid substantial amounts of money as labour dispute settlement awards against the SABC and/or severance packages thereby causing the National Broadcaster to incur unnecessary and avoidable costs.
- 7.6.5 However, during my interview of the SABC Board members and the Chairperson, other than blame one another, they all denied knowing about the escalation of the SABC salary bill. For instance the Chairperson and the Board when questioned and informed by me about Mr Motsoeneng's rapid salary progression up to the current scale of R2,4 million per annum as well as the National Broadcaster's unprecedented salary bill escalation by R29 million, they expressed shock and ignorance of this state of affairs.
- 7.6.6 The afore-going points towards apparent dereliction of duty by the Board and also its failure to exercise its fiduciary responsibilities in the running of the SABC and thus acting contrary to established corporate governance principles.
- 7.6.7 During an interview with the investigation team on 15 March 2013, Mr Itani Tseisi the former Group Executive Risk and Governance of the SABC informed the team that Mr. Motsoeneng was very influential and verbally

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abusive towards SABC staff members and the SABC Board even before he was appointed to the position of the Acting COO.

- 7.6.8 He indicated that Mr Motsoeneng always attended the Board meetings even before he was appointed as the Acting COO notwithstanding the fact that he was prohibited by corporate governance rules to attend such meetings as he was not an Executive Member. Mr Motsoeneng’s attendance had been suggested by the Chairperson of the Board. Ms Mokhobo was also subjected to the abusive behaviour of Mr Motsoeneng.
- 7.6.9 On 15 March 2013, Ms Duda also informed the investigation team that she had been suspended 5 months into her position as the CFO, and that this was after altercations with Mr Motsoeneng who had been verbally abusive towards her and Ms Mokhobo.
- 7.6.10 According to Ms Duda, Mr Motsoeneng did not take kindly to being cautioned whenever certain payments he sought to have made, were not in line with financial prescripts. For instance, she had proposed for an offset of R32 million which the SABC owed to SAFA as against the R23 million the latter owed to the former which Mr Motsoeneng clearly opposed despite it making a sound business proposition.
- 7.6.11 Ms Duda further stated that Mr Motsoeneng at times called her even at night to scream and insult her if things did not go his way. According to Ms Duda, most of the SABC Board members were compromised in their relationship with Mr Motsoeneng. For instance one of the Board member’s daughter had been offered an advertising billboards contract by Mr Motsoeneng. The SABC Chairperson himself is said to have been at times called to Mr Motsoeneng’s office instead of it being the other way round.

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- 7.6.12 Mr Lesala the former Group Executive of HR, informed the investigation team on 15 March 2013 that he reported directly to Mr Motsoeneng who in turn purportedly reported to Ms Mokhobo. However, Mr Motsoeneng did as he pleased without being reined in by Ms Mokhobo. For instance Ms Mokhobo would sign salary increments to Mr Motsoeneng despite the lack of motivation and justification for such increment from HR.
- 7.6.13 For instance, when Mr Motsoeneng’s salary was at R1, 4 million, the GCEO suggested that it be raised to R1, 7 million and that this threshold not be exceeded. However, in four months’ time Ms Mokhobo said that it should be increased to R2, 4 million and proceeded to sign the HR motivation. Mr Lesala put the blame on Ms Mokhobo’s shoulders for failure to deal with Mr Motsoeneng. Mr Lesala indicated that subsequent to his resignation, he instituted a constructive dismissal dispute against the SABC at the CCMA, and that a satisfactory settlement award was given to him.
- 7.6.14 During an interview with Ms Francois, the suspended and now reinstated internal auditor, on 15 March 2013, the investigation team learned that the corporate governance structures at the SABC were dysfunctional. According to her, she had suggested that an external company be outsourced to review the SABC Corporate Governance practices. SizweNtsaluba-Gobodo(SNG) was subsequently appointed. SNG thereafter issued a damning draft report revealing that a lot of Exco dynamics were dysfunctional and due for management’s consideration.
- 7.6.15 Ms Francois had apparently written to the Board for the review of SNG report on 1 November 2012. However, Mr Motsoeneng refused for the report to be released and reviewed by the Board as it implicated several Board members. Mr Motsoeneng then threatened to get rid of Ms Francois if she proceeded with release of the report.

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- 7.6.16 She was subsequently summoned to the Chairperson’s office on 6 November 2012 where she was given a letter of suspension with no reasons. Ms Francois then challenged her suspension at the CCMA, and this led to her reinstatement by the SABC. Ms Francois stated that the SABC has been without a strategic plan but has changed the organogram on numerous occasions. For example, Ms Motsweni has been acting in four (4) different Executive positions concurrently which in her view, point to further corporate governance failure in the SABC.
- 7.6.17 On 20 May 2013, Ms Phoebe Malebane who describes herself as a former “confidante” of Ms Duda gave the investigation team a detailed and written account of how Ms Duda was recruited and eventually appointed to the SABC’s CFO position.
- 7.6.18 According to Ms Malebane, Ms Duda informed her of the very first approach she had from Mr Mngqibisa (who is referred to as Mr P) who apparently received Ms Duda’s CV from the former Minister of Department of Communications, Ms Pule and eventually gave it to Mr Motsoeneng who then gave it to the SABC’s Board Chairperson.
- 7.6.19 During a meeting with me on the 19 July 2013, Mr Motsoeneng the SABC’s Acting COO admitted that he was the one who delivered Ms Duda’s CV to the SABC after he had received it from Mr Phiri, the Acting Deputy Director General of the Department of Communications.
- 7.6.20 Mr Motsoeneng further informed me that he was part of the Board members who interviewed Ms Duda but surprisingly he failed to remember whether Ms Duda was the only candidate interviewed on the said date.
- 7.6.21 In a response to my question about the resignations/termination of senior staff members of the SABC, which had allegedly been attributed to him, Mr

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Motsoeneng denied being responsible for the exodus of staff. But he admitted that some of it was in the best interest of the SABC despite astronomical costs incurred in labour dispute settlements and litigation costs.

7.6.22 Mr Motsoeneng admitted that he was responsible for Ms Motsweni's appointments and salary progressions and provided reasons for the need of such an appointment to deal with Audit issues which had been picked up by the Auditor General.

7.6.23 Mr Motsoeneng advised that he initiated discussions relating to his salary raise which was always motivated by HR and supported by his superior, the GCEO before approval by the Board's Chairperson. Mr Motsoeneng also informed me that for the work he was doing at the SABC, he believes that he deserves what he earns and perhaps even more. When asked if this was in line with the corporation's policy and if he advised the Board as such, he said it was the Board's duty to do the right thing and his right to ask for whatever he deemed he deserved.

7.6.24 Mr Motsoeneng informed me that his appointment as the Acting COO was not for a few months, but was until the SABC appointed a permanent COO.

7.6.25 The SABC Board Chairperson, the Board members and the GCEO informed the Public Protector that they were not aware of such high salaries being paid to the said employees.

