



# **EXHIBIT CC 10**

**AFFIDAVIT & ANNEXURES**

**OF**

**JAN LEKGOA  
MOTHIBI**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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**IN THE COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE  
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR  
INCLUDING ORGANS OF STATE ("THE COMMISSION")**


**SWORN AFFIDAVIT**

I, the undersigned,

**Jan Lekgoa Mothibi**

hereby declare under oath as follows:

1. I am an adult male South African citizen and appointed by the President of South Africa as Head of the Special Investigating Unit in terms of s(1)(a) of the Special Investigating Units and Special Tribunals Act 74 of 1996.
2. The content of this affidavit is true and correct and falls within my own personal knowledge, unless the contrary clearly appears from the context or is otherwise stated.
3. I have agreed to provide this affidavit as well as evidence to the Commission freely and voluntarily.
4. I have been approached by investigators associated with the Commission of Inquiry into Allegations of State Capture, Fraud and Corruption in the Public Sector and certain Organs of State ("the Commission") and have been requested to provide an affidavit which provides context to the attached three (3) reports which relate to the Special Investigating Unit ("SIU") investigations into the affairs of the South African Broadcasting Corporation ("SABC") during the period 2017 to 2018. Copies of the reports are annexed hereto marked A, B and C respectively.
5. Annexure A is an interim report and relates to investigation conducted in respect of the procurement of, or contracting for goods, works or services by or on behalf of the SABC from Mafoko Security Patrols (Pty)(Ltd).
6. Annexure B is a final report and relates to the investigation conducted in respect of the procurement of, or contracting for goods, works or services by or on behalf of the SABC from Mafoko Security Patrols (Pty)(Ltd).
7. Annexure C is an interim report and relates to phase 1 investigations conducted into certain affairs of the SABC under Procurement No. R29 of 2017.



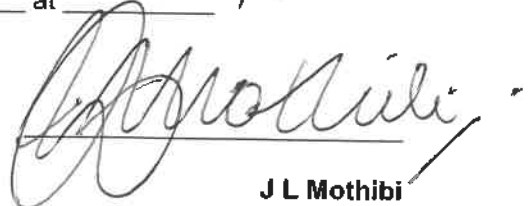
8. The investigations were undertaken under Proclamations R29 of 2017 and R19 of 2018 respectively.
9. The annexures A, B and C hereto were submitted to the President of the Republic of South Africa. I confirm that the reports were issued under my hand and the content is a true reflection of the evidence obtained during the investigations as well as the findings made by the Special Investigating Unit.
10. The Special Investigating Unit will shortly finalise its investigation into the affairs of SABC and thereafter submit its final report to the President in terms of s4(1)(g) of the Special Investigating Units and Special Tribunals Act 74 of 1996.
11. This is all I wish to declare and accordingly reserve my rights to provide further documents to the Commission as and when they may become available or come into my possession and insofar as they may be relevant to the investigation.

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the oath binding on my conscience.

Signed at Pretoria on 29TH JULY 2019 at 16H04

  
J L Mothibi

I hereby certify that the deponent has acknowledged that he knows and understand the contents of this affidavit, which was sworn to before me and signed in my presence at Pretoria on this 29 day of July at Pretoria and that the provisions of the Regulations contained in Government Gazette No. R6148 of 19 November 1977, as amended, were complied with.

  
Lt-Col  
C.S.S. /

#### COMMISSIONER OF OATHS

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ANTI-CORRUPTION TASK TEAM
PRIVAATSAK / PRIVATE BAG X 1800
2019 -07- 29
SILVERTON 0127
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION





**POISED TO STRIKE**  
*against corruption*

## **Special Investigating Unit**

Interim Report to the

President of the Republic of South Africa

His Excellency, President MC Ramaphosa

on

**The investigation conducted in respect of the procurement of, or  
contracting for goods, works or services by or on behalf of the SABC  
from Mafoko Security Patrols (Pty) Ltd.**

Proclamation No. R29 of 2017

amended by

Proclamation No. R19 of 2018

November 2018

**DISTRIBUTION LIST**

Copies to	Addressees:
Copy 1 of 2	Mr Matamela Cyril Ramaphosa: The Honourable President of the Republic of South Africa
Copy 2 of 2	Advocate Jan Lekhoa Mothibi: Head of the Special Investigating Unit

SOE\_SABC\_R192018\_112018\_Interim\_46567



## ABBREVIATIONS

### LIST OF ABBREVIATIONS

Abbreviation	Description
ACOO	Acting Chief Operating Officer
ACFO	Acting Chief Financial Officer
AGCEO	Acting Group CEO
AGSA	Auditor- General of South Africa
BAC	Bid Adjudication Committee
BBBEE	Broad Base Black Economic Empowerment
BEC	Bid Evaluation Committee
BSC	Bid Specification Committee
FIPT	Finance, Investment, Procurement and Technology Committee
GE	Group Executive
Mabotwane	Mabotwane Security (Pty) Ltd
Mafoko	Mafoko Security Patrols (Pty) Ltd
Mjayeli	Mjayeli Security (Pty) Ltd
National Treasury Instruction dated 31 May 2011	National Treasury Instruction Note on enhancing compliance monitoring and improving transparency and accountability in Supply Chain Management dated 31 May 2011
National Treasury Practice Note 8 of 2007/2008	Practice Note 8 of 2007/2008: Threshold values for the procurement of goods, works and services by means of petty cash, verbal or written price quotations or competitive bids
National Treasury Practice Note 2 of 2005	Practice Note SCM 2 of 2005: Threshold values for the procurement of goods and services by means of petty cash, verbal or written price quotations and competitive bids
NPA	National Prosecuting Authority
NT	National Treasury