7.6.26 I was also informed that the SABC had "governance issues" which according to Mr Motsoeneng, were at the heart of most of the challenges the National Broadcaster was grappling with.

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7.6.27 During a meeting with my investigation team on 14 January 2014, Mr Nicholson the former SABC CFO and Acting GCEO, confirmed to several problems within the SABC Board that are attributable to the interference by the Board in SABC management issues and the lack of insight as to their exact role.

7.7 Whether the Department and Minister of Communication unduly interfered in the affairs of the SABC, giving unlawful orders to the SABC Board and staff and if the said acts constitute improper conduct and maladministration

7.7.1 The analysis of the evidence pertaining to the allegations of unlawful orders and improper conduct of the former Minister of Communications in the recruitment and appointment of Ms Duda as the CFO for SABC is discussed in detail on the issue regarding the said appointment in paragraph 7.4 above.

7.8 Evaluation of the responses from the recipients to the Provisional Report

7.8.1 The evaluation of the bulk of the submissions made by the recipients of the Provisional Report raised issues relating to my powers, mandate and jurisdiction. This aspect is dealt with in paragraph 3 above.

7.8.2 Ms Mokhobo corroborated the evidence of the complainants with regard to Mr Motsoeneng’s abuse of power, relationship with the Board as well as his relationship with Dr Ngubane and the SABC staff in general.

7.8.3 While it is true that some of the issues precede her tenure on 27 March 2012, she supported a request for the increase of the total salary package of R2,4 million to Mr Motsoeneng. This salary increase was contrary to SABC’s

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- remuneration policy as it was approved by Dr Ngubane and not by the entire Board.
- 7.8.4 Ms Mokhobo’s submissions regarding the dismissals of former employees indicate that she does not appreciate the concept of constructive dismissal. It also ignores the underlying causes which made the working conditions intolerable. For instance, in the case of Ms Ntombela-Nzimande after being informed that there will be restructuring at the SABC, and subsequent to her not being in favour of the proposed restructuring her access card, laptop, 3G, and cellphone were confiscated on 15 February 2011.
- 7.8.5 Although Dr Ngubane denies that he played a role of an Executive Chairperson (as opposed to non-executive) of the SABC Board, the evidence provided to my office, confirms otherwise. For instance, his approval of Mr Motsoeneng’s salary increases on 27 March 2012.
- 7.8.6 Mr Phiri made a bare denial regarding his role in the appointment of Ms Duda despite corroboration of Ms Malebane’s evidence by Mr Motsoeneng.
- 7.8.7 Mr Mngqibisa also questioned the credibility of Ms Malebane with regard to his role in the appointment of Ms Duda. However, Ms Malebane’s evidence tallied with the evidence that was presented to me by SpencerStuart, the recruitment agency contracted by SABC.
- 7.8.8 Ms O’ Neil emphatically denied the allegation relating to her daughter’s billboard contract which had been offered by Mr Motsoeneng. The allegation by Ms Duda could not be substantiated.
- 7.8.9 Ms Tshabalala provided a response to the Provisional Report on behalf of the SABC. After raising issues relating to my powers and jurisdiction, she proceeded to reject my provisional findings.

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7.8.10 On the dismissal of the complainants, she submitted that their positions were declared redundant and settlements agreements were reached with them in line with SABC’s policy. The evidence presented to me is however at odds with this view. For example, during the interview with Mr Nicholson, he pointed out the reason for the complainants’ dismissal was the alleged breakdown in the relations with their employer. The evidence presented to me also supports constructive dismissal by making the working environment unbearable. Ms Mampane was for instance barred from attending a strategic planning whilst Ms Ntombela-Nzimande had her access card, laptop, 3G and cellphone confiscated.

7.8.11 An analysis of the salary bill of the SABC as well as the CCMA arbitration awards is at odds with the submission that the escalation of the salary bill was as a result of attempts to address the legacy of the past administration.

7.8.12 The submission regarding the matric certificate indicates that the Chairperson of the board falls short of addressing the issue. It is common cause that Mr Motsoeneng does not have matric. The issue considered and investigated by me relates to not whether or not Mr Motsoeneng has a matric certificate (or equivalent qualification) but whether he misrepresented this when he applied for a number of positions at the SABC first in 1995 then later in 2003.

8. LEGAL AND REGULATORY FRAMEWORK

8.1 Legislation and other prescripts and precedents

8.1.1 The Constitution of the Republic of South Africa, 1996;

8.1.2 The Public Protector Act, 23 of 1994;

8.1.3 The Broadcasting Act, 4 of 1999;

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- 8.1.4 The Public Finance Management Act, 1 of 1999
- 8.1.5 The SABC Articles of Association;
- 8.1.6 The SABC Delegation of Authority Framework;
- 8.1.7 The SABC Acting on Higher Grade Policy (policy number HR002/98/A);
- 8.1.8 The SABC Personnel Regulations (January 2000);
- 8.1.9 The SABC Board Charter;
- 8.1.10 The King III Report - 2002;
- 8.1.11 The SABC Turnaround Strategy (September 2011); and
- 8.1.12 Public Protector Touchstones.

8.2 The Broadcasting Act 4, 1999

- 8.2.1 Section 12 of the Act prescribes the composition of the Board. The issue of the powers and obligations of the SABC Board is regulated by section 12 of the Broadcasting Act together with section 14 which provides for the functions and powers of the Executive Committee.
- 8.2.2 Section 12 of the Act provides that the Board should consist of at least the following members:
 - 8.2.2.1 Twelve non-executive members; and
 - 8.2.2.2 A Group Chief Executive Officer, a Chief Operations Officer and a Chief Financial Officer or their equivalents. They form the Executive members of the Board.
- 8.2.3 Section 13 focus on the appointment of the non-executive members and state that:
 - 8.2.3.1 The twelve non-executive members of the Board must be appointed by the President on the advice of the National Assembly.

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- 8.2.3.2 Nine members of the Board, which must include the Chairperson or the Deputy Chairperson, will constitute a quorum at any meeting of the Board.
- 8.2.3.3 The Board is the accounting authority of the Broadcaster.
- 8.2.4 The Executive of the Broadcaster is defined under Section 14 (Executive Committee) and state that:
- 8.2.4.1 The affairs of the Broadcaster are administered by an Executive committee (Exco) consisting of the Group Chief Executive Officer, Chief Operating Officer, Chief Financial Officer and no more than 11 other members;
- 8.2.4.2 The Executive committee is accountable to the Board; and
- 8.2.4.3 The Executive committee (Exco) must perform such functions as may be determined by the Board.

8.3 Articles of Association – South African Broadcasting Broadcaster Limited

- 8.3.1 The issue of appointments of COO, CFO and GCEO is regulated by chapter 5 of the Broadcasting Act as well as section 19.1.1 of the Articles of Association. Section 19.1.1 provides that:

“Any Executive Director appointed in terms of the Broadcasting Act and of these Articles shall:

be appointed by the Board after due process described in article 11.1.2 above and shall have her or his contract of employment approved by the Minister;

...