LIST OF ABBREVIATIONS	
<b>PACOCOA</b>	Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004
<b>PFMA</b>	Public Finance Management Act, Act No. 1 of 1999
<b>PPPFA</b>	Preferential Procurement Policy Framework Act, Act No. 5 of 2000
<b>PSA</b>	Public Service Act, Act No. 103 of 1994
<b>RFP</b>	Request for Proposal
<b>SABC</b>	South African Broad Casting Corporation
<b>SABC Board</b>	The Board of the SABC referred to in section 12 of the Broadcasting Act, Act No. 4 of 1999
<b>SABC Interim Board</b>	The Board of the SABC referred to in section 15A (3a) of the Broadcasting Act, Act No.4 of 1999
<b>SABC Group Executive Committee</b>	EXCO
<b>SCM Procedures Manual dated 1 September 2016</b>	SABC Supply Chain Manual Procedures Manual dated 1 September 2016
<b>SCM</b>	Supply Chain Management process
<b>SIU</b>	The Special Investigating Unit established by Proclamation R118 of 31 July 2001 under section 2(1) of the SIU Act
<b>SIU Act</b>	Special Investigating Units and Special Tribunals Act, Act No. 74 of 1996
<b>The Constitution</b>	The Constitution of the Republic of South Africa, 1996
<b>Treasury Regulations dated March 2005</b>	Treasury Regulations for departments, trading entities, constitutional institutions and public entities, issued in terms of the Public Finance Management Act dated March 2005
<b>TVOB</b>	Television Outside Broadcast
<b>VAT Act</b>	Value-Added Tax Act, Act No. 89 of 1991

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## EXECUTIVE SUMMARY

The Special Investigating Unit ("SIU") was mandated in terms of Proclamation No. R29 of 2017, as published in the Government Gazette on 1 September 2017, and amended by Proclamation No. R19 of 2018, published on 6 July 2018 to include the investigation of the award of the South African Broadcasting Corporation ("SABC") Security Contract.

This is an Interim Report on the SABC Security Contract investigation conducted in respect of Proclamation No. R19 of 2018. A Final Report will be submitted when the investigation has been concluded. This report summarises the findings, recommendations and outcomes of the SIU's investigation into the procurement of, or contracting for goods, works or services by or on behalf of the SABC from Mafoko Security Patrols (Pty) Ltd ("Mafoko"). The detailed findings are discussed in more detail under paragraph 5 ("Summary of Findings and Outcomes") below.

In summary, the SIU found evidence that indicated that there were irregularities in the procurement of the services from and subsequent awarding of the contract to Mafoko by the SABC Interim Board to the value of R194 350 678.15. In essence the SIU's investigation found that the Bid Evaluation Committee ("BEC") was irregularly constituted, there was financial misconduct and contravention of sections 83(1)(b) and 86(3) of the Public Finance and Management Act ("PFMA") on the part of the Interim Board, as an accounting authority, for failing to act in the best interest of the SABC. There was also a contravention of sections 81(1)(b), 38 and 45 of the PFMA in respect of the officials of the SABC who were part of the process when the Interim Board made a decision to award the contract to Mafoko.

As a result of these findings, the SIU will approach the High Court to have the contract between the SABC and Mafoko set aside. The SIU will also request the court to make a just and equitable order in an effort to recover monies that have been lost due to an irregular contract.

Details of the outcomes of the individual matters investigated include the following:

Criminal referral: The SIU is preparing the criminal referrals in terms of section 86(2) of the PFMA against the members of the SABC Interim Board, as per the findings of our investigation which revealed irregularities in the contract awarded to Mafoko.

Civil recovery: The SIU has briefed Counsel to bring an application to be joined in the current proceedings between Mjayeli Security (Pty) Ltd ("Mjayeli" the bidder that was not awarded the contract) and the SABC. The joinder application was lodged on the 29 November 2018 and the SIU anticipates that the contract between the SABC and Mafoko, amounting to R194 350 678.15, will be set aside on the grounds of irregularity.

Disciplinary referral: The SIU is preparing disciplinary referrals against the executive directors / officials who were part of the process when the SABC Interim Board' decision was made to appoint Mafoko as a preferred service provider, for contravening sections 81(1)(b), 38 and 45 of the PFMA and SABC policies for failing to act in the best interest of the SABC.

Other referrals: Directors' declaration of delinquency or placement on probation: The SIU intends bringing an application in terms of section 162 of the Companies Act 71 of 2008 (**"the Companies Act"**), to declare the SABC Interim Board members delinquent or to place them under probation, once the civil proceedings are finalised, due to their failure to act in the best interest of the SABC.



## **1. SUMMARY OF OUTCOMES**

### **1.1 Evidence referred for the institution or defence of civil proceedings**

The SIU has lodged an application to join in the current proceedings between Mjayeli and the SABC and will request the court to set aside the contract between the SABC and Mafoko. The value of the contract is R185 519 425.67 plus R8 831 252.54 in lieu of the delay in the adjudication of the tender. The total value of the contract is R194 350 678.15. As part of the court proceedings, the SIU will request a just and equitable order seeking to recover monies lost by the SABC.

### **1.2 Referrals to the relevant Prosecuting Authority**

The SIU is preparing a referral to the National Prosecuting Authority ("NPA") in terms of section 86(2) of the PFMA, for criminal action against the former accounting authority(ies) who in this matter are the directors of the SABC Interim Board, due to financial misconduct committed by its members.