- 9 have a contract for a period not exceeding 5 (five) years;*
- 10 be eligible for re-appointment at the expiry of any period of appointment; and*
- 11 in her or his contract specified the minimum amount of time she or he is required to spend on the business of the Broadcaster.”*

8.3.2 The issue of acting appointments for GCEO, COO and CFO, is regulated by section 19.2 of Articles of Association. Section 19.2 of the Articles of Association provides that:

“The Board may appoint any employee of the Broadcaster whom it deems fit subject to the approval/rejection by the Member and subject to conditions that may be imposed by the Member from time to time to act in the positions of Group Chief Executive Officer, Chief Operations Officer or Chief Financial Officer.”

8.4 Delegation of Authority Framework (DAF)

8.4.1 The issue of staff appointments at SABC is regulated by the Delegation of Authority Framework, in particular section G, sub-sections G1 and G3 which include the level of authority required for recommendation and approval of levels 115 and above.

8.4.2 The issue of appointments of new positions at the SABC is regulated by the SABC Delegation of Authority Framework in particular section G, sub-section G1 which includes the level of authority required for recommendation of levels 120 and above.

8.4.3 Section G1 provides as follows:

8.4.3.1 Creation of new positions at SC 120 and above should be recommended by the relevant line manager (SC115 or above in consultation with the GCEO, GE Human Capital and the CFO, and should be approved by Exco.

8.4.3.2 Creation of new positions at SC 125 and below during the year which have not been included in the budget should be recommended by the line manager (SC 120 or above) in consultation with the relevant Human Capital manager for the division and should be approved by the CFO.

"G. HUMAN CAPITAL: APPOINTMENT OF PERSONNEL

No	AREA	AUTHORITY	RECOMMEND	APPROVE
G1	New	Creation of new positions	Relevant line manager	Exco

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	<i>Positions</i>	<i>at SC 120 and above, during the year and which have not been included in the budget</i>	<i>(SC 115 or above) in consultation with GCEO, GE Human Capital and the CFO</i>	
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G. HUMAN CAPITAL: APPOINTMENT OF PERSONNEL

No	AREA	AUTHORITY	RECOMMEND	APPROVE	NOTIFY / MONITOR
G3	<i>Other staff appointments</i>	<i>Employees at SC 120 (excluding temporary staff and independent contractors)</i>	<i>Relevant line manager (SC 115 or above)</i>	<i>Interview panel constituted by the relevant cluster</i>	<i>Exco</i>

8.4.3.3 SABC Policy number HR002/98/A – Acting in Higher Scale (effective 1 April 2011) regulates the issue of appointment of employees at the SABC whom are from time to time, required to act in higher graded positions than the position they occupy as well as the payment they must receive whilst acting in those positions.

8.4.3.4 SABC’s Turnaround Strategy (September 2011) deals with the Broadcasters’ objective to achieve its vision: “to improve cash flow, independent of bail-outs and government guarantees” as a short term priority. The Turnaround Strategy included the financial recovery plan.

8.5 The Public Finance Management Act (PFMA)

8.5.1 The management of the finances of the SABC as a public entity is regulated by the PFMA. The main objective of the PFMA is to regulate the financial management of national or provincial governments and public entities. This is to ensure that they utilize their resources efficiently and effectively.

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8.5.2 The SABC is listed as a major public entity in schedule 2 of the PFMA. As such, it is bound by the provisions of the PFMA. The SABC Board has an obligation to ensure that the SABC adheres to the applicable provisions of the PFMA.

8.5.3 The PFMA put the responsibility mainly on the accounting authority of an entity or government department. An accounting authority is defined as those persons mentioned in section 49 of the Act. Section 49 provides that the Board is the accounting authority for a public entity such as the SABC. The accounting authority must ensure that the entity is managed in accordance with the PFMA.

8.5.4 Section 50 of the PFMA sets out the fiduciary duties of the accounting authority (the SABC Board in this instance). Section 50 provides that:

“(1) The accounting authority for a public entity must-

- (a) Exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;*
- (b) act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;*
- (c) on request, disclose to the executive authority responsible for that public entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature; and*
- (d) seek, within the sphere of influence of the accounting authority, to prevent any prejudice to the financial interests of the state.*

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(2) *A Member of an accounting authority or, if the accounting authority is not a Board or other body, the individual who is the accounting authority, may not:-*

- (a) act in a way that is inconsistent with responsibilities assigned to an accounting authority in terms of this Act; or*
- (b) use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.”*

8.5.5 The general responsibilities of the accounting authority are set out in section 51 of the PFMA. Section 51 (1) provides:-

“(1) an accounting authority for a public entity:-

- (a) must ensure that public entity has and maintains;*
 - (i) effective, efficient and transparent systems of financial and risk management and internal control;*
 - (ii) a system of internal audit under the control and direction of an audit committee complying with regulations and instructions prescribed in terms of sections 76 and 77; and*
 - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective*
- (d) must take effective and appropriate disciplinary steps against any employee of the public entity;-*
 - (i) contravenes or fails to comply with provisions of this Act”*

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8.6 The SABC Board Charter

8.6.1 The issue of corporate governance of the SABC is regulated in the main by the SABC Board Charter. The Charter regulates the parameters within which the Board should operate and it is to ensure the application of the principles of good corporate governance in all dealings by SABC and the Board, in respect and on behalf of the Broadcaster.

8.6.2 The purpose of the Charter is to:

- “3.1.1. set out vision, mission, roles and responsibilities of the Board of the South African Broadcasting Broadcaster SOC Limited;*
- 3.1.2. ensure that all board members are aware of their collective and individual responsibilities*
- 3.1.4. ensure that the principles of corporate governance are in their dealings in respect of, and on behalf of the SABC”*

8.6.3 The role of the Board

8.6.3.1 Chapter 8 of the Board Charter makes the following provisions;

“8.1. The Board constitutes the fundamental base of corporate governance in the SABC. Accordingly, the SABC must be headed and controlled by an effective and efficient Board, comprising of Executive and Non-Executive Directors, of whom the majority must be Non-Executive Directors in order to ensure independence and objectivity in decision-making.

8.2. The Board of the SABC has absolute responsibility for the performance of the entity and is accountable for such performance. As a result, the Board should give strategic direction to the SABC and, in

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concurrence with the Executive Authority and the President, appoint the Group Chief Executive Officer, the Chief Operating Officer and the Chief Financial Officer and ensure that an effective succession plan is in place and adhered to for all Directors and key executives.

- 8.3. The Board must retain full and effective control over the SABC and monitor management in implementing Board decisions, plans and strategies.*
- 8.4. The Board must ensure that the SABC has and maintains a system of Internal Audit under the control and direction of an Audit Committee in compliance with and operating in accordance with regulations and instructions prescribed in terms of the Companies Act (as amended) and sections 76 and 77 of the PMFA (as amended).*
- 8.5. The Board must ensure that the SABC is fully aware of and complies with applicable laws, regulations, government policies and codes of business practice and communicates with its Shareholder and relevant stakeholders openly and promptly with substance prevailing over form.*
- 8.6. All Board Members should ensure that they have unrestricted access to all relevant and timely information of the SABC. Directors are required to act on a fully informed basis, in good faith, with diligence, skill and care and in the best interest of the SABC, whilst taking account of the interests of the Shareholder and other stakeholders, including employees, creditors, customers, suppliers and local communities. To this end, the Board must monitor the process of disclosure and communication and exercise objective judgment on the affairs of the SABC, independent of management. In so doing, each*

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individual member of the Board must keep confidential all confidential matters of the SABC;

8.11. The Board must take effective and appropriate steps to:

8.11.1. Collect all revenue due to the SABC;

8.11.2. Prevent irregular fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the SABC;

8.11.3. Manage available working capital efficiently and economically;

8.11.4. Take effective and appropriate disciplinary steps against any employee of the SABC who:

8.11.4.1. Contravenes or fails to comply with a provision of the PMFA;

8.11.4.2. Commits an act, which undermines the financial management and internal control system of the SABC; or

8.11.4.3. Makes or permits an irregular expenditure or a fruitless and wasteful expenditure.

8.19. The Board must always maintain the highest standard of integrity, responsibility and accountability and ensure that it finds a fair balance between conforming to corporate governance principles and the performance of the SABC.”

8.7 The King III Report

8.7.1 The issue of corporate governance is further regulated by the King III report which deals with the standards of corporate governance within companies. It seeks to provide an accountable and effective corporate governance practices.

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8.7.2 Chapter 1 of the Report makes provision for the role and functions of the Board, and it provides that:

- “1. Companies should be headed by a board that should direct, govern and be in effective control of the company. Every board should have a charter setting out its responsibilities.*
- 2. The Board should collectively provide effective corporate governance that involves managing the relationships between the management of the company, its board, its shareholders and other relevant stakeholders.*
- 3. The Board is the focal point of the corporate governance structure in the company and is the link between the stakeholders and the company. The board’s paramount responsibility is the positive performance of the company in creating value for its shareholders. In doing so, it should appropriately take into account the interests of other stakeholders.*
- 4. The Board should exercise leadership, enterprise, integrity and judgment in directing the company so as to achieve continuing survival and prosperity for the company.*
- 5. An important role of the board is to identify the stakeholders relevant to the business of the company. Although the board is accountable to the company it should take account of the legitimate expectations of all the company’s stakeholders in its decision-making.*
- 6. The Board should ensure that stakeholders are engaged in such a manner as to create and maintain trust and confidence in the company.”*

8.8 The SABC Personnel Regulations (Jan 2000)

8.8.1 In terms of Clause 11 of Part VI of the Personnel Regulations, Disciplinary action may be taken against an employee in the following circumstances:

- (a) If the employee commits an offence as laid down in the SABC Disciplinary Procedure and Code of Conduct;
- (b) if the employee contravenes a provision of Regulation 2;
- (c) If the employee takes an active part in political affairs that the Group Chief Executive Officer believes to be to the detriment of the Corporation. In this regard, “active participation” shall mean, amongst other things, the holding of an official political office or any office with duties requiring exposure of such participation to the public; and
- (d) For any other reason recognized in law as being sufficient grounds for taking disciplinary action.

8.8.2 Clause 12 makes provisions for suspension of an employee.

8.8.2.1 According to the clause “Where, prima facie, an employee has inter alia committed an act of serious misconduct such as assault or theft or fraud, the employee may be suspended pending an investigation and/or the holding of a disciplinary hearing. The employee shall be advised that the Corporation is considering suspending the employee pending an investigation or the holding of a disciplinary hearing and the employee shall be given an opportunity to respond to the proposed suspension before a decision is made to suspend such employee. If the employee is suspended, the employee shall be advised of the suspension in writing. Any such suspension shall be on full pay.”

8.8.3 Clause 9 of Part V of the Personnel Regulations makes provision for termination of service of employees.

- 8.8.3.1. An employee’s services may be terminated at any stage for misconduct, incapacity, poor performance or for operational requirements of the Corporation or for any reason justified in law.
- 8.8.3.2. With the exception of staff appointed on extraordinary terms and conditions of employment, and subject to the provisions of Part VI of these regulations, the services of any employee may be terminated in writing as follows:
- (i) one (1) week’s notice if the employee has been employed for four (4) weeks or less;
 - (ii) Two (2) weeks’ notice if the employee has been employed for more than four (4) weeks but not more than one year;
 - (iii) Four (4) weeks’ notice if the employee has been employed for one (1) year or more.
- 8.8.3.3. The notice period of those employees who commenced employment before 1 January 1987 and whose employment contract stipulates a three (3) month notice, remains unchanged.
- 8.8.3.4. The Group Chief Executive may, in his discretion, agree to a shorter period of notice given by an employee. Where an employee gives a shorter period of notice and the Group Chief Executive accepts the shorter period of notice, the employee shall not be entitled to receive notice pay in lieu of that period of notice which the Group Chief Executive has agreed to waive.
- 8.8.3.5 In terms of Clause 4 of Part IV of the Personnel Regulations, the Group Chief Executive determines the remuneration of employees, subject to the general guidelines that the Board may set. The Corporation may review employees’ salaries without any obligation on its part to increase same.

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8.9. The Public Protector Touchstones: Previous report applicable to corporate governance in state-owned institutions as expected from their Board members

8.9.1. “Not Above Board” Report Number 2 of 2013/14

8.9.1.1 The Corporate governance issue was whether or not Chairperson of the Eastern Gambling Board had the authority to act on its behalf when the matter of the alleged irregular appointment of the CEO was settled at the CCMA. The CEO had allegedly been appointed without meeting the minimum qualifications requirements for the said position, and he had challenged the decision to nullify his appointment.

8.9.1.2 The finding was that the Chairperson acted unlawfully as there was no Board resolution or minutes confirming that the Board had authorised him to act on its behalf at the CCMA as was required under the Gambling Board Act, 1997, and as a result thereof the settlement agreement reached was invalid.

9. ANALYSIS AND CONCLUSION

9.1. On the alleged irregular appointment and salary progression of Mr Motsoeneng as the Acting COO constituting an act of maladministration:

9.1.1. It has been established in the legal framework, that the SABC’s Articles of Association and the Broadcasting Act state that the authority to appoint an acting COO, CFO and GCEO lies with the Minister on the recommendation of the Board. The period of acting appointment of Senior Executives is also regulated by the Articles of Association which is a period not exceeding

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three (3) months. The Board can however authorise a period longer than three (3) months.