### **1.3 Referrals made for disciplinary, executive and/or administrative action**

The SIU will refer the matter to the current chairperson of the SABC Board regarding the SIU's intention to bring an application under Section 162 of the Companies Act, to declare the former directors of the SABC Interim Board delinquent directors and or to have them placed under an order of probation for failing to act in the best interests of the SABC. However, the SIU will only embark on this application jointly with the SABC when the outcome of the current litigation between Mjayeli and the SABC is finalised. The SIU is currently not a party to the proceedings and a joinder application has been launched for the SIU to intervene as a party in the proceedings. Once the SIU is admitted as the fifth respondents in the proceedings, then it will seek the review and setting aside of the contract and the remittance of the tender for reconsideration by the SABC. It will be premature to bring an application of delinquency until the litigation against the SABC has been finalised, as this will be a factor to be considered in the intended delinquency declaratory application.

The SIU is preparing disciplinary referrals against the executive directors / officials who were part of the process when the SABC Interim Board's decision was made to appoint Mafoko as a

Two handwritten signatures in black ink are located at the bottom right of the page. The first signature is a stylized, cursive 'S' followed by a flourish. The second signature is a more complex, cursive signature, possibly reading 'AM' or similar, followed by a flourish.

preferred service provider, for contravening 81(1)(b), 38 and 45 of the PFMA and thus failing to act in the best interest of the SABC.

## 2. INTRODUCTION

### 2.1 Background

On 1 March 2018, the Head of the SIU was requested by the chairperson of the Board, Mr BE Makhathini, to investigate the award of the tender for the provision of physical security services at Auckland Park and Television Outside Broadcast ("TVOB") to Mafoko.

The matter did not fall within the terms of reference of Proclamation No. R29 of 1 September 2017 which mandated the SIU to investigate certain affairs of the SABC.

The SIU entered in a Secondment Agreement on the 29 March 2018 with the SABC and also applied for an amendment to Proclamation No. R29 of 2017 which was published as Proclamation No. R19 of 2018 on 6 July 2018 and authorized the SIU to investigate the said contract for the provision of security service.

The investigation into the allegations of corruption is underway and ongoing.

### 2.2 The SIU's Mandate and scope of investigation

In terms of Presidential Proclamation R29 of 2017, as published in the Government Gazette on 1 September 2017, read together with the relevant provisions of the SIU Act, the SIU was (for the purposes of this investigation) mandated to investigate:

*"any alleged—*

- (a) *serious maladministration in connection with the affairs of the SABC;*
- (b) *improper or unlawful conduct by board members, officials or employees of the SABC (hereinafter referred to as "the personnel of the SABC");*
- (c) *unlawful appropriation or expenditure of public money or property;*
- (d) *unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;*
- (e) *intentional or negligent loss of public money or damage to public property;*



- (f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the SABC; or
- (g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

which took place between 1 November 2011 and the date of publication of this Proclamation or which took place prior to 1 November 2011 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the SABC or the State, in relation to the said matters in the Schedule."

The nature of "the matters mentioned in the Schedule" (which are reported on herein), is apparent from the wording of the Schedule, which reads as follows:

"1. The procurement of, or contracting for goods, works or services by or on behalf of the SABC from Lomavision (Pty) Ltd, Vision View Productions CC, SekelaXabiso CA Incorporated, Lezaf Consulting CC, Gekkonomix (Pty) Ltd (trading as Infonomix), Asante Sana (Pty) Ltd, Foxton Communicating (Pty) Ltd and Mott MacDonald (Pty) Ltd and payments made in respect thereof, in a manner that was—

- (a) not fair, competitive, transparent, equitable or cost-effective;
- (b) contrary to applicable—
  - (i) legislation;
  - (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or
  - (iii) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the SABC,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the SABC or the State.

2. Maladministration in the affairs of the SABC and any losses or prejudice suffered by the SABC or the State as a result of such maladministration in relation to—



- (a) *the mismanagement of the finances, rights, assets or liabilities of the SABC;*
- (b) *the selling of assets or rights which were owned by the SABC which was not to the advantage of the SABC;*
- (c) *business transactions that were concluded by or on behalf of the SABC and which were not viable or to the advantage of the SABC;*
- (d) *the irregular appointment and promotion of staff; or*
- (e) *the payment of salaries, increases, bonuses and other forms of remuneration that were not due, owing or payable or were made in a manner that was contrary to applicable—*
  - (i) *legislation; or*
  - (ii) *manuals, policies, procedures, directives, instructions or practices of or applicable to the SABC*

*including the causes of such maladministration and any related unauthorised, irregular or fruitless and wasteful expenditure suffered by the SABC or the State.*

3. *Any undisclosed or unauthorised interest that certain members of the personnel of the SABC may have had with regard to —*
- (a) *contractors, suppliers or service providers who bid for work or did business with the SABC; or*
  - (b) *contracts awarded by or on behalf of the SABC."*

In terms of Presidential Proclamation No. R19 of 2018 on 6 July 2018, an amendment of Proclamation No. R29 of 2017, and authorized the SIU to investigate the matter as published in Government Gazette number 41754,

*"Under section 2(4) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996), I hereby amend Proclamation No. R. 29 of 2017, by—*

- (a) *the further extension of the period referred to in the fourth paragraph of the Proclamation to the date of publication of this Proclamation; and*
- (b) *the substitution for paragraph 1 of the Schedule to the Proclamation of the following paragraph:*