- 9.1.2 Contrary to the above, the evidence shows that Mr Motsoeneng's appointment as the Acting COO was initiated by Dr Ngubane and later endorsed by the Board. The Board's powers were further ignored when resolved that he should be appointed for a period not exceeding three months within which the position will be filled with a permanent incumbent only to find that its chairperson countermanded its resolution.
- 9.1.3 The issuing of a letter of appointment letter to Mr Motsoeneng signed by Dr Ngubane on 15 November 2011 appointed Mr Motsoeneng, in the position until the appointment of a permanent incumbent meant an indefinite period of acting in contravention of the Board resolution, which resolution was in line with the provisions of the SABC's Articles of Association.
- 9.1.4 The contravention of the Board resolution by Dr Ngubane invariably means a contravention of the Articles of Association of the SABC. Section 19.2 of the Articles of Association the appointment was supposed to have been initiated by the Board. Also, in accordance with SABC Policy number HR002/98/A – Acting in Higher Scale, the maximum period for acting on higher position should not exceed three months except with the approval of the Board. The fact that Mr Motsoeneng has been acting as the COO for well over 2 years, entails a contravention of the Articles of Association.
- 9.1.4 The payment of an allowance in excess of the threshold stipulated in the SABC's Acting Policy, which provides that employees appointed to acting positions will be paid a fixed acting allowance during their occupation of such positions, constitutes a further disregard of internal policies in the handling of Mr Motsoeneng's appointment and remuneration

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9.2. On whether Mr Motsoeneng fraudulently misrepresented his qualifications to the SABC, including stating he had passed matric when applying for employment:

9.2.1 Fraudulent misrepresentation is both a form of misconduct and a criminal act that can be prosecuted. By his own admission, Mr Motsoeneng did falsify his qualifications, not once but at least twice. The question is, what do we make of that conduct. Clearly the conduct was unethical and in violation of the corporation’s Code of Ethics.

9.3 On the alleged irregular appointment(s) and salary progression of Ms. Sully Motsweni and possibly constituting improper conduct and maladministration:

9.3.1 Having established in the legal and regulatory framework, the SABC’s specific processes and procedures that should have been followed in the appointment of particular with regard to various levels, it is clear that what happened deviated remarkably from what should have happened. The DAF makes no provision for approval for deviation from the said policy by any person.

9.3.2 Ms Motsweni was appointed to three positions, namely General Manager: Compliance and Provincial Operations; Group Executive: Stakeholder Relations and Provinces; Head: Monitoring Compliance and Operation Services. In all three instances the procedure required by section G of DAF to have prior approval of Exco was not complied with.

9.3.3 During the period 1 July 2011 to 1 April 2012, the SABC appointed Ms Motsweni to three (3) different positions without advertising, shortlisting or holding interviews prior to her placement in these positions contrary to the SABC’s DAF.

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9.3.4 Mr. Motsoeneng admitted in a meeting with me on 19 July 2013 to have been responsible for Ms Motsweni’s appointment, but indicated that the salary increases offered to Ms Motsweni were initiated by him, supported by HR and approved by his superior.

9.3.5 The SABC DAF required Exco approval for the creation of this position. Ms Motsweni’s appointment was therefore in contravention of the SABC’s recruitment policies.

9.4 On the alleged irregular appointment of Ms Gugu Duda and such possibly constituting improper conduct and maladministration:

9.4.1 The evidence showing that her CV was brought to Mr Motsoeneng by Mr Phiri in the process initiated after the recruitment and selection process was concluded and a recommendation made to and rejected by Ms Pule as Minister of Communications, clearly establishes that what happened was at odds with the law and corporate policies.

9.4.2 In the legal framework, it is clear that the SABC’s Articles of Association and Broadcasting Act require that the recruitment and appointment of the Executive Directors be conducted in a transparent and competitive manner. It requires the position to be advertised, for suitable candidates to be shortlisted and interviewed before being appointed by the Minister on recommendation by the Board.

9.4.2 After internal and external advertisements were placed by the SABC for the position of the CFO, four (4) candidates were interviewed on 11 January 2012 by seven (7) SABC Board members.

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9.5 On Mr Motsoeneng's alleged purging of senior staff members at the SABC resulting in unnecessary financial losses in CCMA, court and other settlements, which amounts to financial mismanagement and if this constituting maladministration

9.5.1 A comparison between the processes followed in respect of the suspensions and termination of contracts with relevant employees reveals gross deviations from the standards required in respect of human resources policies.

9.5.2 The SABC's Personnel Regulations and Disciplinary Procedure and Code of Conduct stipulate processes and procedures which need to be explored when dealing with employees' appointments and termination of their services.

9.5.2 The SABC had allegedly instituted disciplinary proceedings against several staff members whose services were either suspended or terminated. Most of their disciplinary proceedings went before the CCMA for pre-dismissal arbitration and/or final dispute resolution.

9.5.3 I established that the SABC in a number of such proceedings had been found to have acted improperly and was consequently compelled to reinstate some of the said employees, while others had to be awarded astronomical sums of money for settlement packages.

9.5.4 The suspensions and/or service terminations of staff by the SABC were not in compliance with their Part V and VI of the Personnel Regulations.

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9.6 On the whether there were systemic corporate governance deficiencies at the SABC and the causes thereof

9.6.1 The lack of corporate governance at the SABC is a matter conceded by virtually all key role players, including Ms Pule, the Board and the senior managers that were interviewed.

9.6.2 Virtually all key role players, including Mr Motsoeneng that he SABC management and Board decision-making were characterized by a culture of expediency and quickie gains. It would appear that the high turnover of board members contributed in that Board members wanted quick delivery. It did not help that as shown in the evidence, persons like Mr Motsoeneng, who should have directed the Board otherwise, encouraged expediency at the expense of corporate governance. It would appear that the GCEOs somehow acquiesced in what I can only refer to as a “cowboy” corporate culture.

9.6.3 Examples of gross disregard of law and internal policies include the appointment and salary progression of Mr Motsoeneng, salary progressions of others, suspensions and termination of contracts of staff members and failure to adhere to Board Resolutions.

9.6.4 The question I had to answer in the investigation, was whether acts complained of were against the law, thus constituting maladministration. I address this matter in the specific findings.

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9.7 The allegation that the Department and the former Minister of Communications unduly interfered of the affairs of the SABC and gave unlawful orders to the SABC Board and staff and if the said acts constitute improper conduct and maladministration

9.7.1 The Minister of Communication is required to exercise an oversight function over the administration of the public enterprise entities including the SABC.

9.7.2 The appointment of the CFO was pre-empted by the former Minister of Communications’ rejection of the recommendation for appointment which was based on her interest to appoint a candidate that was handpicked by her in consultation with Mr Mngqibisa.

9.7.3 The HR records incontrovertibly show that Ms Duda’s appointment followed an extraordinary process, involving gross deviation from corporate processes and established recruitment and selection norms. I have also noted the strong indication that the recruitment and appointment of Ms Duda was preceded by lobbying and discussions outside the recruitment process. However, due to lack of documentary evidence, I have decided not to base my decision on the information in question.

9.7.4 The official records clearly show that Ms Duda did not apply for the position of CFO in the normal course as required by the SABC recruitment policy. Instead, her CV was sent to the Department of Communications, whose Mr Phiri then ensured that it reached the SABC, through Mr Motsoeneng.

9.7.5 According to the SABC Articles of Association and the Broadcasting Act, applicants are considered upon application, shortlisting and interviews. The Board then recommends the appointment of a suitable candidate to the former Minister for approval.

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9.7.6 Ms Duda’s appointment was not fair and competitive. Despite her not being the best candidate according to the scoring of the panel, the former Minister nonetheless proceeded to appoint her. According to the overall scoring, Ms Duda was the second last candidate.

10. FINDINGS

My findings on the allegations and issues investigated are the following:

10.1. Regarding the alleged irregular appointment and salary progression of Mr. Hlaudi Motsoeneng, I find that:

10.1.1. The allegation that the appointment of Mr Motsoeneng as the Acting COO was irregular is substantiated. By doing allowing Mr Motsoeneng to act without requisite qualifications and for a period in excess of three (3) months without the requisite Board resolution and exceeding the capped salary allowance, the SABC Board acted in violation of the SABC’s 19.2 Articles of Association which deals with appointments, SABC Policy No HR002/98/A-Acting in Higher Scale and Chapter 5 of the Broadcasting Act, which regulates acting appointments and this constitute improper conduct and maladministration.

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10.1.2. The former SABC Board’s Chairperson, Dr Ben Ngubane further acted irregularly when he ordered that the qualification requirements for the appointment to the position of COO be altered to remove academic qualifications as previously advertised, which was clearly aimed at tailor making the advert to suit Mr Motsoeneng’s circumstances. This constitutes improper conduct maladministration and abuse or unjustifiable exercise of power.

10.1.3. The allegation that Mr. Motsoeneng’s salary progression was irregular is also substantiated in that Mr Motsoeneng received salary appraisals three times in one year as, hiking his salary as Group Executive Manager: Stakeholder Relations from R 1.5 million to R2.4 million. His salary progression as the Acting Chief Operations Officer concomitantly rose irregularly from R122 961 to R211 172 (63% increase) in 12 months and was in violation of Part IV of SABC’s Personnel Regulations and SABC Policy No HR002/98/A-Acting in Higher Scale and this constitute improper conduct and maladministration.

10.1.4. While I have accepted the argument presented by Mr Motsoeneng, the current GCEO and the chairperson of the current Board that salary increases at the SABC are negotiated without any performance contracts or notch increase parameters, I am unable to rule out bad faith in Mr Motsoeneng in the circumstances that allowed 3 salary increases in one fiscal year resulting in Mr Motsoeneng’s salary being almost doubled. My discomfort with the whole situation is exacerbated by the fact that all were triggered by him presenting his salary increase requests to new incumbents who would have legitimately relied on him for guidance on compliance with corporate prescripts and ethics. It cannot be said that he did not abuse power and/or his position to unduly benefit himself although on paper the decisions were made by other people. The approval of Mr

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Motsoeneng’s salary increments by the GCEO’s and the Chairperson of the Board at the time, Dr Ben Ngubane was, accordingly, irregular as it was in violation of Part IV of SABC’s Personnel Regulations and SABC Policy No HR002/98/A-Acting in Higher Scale and constitutes improper conduct, abuse of power and maladministration.

10.1.5. The SABC Human Resources Department failed to keep proper records regarding Mr Motsoeneng’s documentation and other Human resources matters dealt with in this report and this constitutes improper conduct and maladministration.

10.1.6. The SABC Board’s failure to exercise its fiduciary obligations in the appointment and appropriate remuneration for the Acting Chief Operations Officer for the SABC was improper and constitutes maladministration.

10.2. Regarding Mr Motsoeneng’s alleged fraudulent misrepresentation of his qualifications to the SABC when applying for employment including stating that he had passed matric, I find that:

10.2.1. The allegation that Mr Motsoeneng committed fraud by stating in his application form that he had completed matric from Metsimantsho High School is substantiated. By his own admission during his interview, Mr Motsoeneng provided stated in his application form that he had passed standard 10 (matric), filled in made-up symbols in the same application form and promised to supply a matric certificate to confirm his qualifications. He did so knowing that he had not completed matric and did not have the promised certificate. His blame of Mrs Swanepoel and the SABC management that stating that they knew he had not passed matric, is disconcerting. If anything, this defence exacerbates his situation as it

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shows lack of remorse and ethical conduct. Mr Motsoeneng’s conduct regarding his matric results has been unethical continuously since 1995. The conduct is improper and constitutes a dishonest act as envisaged in 6(4)(a)(ii) and (iii) of the Public Protector Act.

10.2.2. The allegation that Mr Motsoeneng was appointed to several posts at the SABC despite having no qualifications as required for such posts, including a matric certificate, is substantiated and this constitutes improper conduct and maladministration.

10.2.3. Mr Motsoeneng would have never been appointed in 1995 had he not lied about his qualifications. He repeated the matric misrepresentation in 2003 when he applied for the post of Executive Producer: Current Affairs to which he, accordingly should never have been appointed.

10.2.4. I am also concerned the Mr Motsoeneng’s employment file disappeared amid his denial of ever falsifying his qualification and that at one point he used the absence of such information to support his contention that there was no evidence of this alleged fraudulent misrepresentation. The circumstantial evidence points to a motive on his part although incontrovertible evidence to allow a definite conclusion that he indeed cause the disappearance of his employment records, particularly his application forms and CV could not be found.

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10.2.5. The SABC management and Human Resources unit failed to exercise the necessary due diligence or risk management to avoid the misrepresentation and/or to act decisively when the misrepresentation was discovered. He also failed to ensure information as required by law. This constitutes improper conduct and maladministration.

10.3. Regarding the alleged irregular appointment(s) and salary progression of Ms Sully Motsweni, I find that:

10.3.1. The allegation of irregularities in the appointment of Ms Sully Motsweni to the position of General Manager: Compliance and Operation and Stakeholder Relations and Provinces on 30 June 2011 to 31 January 2012; Head: Compliance and Operation on 01 February 2012 to date; Acting Group Executive: Risk and Governance on June 2012 to date and subsequent salary increments taking her from R960 500.00 per annum to R1.5 million per annum are substantiated. The HR records show that Ms Sully Motsweni's appointments and salary progressions were done without following proper procedures and was in violation of sub-section G3 of DAF and Part IV of the Personnel Regulations was irregular and therefore this constitutes abuse of power and maladministration.

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10.4. Regarding the alleged irregular appointment of Ms Gugu Duda as the Chief Financial Officer (CFO), I find that:

10.4.1. The allegation regarding Ms Gugu Duda being irregularly appointed to the position of CFO, through the interference of the Department of Communications, is substantiated.