*"1. The procurement of, or contracting for goods, works or services by or on behalf of the SABC from Lornavision (Pty) Ltd, Vision View Productions CC, Sekela Xabiso CA Incorporated, Lezaf Consulting CC, Gekkonomix (Pty) Ltd (trading as Infonomix), Asante Sana (Pty) Ltd, Foxton Communicating (Pty) Ltd, Mott*



*MacDonald (Pty) Ltd and Mafoko Security Patrols (Pty) Ltd and payments made in respect thereof, in a manner that was—*

- (a) not fair, competitive, transparent, equitable or cost-effective; (b) contrary to applicable—*
- (i) legislation;*
- (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or*
- (iii) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the SABC,*

*and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the SABC or the State.”.*

### **2.3 Objectives of the Investigation**

The primary objectives of this investigation were to:

- Review compliance with the prescribed legislative/policy frameworks and contractual terms in respect of the procurement of services from Mafoko;
- Identify and review payments made in respect of the procurement of services from Mafoko, confirm compliance with the prescribed legislative, policy and contractual terms and conditions;
- To investigate allegations of corruption;
- Take steps to effect recoveries in respect of any identified irregular and/or fruitless and wasteful expenditure;
- Facilitate disciplinary action in respect of identified officials;
- Assist or facilitate any criminal investigation and prosecution relating to any act of fraud/theft and/or corruption and maladministration (in partnership with the NPA, South African Police Services (“SAPS”) and Asset Forfeiture Unit (“AFU”); and
- Undertake a systemic review and make associated recommendations.
- Consider referrals to other regulatory authorities.

### **2.4 Limitations**

The report is based on the facts established from documentation provided and information obtained during the course of the investigation. Although all reasonable attempts were made to obtain the relevant information, the SIU cannot and does not guarantee that it has had sight of all

relevant documentation. The SIU cannot further confirm that it has been given access to all information that may be in existence, or that the contents of any documentation at its disposal or any statements or information obtained by or made available to it, are true and correct.

Should any further information become available, or should any of the contents of any documentation or statements or information at its disposal not be true or correct, it may influence the SIU's conclusions and recommendations. In such circumstances, the SIU will apprise the President accordingly in future reports.

### 3. LEGISLATIVE FRAMEWORK

#### 3.1 The Constitution of the Republic of South Africa, 1996 ("the Constitution")

Section 217 of the Constitution stipulates that *"when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective."*

The Constitution further stipulates that subsection (1) *"does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for –*

- (a) *categories of preference in the allocation of contracts;*
- (b) *the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination."*

#### 3.2 Public Finance Management Act, 1999 (Act No 1 of 1999) ("PFMA")

The PFMA defines "fruitless and wasteful expenditure" as *"expenditure made in vain, which could have been avoided had reasonable care been exercised."*

The PFMA further stipulates to the effect that wilful or negligent failure to comply with general and/or delegated responsibilities constitutes financial misconduct. Section 51 ((b)(ii) states that *"an accounting authority for a public entity—*

- (b) *must take effective and appropriate steps to—*
  - (ii) *prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and*

Section 45 (c) states that *"an official in a department, trading entity or constitutional institution –*

- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due."*

In terms of section 83 of the PFMA: Financial misconduct by accounting authorities and officials of public entities:

- (1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently-*
  - (a) fails to comply with a requirement of section 50, 51, 52, 53, 53 or 55*
  - (b) makes or permits an irregular expenditure or fruitless and wasteful expenditure.*
- (2) If the accounting authority is a Board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.*
- (3) An official of a public entity to whom a power or duty is assigned, in terms of section 56, commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.*

In terms of section 86(2) of the PFMA:

*"An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding 5 years, if that accounting authority wilfully or in a grossly negligent way fails to comply with section 50, 51 or 55."*

### **3.3 Preferential Procurement Policy Framework Act No. 5 of 2000 ("PPPFA")**

This Act gives effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution; and to provide for matters connected therewith. The Act is applicable to the procurement of goods and/or services by all organs of State.

The matter is further regulated by section 2(1)(f) of the PPPFA which provides that:

*"the contract must be awarded to the tenderer who scores the highest points unless objective criteria in addition to those contemplated in paragraph (d) and (e) justify the award to another the tenderer"*

*"Clause (d) provides that the specific goals may;*

- (i) *include contracting with the person or categories of persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability;*
- (ii) *implementing the programmes of the Reconstruction and Development Programme as published in the Government Gazette.*

*Clause (e) provides that any specific goals for which a point may be awarded must be clearly specified in the invitation to submit a tender"*

### **3.4 The Companies Act, Act No. 71 of 2008**

**Section 162: Application to declare director delinquent or under probation:**

Section 162 (2) states that: *A company, a shareholder, director, company secretary or prescribed officer of a company, a registered trade union that represents employees of the company or another representative of the employees of a company may apply to a court for an order declaring a person delinquent or under probation if—*

- (a) *the person is a director of that company or, within the 24 months immediately preceding the application, was a director of that company; and*
- (b) *any of the circumstances contemplated in—*
  - (i) *subsection (5) (a) to (c) apply, in the case of an application for a declaration of delinquency; or*
  - (ii) *subsections (7) (a) and (8) apply, in the case of an application for probation.*

*In terms of section 162(5)(c), a court must make an order declaring a person to be a delinquent director if the person while a director-*

- (i) *grossly abused the position of director;*
- (ii) *took personal advantage, inflicted harm upon the company or a subsidiary of the company, contrary to section 76(2)(a);*
- (iii) *acted in a manner-*
  - (aa) *that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of the director's functions within, and duties to, the company;*  
*or*
  - (bb) *contemplated in section 77(3)(a), (b) or (c).*

#### 4. SABC Supply Chain Management ("SCM") Procedure Manual, 2016

In terms of paragraph two of section 5.6 (i) of the SABC SCM Procedures Manual ("SCM Manual"), relating to the BEC, the BEC must be composed in the following manner:

"The composition of the Bid Evaluation Committee will vary depending on the nature and complexity of the specific project but should at all times have a minimum of three individuals. For more complex projects, strategic projects or projects of a value above R10 million, the members of the BEC must be senior managers in the employ of the SABC. The BEC should always include a representative from SCM and the Business Unit concerned. A representative from Legal must be included for high value and strategic bids."

In terms of section 9.10.f.2(d) of the SABC's SCM Procedures Manual relating to functionality evaluation and scoring, moderation of the BEC scores can take place under the following circumstances:

*"Where there are significant differences in scoring of a particular criterion, then the team members will discuss this amongst themselves, as this may indicate a misunderstanding or an error in the assessment. If this is the case, then the evaluator will be able to amend his score at this point. Such evaluator is however not obligated to amend his score..."*

#### 5. SUMMARY OF FINDINGS AND OUTCOMES IN RESPECT OF MAFOKO

The SIU's investigation focused on the second of the two tender processes and a review of the first tender process was conducted. We will deal with our findings under each of the two tender processes.

##### 5.1 The First Tender Number RSK/APSOB/15/01

The SIU perused and considered all available information and documentation with regards to this tender, however, a detailed investigation was not conducted, as this matter has been comprehensively dealt with by the SABC. The SIU concurs with the final outcome of that process.

For completeness sake, a summary of the factual background is as follows: It is common cause that on 25 June 2015, the SABC Board approved the business plan for the provision of physical security services tender for Auckland Park and TVOB. Tender number RSK/APSOB/15/01 was advertised on 17 July 2015. A compulsory briefing session was held on 27 July 2015. The closing date of the tender was 19 August 2015.



It is also common cause that three separate evaluations on this tender were conducted by three different BEC's and this did not proceed to the next stage of assessment.

The SABC took a decision to embark on an internal forensic investigation after receipt of a whistle blowers report through the hotline, alleging some irregularities in the scoring process. The internal forensic investigation concluded in a report issued on the 30 November 2015 that there were irregularities and recommended the re-run of the security tender.

After advice was sought from external Legal Counsel, the SABC Board adopted a resolution on 28 September 2016 to cancel the Tender Number RSK/APSOB/15/01 and re-run the tender process.

## **5.2 The Second Tender Number RFP/LOG/2017/3**

As per the Board resolution of 28 September 2016 approval was granted to SCM to issue a new bid for the provision of physical security at the Auckland Park and TVOB.

The Bid Specification Committee ("BSC") convened a meeting on 17 January 2017 and the tender, RFP/LOG/2017/3, was advertised on 20 January 2017. A non-compulsory briefing session was held on 1 February 2017 and the closing date of the bid was 10 February 2017.

After the normal SCM process was followed, Mjayeli was recommended by the BEC as the highest scoring bidder and recommendations were made to appoint Mjayeli as the preferred service provider. This recommendation was accepted by the Bid Adjudicating Committee ("BAC") and the SABC Group EXCO.

When this matter was referred to the SABC's Finance, Investment, Procurement and Technology Committee ("FIPT"), the committee did not make a recommendation in respect of the preferred service provider as they needed more time to consider the matter. A resolution was made to reconvene at a later stage for their final recommendation. However, before the FIPT could reconvene and decide on the matter, the SABC Interim Board on 30 June 2017 made a decision to award the tender to the second highest scoring bidder, which was Mafoko.

The discretion to award the tender rests with the Board but it is trite that such discretion had to be exercised fairly, impartially, independently and with reasonable care in the evaluation and investigation of the tender, within the parameters of the tender requirements. The prevalent reason stated by the Board, as per the minutes and transcript of the meeting, was that Mafoko had a higher BBBEE status than Mjayeli and for that reason, a decision was taken not to award the tender to Mjayeli, irrespective of the fact that it was the highest scoring bidder. The bid did



not have an objective criteria and at that stage all the bidders had already been given a score for BBBEE contributor level, thus there was no justification by the Board to pass over the highest scoring bidder. This issue was also brought to the Board's attention through an opinion from the National Treasury and they were advised not to appoint the second bidder on the basis of BBBEE level status, but this was disregarded by the Board.

There was no mention in the meeting about allegations from a certain whistle-blower of a possible corrupt relationship between Mjayeli and the SABC senior officials, something that was alluded to by Chairperson of the Board during interviews with the SIU.

The contract awarded to Mafoko is for a period of five years, effective from 1 August 2017 to 31 July 2022, with a total value of R194 350 678.15

### **5.3 Review of SCM process for Tender RFP/LOG/2017/3**

The SIU conducted a review of the entire SCM process, which included the scrutinising of all available SCM documents and minutes and recordings of meetings in relation to this tender. Interviews were also conducted with various role players.

#### **5.3.1 Composition of BSC and BEC**

On 17 January 2017, the Head of SCM, Mr Simon Molaudzi, endorsed the cross-functional team in respect of the BSC and the BEC. The recommended members for the BSC were:

- Ms. Ayanda Mkhize (SCM);
- Ms. Refilwe Maraka (SCM);
- Mr. Trevor Kaseke (Compliance);
- Mr. Simon Mathebula (Protection Services);
- Ms. Jerry Mashego (TVOB); and
- Mr. Dumisani Gamede (Finance).