10.4.2. Ms Duda, who was appointed to the position of CFO during February 2012, was not an applicant for the position, which was advertised. Interviews were conducted with shortlisted applicants and a recommendation was made by the SABC Board to the Minister of Communications, Ms Pule as the shareholder. Mr Phiri, from the Department of Communications, and Mr Motsoeneng, from the SABC orchestrated the appointment of Ms Duda long after the recruitment and selection process had been closed. Ms Duda was interviewed on 07 February 2012, without having applied for said post. The interview occurred after the submission of the Board's recommendation, of the appointment of a legitimately selected candidate, Mr Daka, to Ms Pule on 31 January 2012, which, recommendation was rejected by her.

10.4.3. The conduct of the SABC management, particularly Mr Motsoeneng and the Board, in the appointment of Ms Duda, as the CFO of the SABC, was in violation of the provisions of section 19.1.1 of the Articles of Association and Broadcasting Act and accordingly unlawful. The appointment was grossly irregular and actions involved constitute improper conduct, maladministration and abuse of power.

10.4.4. Although I could not find conclusive evidence that Ms Pule personally ordered that Ms Duda's CV be handed over to the SABC and that the

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Board interview her against the law as alleged, there is sufficient evidence that suggests an invisible hand from her direction and that of Mr Mngqibisa, to which we can legitimately attribute this gross irregularity. In any event, if we accept that Ms Pule was not involved as per her denial, it is unclear why she would have speedily approved the appointment as she did, when the irregularities were obvious. The conduct of Ms Pule as Minister of communications was accordingly improper and constitutes maladministration.

10.5. Regarding Mr Motsoeneng’s alleged purging of senior staff members of the SABC resulting in unnecessary financial losses in CCMA, court and other settlements, which amounts to financial mismanagement, I find that:

10.5.1. The allegation that Mr Motsoeneng purged senior staff members leading to the avoidable loss of millions of Rand towards salaries in respect of unnecessary and settlements for irregular terminations of contracts is justified in the circumstances SABC human resources records of the circumstances of termination and Mr Motsoeneng’s own account show that he was involved in most of these terminations of abuse of power and systemic governance failure involving irregular termination of employment of several senior employees of the SABC and that the SABC lost millions of Rand due to procedural and substantive injustices confirmed in findings of the CCMA and the courts. Some of these matters were settled out of court with the SABC still paying enormous amounts in settlements. The fact that the evidence shows Mr Motsoeneng’s involvement in most of this matters and the history of conflict between him and the majority of the employees and the former employees makes it difficult to rule out the allegation of

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purging. Even if purging is discounted, recklessness appears to have been endemic supporting the narrative on the culture of expediency.

10.5.2. SABC records show that Mr Motsoeneng played the following role in the dismissals:

Direct involvement

10.5.2.1. Mr Motsoeneng directly initiated the termination of the employment of Messrs Bernard Koma, Hosia Jiyane, Sello Thulo, Montlennyane Diphoko and Mesd Mapule Mbalathi and Ntswoaki Ramaphosa who participated in Mr Motsoeneng’s disciplinary hearing held in Bloemfontein.

Advice to the board

10.5.2.2. Mr Motsoeneng advised the Board not to renew the employment contracts of Mesd Ntombela-Nzimande and Mampane.

History of conflict

10.5.2.3. Mr Motsoeneng had a dispute with Ms Duda before her suspension as well as an altercation with Ntombela-Nzimande, who later alleged with the corroboration of others that Mr Motsoeneng influenced the premature termination of her employment contract.

10.5.2.4. Although one or more witnesses pointed a finger at Mr Motsoeneng regarding the termination of the employment of Dr Saul Pelle, Ms Ntsiepe

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Mosoetsa, Ms Cecilia Phillips, Ms Sundi Sishuba, Ms Lorraine Francois, Ms Nompilo Dlamini, no credible evidence was found to back the allegation.

- 10.5.2.5. Mr Motsoeneng’s actions in respect of the abovementioned suspensions and terminations, where evidence clearly shows his irregular involvement, constitutes improper conduct, abuse of power and maladministration.

The results of many of the individuals in questions support the allegation that there was maladministration in the processes involved leading to avoidable financial losses as can be seen below:

- 10.5.2.6. Mr Bernard Koma was the lead witness in his disciplinary hearing received a 12 months’ settlement award at the CCMA with his attorneys on condition that he withdrew his civil case against the SABC after spurious charges had been levelled against him;
- 10.5.2.7. Mr Montlanyane Diphoko who had testified against Mr Motsoeneng in his disciplinary hearing, was reinstated after CCMA ruling, almost three years after SABC had terminated his contract;
- 10.5.2.8. Mr Hosia Jiyane, who had testified against Mr Motsoeneng in his disciplinary hearing, endured a disciplinary process that dragged for two years before he won the case against the SABC. However, Mr Motsoeneng opposed the finding of not guilty;

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10.5.2.9. Dr Saul Pelle won his case at the Labour court for reinstatement but SABC refused to reinstate him and offered him 12 months' settlement payout;

10.5.2.10. Ms Ntsiepe Masoetsa was reinstated after her labour dispute case against the SABC dragged for three years in the Labour court ;

10.5.2.11. Ms Cecilia Phillips was suspended for four months without charges being brought against her by the SABC;

10.5.2.12. Mr Sello Thulo, who had testified against Mr Motsoeneng in his disciplinary hearing, was dismissed, allegedly after Mr Motsoeneng said '...get that man out of the system';

10.5.2.13. Mr Thabiso Lesala received a substantial settlement award offered to him through his attorney at the CCMA and he was asked to withdraw his case as a condition of the settlement;

10.5.2.14. Ms Charlotte Mampane's employment contract was terminated prematurely in March 2012 instead of October 2013 for being redundant. A settlement award was given to her for the remainder of her contract;

10.5.2.15. Ms Phumelele Ntombela-Nzimande's employment contract was terminated prematurely, and she was awarded settlement payment for the remainder of 13 months of her contract;

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10.5.2.16. Ms Gugu Duda was suspended indefinitely since September 2012 to date without expeditious finalisation of the disciplinary proceedings against her;

10.5.2.17. Ms Sundi Sishuba has been suspended for two and half years, so far no charges have been brought against her;

10.5.2.18. Ms Loraine Francois was suspended for months but won her case at the CCMA and was reinstated to her post; and

10.5.2.19. Ms Nompilo Dlamini won her case in the Labour court, the SABC appealed the ruling to the High court, the matter is due to be heard in April 2014.

10.6. Whether Mr Motsoeneng irregularly increased the salaries of various staff members, including a shop steward, resulting in a salary bill increase in excess of R29 million and if this amounted to financial mismanagement and accordingly improper conduct and maladministration

10.6.1. The allegation that Mr Motsoeneng irregularly increased the salaries of various staff members is substantiated.

10.6.2. Mr Motsoeneng unilaterally increased salaries of, Ms Sully Motsweni, Ms Thobekile Khumalo, a shop steward and certain freelancers without following Part IV of the SABC Personnel Regulations.