Members recommended for the BEC were:

- Ms. Ayanda Mkhize (SCM);
- Mr. Sifiso Dube (Protection Services);
- Mr. Solomon Nkabinde (Protection Services);
- Ms. Bushy Khabisi (Technology); and



- Mr. Mervin Joseph (Compliance).

At the time that the BEC was appointed on 17 January 2017, the SABC SCM Procedures Manual dated 1 September 2016, with effective date 1 June 2016 (SCM Manual) required that the members of the BEC *"must be senior managers"* in the employ of the SABC. Paragraph two of section 5.6 (i) of the SCM Manual provides as followings:

*"The composition of the Bid Evaluation Committee will vary depending on the nature and complexity of the specific project but should at all times have a minimum of three individuals. For more complex projects, strategic projects or projects of a value above R10 million, the members of the BEC must be senior managers in the employ of the SABC. The Bid Evaluation Committee should always include a representative from SCM and the Business Unit concerned. A representative from Legal must be included for high value and strategic bids."*

This required composition of the BEC was amended by a resolution adopted by the Group EXCO on 20 April 2017. Resolution No:20/04/17-G2051 stated that:

- (1) Approval be and is hereby given for the following amendments to the SCM Procedures Manual on page 54:

*"For more projects, strategic projects or projects of a value above R10 million, the Members of the BEC must be Managers or technical specialist in the employ of the SABC. The Bid Evaluation Committee should always include a representative from SCM and the Business Unit concerned. A representative from Legal Service must be included for procurement in line with the Materiality Framework"*

This amendment was only effective from 20 April 2017. It is clear that from 17 January 2017 until 19 April 2017 the BEC was not properly constituted as there were no senior managers. A representative of the Legal Service was also not included in the BEC. This fact was highlighted in a communication to the Head of Compliance on the attendance of the BEC and BSC sittings. The evaluations on the tenders on functionality, site visits and scoring were performed during this period.

The SIU's findings to date include that the BEC was constituted irregularly in that it was inconsistent with the SABC SCM Procedures Manual dated 1 September 2016.

#### 5.4 Tenders Received

A total of 45 tenders were received by the tender office on or before the closing date of 10 February 2017. Of these, 39 bidders were disqualified from further evaluation as they were

regarded as non-responsive for not complying with the mandatory criteria, as stipulated in the Request for Proposal ("RFP") document. Only six bidders qualified.

### 5.5 Functional Evaluation by BEC

The six bidders who qualified were evaluated by the BEC on 31 March and 6 April 2017 respectively. Individual score sheets were completed in respect of each of the six responsive bidders by Messrs Dube, Nkabinde and Khabisi.

The SIU investigation established that some of the scores on the individual score sheets were amended and marked as anomalies, due to significant differences in scores during a process of moderation. This raised a concern as to the fairness of the scoring process. The SCM Manual was scrutinised to establish whether this process of moderation is in line with approved processes. Section 9.10.f.2(d) of the SCM Manual states the following:

*"Where there are significant differences in scoring of a particular criterion, then the team members will discuss this amongst themselves, as this may indicate a misunderstanding or an error in the assessment. If this is the case, then the evaluator will be able to amend his score at this point. Such evaluator is however not obligated to amend his score..."*

Three bidders of the remaining six bidders, same being Mafoko, Mabotwane and Mjayeli, met the minimum functionality score of 40 points as per criteria in the RFP.

A review of the score sheets revealed that, prior to the moderation process, all three of these bidders already scored an average of above 40 points and would in any event have advanced to the next phase of evaluation prior to the changing of scores by the BEC.

### 5.6 Site Inspection by BEC

On 7 April 2017, site inspections were conducted by the BEC members at the premises of Mabotwane, Mafoko and Mjayeli who were the three remaining bidders.

In terms of the scoring done by Messrs Dube, Nkabinde and Khabisi, all three bidders scored full points (100 points) and were therefore fully compliant and proceeded to the next evaluation phase.



### 5.7 Price and BBBEE Evaluation

The final consolidated scores in respect of price and BBBEE Evaluation (90/10 principle) were as per the Table 1 below:

Name of Bidder	Financial Offer	Points for Financial Offer	BBBEE Level of Contribution	BBBEE Point out of 10	Total point out of 100 (Price 90 & BBBEE 10)	Ranked Price and BBBEE
Mjayeli	R183 218 470.18	90.00	2	9	99.00	1
Mabotwane	R184 968 208.34	89.14	2	9	98.14	3
Mafoko	R185 519 425.61	88.87	1	10	98.87	2

It is evident from above table that Mjayeli was the highest scoring bidder based on price and BBBEE. Also note that the financial offer of Mjayeli is the lowest, while the BBBEE status of Mafoko is level 1 and the other two bidders are level 2 BBBEE contributors.

### 5.8 Financial Stability

Although the financial stability was not a disqualifying factor as specified in the RFP, a financial stable and liquid company was required to score a minimum of 6.2 points. The SABC used this criterion only as a risk mitigating factor.

Mjayeli met the threshold with a score of 8.3 while Mafoko and Mabotwane did not meet the threshold as they scored 4.6 and 5.8 points respectively. The 2016 financial statements of Mjayeli were audited by Vincent Laubscher & Associates CA (SA) and received an unqualified audit opinion. Net profit recorded in 2015 and 2016 was R3.4 million. The company had cash and cash equivalents of R415 000 for 2016 and it was trading with a bank overdraft of –R2.1 million in 2015. The liquidity ratios were very strong at 2.2 in 2016 and 2.56 in 2015.

The 2016 financial statement for Mafoko was audited by N Baker & Co CA (SA) and received an unqualified audit opinion. The company did not meet the threshold as it scored 4.6 points. Net

profit recorded was R2.1 million in 2016 and R3.1 million in 2015. The company was operating with a bank overdraft of –R19.8 million in 2016 and –R17.8 million in 2015. The liquidity ratios recorded in 2016 was 1.23 and 0.00 in 2015.

The 2016 financial statement for Mabotwane was audited by BRF & Co Registered Auditors and received an unqualified audit opinion. The company did not meet the threshold as it scored 5.8 points. Net profit recorded for 2016 was R6.6 million and R7.5 million for 2015. The company had cash and cash equivalents of R7 000 in 2016 and 2015. The liquidity ratios were weak at 1 in 2016 and 0.54 in 2015.

### 5.9 Committee Meetings

In terms of the value of the security tender, the SABC Interim Board was responsible for the final approval of the award of the tender. The recommendation, however, had to be submitted to the BAC, Group EXCO and FIPT for recommendations prior to the approval by the SABC Interim Board.

Bid Adjudication Committee Meeting held on 23 May 2017

The BAC convened a meeting on 23 May 2017 and the following members were present:

- Ms MA Raphela (Chairperson);
- Ms T Dlamini (On behalf of Group Executive("GE") Commercial Enterprises);
- Mr O Mahlangu (On behalf of GE: Television);
- Ms L Sefolo (Acting GE: Media Technology Infrastructure); and
- Mr S Vilakazi (Head of Legal)

After a discussion, the BAC resolved that once the Internal Audit Department Assurance Report had been finalised, the recommendation to award the tender to Mjayeli could be made to the Group Executive Committee ("Group EXCO") for recommendation to FIPT and ultimately the Board for final approval.

The Group EXCO convened a special meeting on 20 June 2017 whereby the recommendation to award the security tender to Mjayeli was discussed. The following members were present:

- Mr T Ralitabo (Acting Group Chief Executive Officer ("AGCEO") and Chairperson);
- Ms BL Tugwana Acting Chief Operations Officer ("ACOO");
- Ms MA Raphela Acting Chief Finance Officer ("ACFO");

- Mr K Mosweu (Acting GE: Corporate Affairs);
- Mr T Mulaudzi (GE: Commercial Enterprises);
- Mr Z Yunus (Acting GE: Human Resources);
- Ms N Maseko (Acting GE: News and Current Affairs);
- Mr L Ramakgolo (Acting GE: Radio);
- Ms L Sefolo (Acting GE: Media Technology Infrastructure);
- Ms N Philiso (GE: Television); and
- Ms SM Motsweni (GE: Sport)

During this meeting, the Group EXCO resolved that:

- It is recommended that the contract be awarded to Mjayeli for a period of five years, from 1 August 2017 to 31 July 2022, at a total cost of R183 218 270.18 (incl VAT);
- Requested that the Group EXCO recommends that the FIPT approves the budget increase;
- Recommended the FIPT permits the BEC to negotiate the price and contract with the recommended service provider to include all terms as per the tender proposal;
- Recommended that the CFO and GE: Governance and Assurance are duly authorised to sign the letter of award and contract documentation on behalf of the SABC; and
- The Head of Legal must submit an update and legal opinion in the Venus litigation matter to the FIPT prior to the award of the tender.

#### **5.9.1 Finance, Investment, Procurement and Technology Committee Meeting held on 22 June 2017**

The FIPT convened a meeting on 22 June 2017 during which one of the matters discussed was the provision of physical security tender for Auckland Park and TVOB. The following members were present:

- Ms KT Kweyama (Chairperson);
- Mr MG Tsedu (Member);
- Mr K Naidoo (Member);

- Mr TE Ralitabo (AGCEO);
- Ms BL Tugwana (ACOO);
- Ms A Raphela (ACFO);
- Ms LV Bayi (Group Company Secretary);
- Mr S Molaudzi (Head of SCM);
- Ms L Sefolo (Acting GE: Media Technology Infrastructure);
- Ms FY Valla (Deputy Company Secretary); and
- Ms A Mkhize (General Manager ("GM"): SCM and Governance)

It was noted at the commencement of this meeting that the submission in respect of the security tender was only received by members the day prior to the meeting, therefore not providing members with adequate time to familiarise themselves with the contents thereof. The purpose of this submission was to seek approval from FIPT to award the tender as the extension to the previous contracts with service providers at Auckland Park and TVOB would lapse on 31 July 2017.

After the discussions the FIPT resolved that:

- In order to take a decision to recommend that the Board approves the award of the tender, members must peruse the documents and provide feedback by 26 June 2017; and
- The legal advice pertaining to the cancellation of the previous (2015) tender and the company profiles of the three top ranked bidders must be circulated to the FIPT member.

During interviews with the Interim Board members, the SIU was informed that the Chairperson, Ms Kweyama was approached by a whistle blower directly after the FIPT meeting. It is said that the whistle-blower had raised concerns pertaining to irregularities in the SCM process leading up to the recommendation to award the tender to Mjayeli. However, these allegations were not interrogated by any of the Interim Board members. The SIU met with the alleged the whistle-blower who strongly denied reporting any irregularities to any Board member.

This integrity of Ms Kweyama remains questionable in so far as the whistle-blower's denial of a meeting held with her is concerned.



When members of the Board were afforded a right of reply, the majority of the members alluded to the fact that they were appraised of the allegations made by the whistle-blower during the Board meeting. However, neither the minutes nor the transcript of meeting, could reflect that such discussion was held prior to the decision to award the tender to Mafoko was reached. This also questions the integrity of the SABC Interim Board members concerned.