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10.6.3. These irregular and rapid salary progressions contributed to the National Broadcaster’s unprecedented salary bill escalation by R29 million.

10.6.4. Had the SABC Board stopped him, Mr Motsoeneng’s would have also recklessly proceeded to convert contract staff members without proper financial planning in compliance with Human Resources Policies.

10.6.5. Mr Motsoeneng’s conduct was irregular and amounts to improper conduct and maladministration.

10.7. Regarding the alleged systemic corporate governance failures at the SABC and the causes thereof, I find that:

10.7.1. All the above findings are symptomatic of pathological corporate governance deficiencies at the SABC, including failure by the SABC Board to provide strategic oversight to the National Broadcaster as provided for in the SABC Board Charter and King III Report.

10.7.2. The Executive Directors (principally the GCEO, COO and CFO) failed to provide the necessary support, information and guidance to help the Board discharge its fiduciary responsibilities effectively and that, by his own admission Mr Motsoeneng caused the Board to make irregular and unlawful decisions.

10.7.3. The Board was dysfunctional and on its watch, allowed Dr Ngubane to effectively perform the function of an Executive Chairperson by authorizing numerous salary increments for Mr Motsoeneng.

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10.7.4. Mr Motsoeneng has been allowed by successive Boards to operate above the law, undermining the GCEO among others, and causing the staff, particularly in the Human Resources and Financial Departments to engage in unlawful conduct.

10.8. Regarding the allegation that the Department and Minister of Communications unduly interfered in the affairs of the SABC, giving unlawful orders to the SABC Board and staff, I find that:

10.8.1. The allegation that the Department and Minister of Communications unduly interfered in the affairs of the SABC, is substantiated.

10.8.2. Former Minister Pule acted improperly in the handling of her role as the Shareholder Representative in the SABC and Executing Authority.

10.8.3. Amongst her most glaring transgressions was the manner in which she rejected the recommendation made by the Board for the appointment of the CFO and the orchestrated inclusion of Ms Duda’s CV. Her withdrawal of certain power from the Board was also not in line with the principles of Corporate Governance.

10.8.4. Her conduct accordingly constitutes a violation of the Executive Ethics Code and amounts to an abuse of power.

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10.8.5. Mr Phiri the Acting DDG of Department of Communication, acted unlawfully in submitting Ms Duda’s CV to Mr Motsoeneng for her inclusion in the subsequent interview by the Board after the selection process had been concluded and recommendations already submitted to the Minister for approval of the CFO’s appointment and his conduct in this regard was improper and constitutes maladministration.

10.8.6. In its unlawful interference, the department of Communications was aided and abated by Mr Motsoeneng who irregularly accepted receiving Ms Duda’s CV from Mr Phiri and arranged that she be interviewed as a single candidate after Ms Pule had declined the recommendation by the Board and ordered the process to start anew. The conduct of Mr Phiri, Mr Motsoeneng, the Human Resources Unit and that of the Board was unlawful and had a corrupting effect on the SABC Human Resources’ practices. The conduct of the parties involved was grossly improper and constitutes maladministration.

11. REMEDIAL ACTION

Appropriate remedial action to be taken as envisaged in section 182(1) (c) of the Constitution, is the following:

11.1. Parliament Joint Committee on Ethics and Members’ interests

11.1.1. To take note of the findings against the former Minister of Communications, Ms Pule in respect of her conduct with regard to the irregular appointment of Ms Duda as the SABC’s CFO and her improper conduct relating to the issuing of unlawful orders to the SABC Board and staff.

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11.2. The current Minister of the Department of Communications: Hon. Yunus Carrim

11.2.1. To institute disciplinary proceedings against Mr Themba Phiri in respect of his conduct with regard to his role in the irregular appointment of Ms Duda as the SABC CFO.

11.2.2. To take urgent steps to fill the long outstanding vacant position of the Chief Operations Officer with a suitably qualified permanent incumbent within 90 days of this report and to establish why GCEO's cannot function at the SABC and leave prematurely, causing operational and financial strains.

11.2.3. To define the role and authority of the COO in relation to the GCEO and ensure that overlaps in authority are identified and eliminated.

11.2.4. To expedite finalization of all pending disciplinary proceedings against the suspended CFO, Ms Duda within 60 days of this report.

11.3. The SABC Board to ensure that:

11.3.1. All monies are recovered which were irregularly spent through unlawful and improper actions from the appropriate persons.

11.3.2. Appropriate disciplinary action is taken against the following:

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- 11.3.2.1. Mr Motsoeneng for his dishonesty relating to the misrepresentation of his qualifications, abuse of power and improper conduct in the appointments and salary increments of Ms Sully Motsweni, and for his role in the purging of senior staff members resulting in numerous labour disputes and settlement awards against the SABC;
- 11.3.2.2. Ms Lulama Mokhobo, the outgoing GCEO for her improper conduct in the approval of the salary increment of Mr Motsoeneng;
- 11.3.2.3. Any fruitless and wasteful expenditure that had been incurred as a result of irregular salary increments to Mr Motsoeneng, Ms Motsweni, Ms Khumalo, a shop steward and the freelancers, is recovered from the appropriate persons;
- 11.3.2.4. In future, there is strict and collective responsibility by the SABC Board members through working as a collective and not against each other, in compliance with the relevant legislation, policies and prescripts that govern the National Broadcaster;
- 11.3.2.5. A public apology is made to Ms P Ntombela-Nzimande, Ms C Mampane and all its former employees who had suffered prejudice due to the SABC management and Board's maladministration involving failure to handle the administration of its affairs in accordance with the laws, corporate policies and principles of corporate governance.

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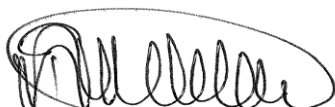
11.3.2.6. All their HR processes pertaining to creation of new posts, appointments and salary scales and progressions are reviewed to avoid a recurrence of what happened

11.3.2.7. The roles and relationship of the SABC Board and COO are defined, particular in relation to the role of a relationship with the GCEO to avoid the paralysis and premature exist of GCEO's while adhering to established principles of corporate governance.

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12. MONITORING

- 12.1. The Minister of Communications is to submit an implementation plan indicating how the remedial action referred to in paragraph 11.1.2 above will be implemented, within 30 days from the date of my final report.
- 12.2. The SABC Board is to submit an implementation plan indicating how the remedial action referred to in paragraph 11.1.3 above will be implemented, within 30 days from the date of my final report.
- 12.3. All actions requested in this report as part of the remedial action I have taken in terms of my powers under section 182(1)(c) of the Constitution to be finalized within six months and a final report presented to my office by 16 August 2014.



**ADV THULI N. MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA**

Date: 17 February 2014

Assisted by:

Adv. Nkebe Kanyane: Chief Investigator, Good Governance and Integrity (GGI)

Mr Rodney Mataboge: Lead Investigator and Senior Investigator, GGI

Mr Thembinkosi Sithole: Investigator, GGI