Since such discussion was never minuted and no resolution was taken in that regard, the only inference that could be drawn is that such discussion could have been made among certain Board members with the Chairperson prior to the Board meeting, which then influenced their decision not to award the tender to Mjayeli.

#### 5.10 Opinion by National Treasury

Subsequent to the FIPT meeting, Ms Mkhize requested National Treasury on 22 June 2017 to provide an opinion based on the overlooking of the highest scoring service provider in terms of the PPPFA 90/10 principle. Ms Mkhize provided the scenario in respect of the security tender to National Treasury and requested they advise as to whether the SABC can overlook the highest scoring bidder and appoint the second highest scoring bidder based on the fact that they are a level 1 BBBEE contributor as opposed to the other two bidders who are level 2 BBBEE.

National Treasury responded on the same day, stating the following:

*"My understanding is that the bid did not have an objective criteria and all bidders that passed functionality were acceptable bids. It is for this reason that I would advise that the highest scoring bidder is not passed over because it is not justifiable grounds for passing over. Furthermore, the bidders were already given a score for BBBEE contributor level hence you cannot disadvantage the bidder."*

This response from National Treasury was circulated to all FIPT members, including Ms Kweyama, Mr Tsedu and Mr Naidoo on 23 June 2017, but this response was never discussed in the Board meeting prior to the decision to award the tender to Mafoko was made.

##### 5.10.1 Strategy Session of the Interim SABC Board held on 30 June 2017

The Interim SABC Board convened a meeting on 30 June 2017 whereby a decision was taken to appoint Mafoko for the provision of physical security at Auckland Park and TVOB. The following members were present:

- Ms KT Kweyama (Chairperson and Non-Executive Board Member);

- Mr MG Tsedu (Non-Executive Board Member);
- Mr J Matisonn (Non-Executive Board Member);
- Mr K Naidoo (Non-Executive Board Member);
- Ms FC Potgieter-Gqubule (Non-Executive Board Member);
- Mr T Ralitabo (AGCEO);
- Ms BL Tugwana (ACOO); and
- Ms T Dlamini (ACFO)

After matters were raised and discussed during the Interim Board meeting: The Board resolved that:

- Approval is given to award bid number RFP/LOG/2017/3 to Mafoko Security Patrols (Pty) Ltd for the provision of physical security services at SABC Auckland Park and TVOB for a period of 5 years from 1 August 2017 to 31 July 2022 at a total contract price of not exceeding R185 519 425.61;
- In view of the delays in the adjudication of this tender, approval is given for a budget increase request of R8 831 252.54;
- The BEC is authorised to negotiate the price and contract with Mafoko to include all terms and pricing as per the tender proposal on behalf of the SABC;
- The Head of SCM is authorised to issue a letter of award to Mafoko so that the contract can immediately move into the transition and then the execution phase; and
- The CFO, GE: Governance and Assurance and Head of Legal is authorised to sign the contract and documentation relating to this resolution on behalf of the SABC.
- The SIU investigation could not establish any evidence that the FIPT was reconvened to reconsider the matter and make recommendations to the Board.
- Further, the SIU investigation could not establish any evidence why the advice from the National Treasury was not considered despite it being circulated to all members.

## 6. RIGHT OF REPLY LETTERS SENT TO BOARD MEMBERS

The Interim Board Members were each provided with an opportunity to submit their responses to the SIU's findings in this investigation. This is a standard procedure of the SIU when there are



possible negative findings to be made against any person implicated in the SIU's report. In all instances, such persons are provided with the SIU possible adverse findings against them and afford them an opportunity to respond prior to the finalisation and submission of the report to the President.

## **7. REMEDIAL ACTIONS TO FOLLOW ON COMPLETION OF THE SIU INVESTIGATION**

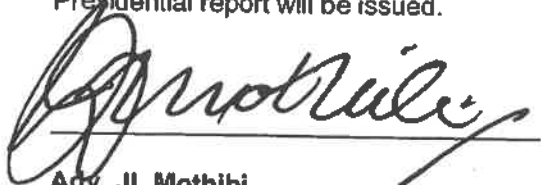
- The SIU's findings to date include that the BEC was constituted irregularly in that it was inconsistent with the SABC's SCM Procedures Manual dated 1 September 2016, as amended by Group EXCO Resolution No 20/04/2017-G2051. It is also our finding, based on the evidence collected thus far, that the Interim SABC Board decision to award the contract to Mafoko was irregular. The SIU intends to launch a declaratory application to ask the court to declare the members of the Board delinquent or be placed under probation, in terms of the Companies Act, for breach of their fiduciary duties and failing to act in the best interest of the SABC. The investigation has revealed that the Interim Board had irregularly awarded the security contract to the bidder that scored the second highest points, justifying their decision by using BBBEE level status, a factor that has already been evaluated as an objective criteria and which cannot be used as valid basis thereof. This action by the Board has been found to be wrongful and irregular. Even though they may have doubts about awarding the contract to the highest bidder, they were supposed to consider launching an investigation or cancel the tender or remit it for reconsideration, and they have failed to do so.
- The SIU findings are that the manner in which the BEC was constituted was irregular, and such irregularity will form sufficient grounds to set aside the contract awarded to Mafoko Security as a nullity ab initio.
- The SIU has launched a joinder application to intervene in the current proceedings between Mjayeli Security and the SABC as the fifth respondent, as the SIU has vested interest in the matter and has been ordered by the court to make available its investigation report and evidence when an order of stay of proceedings was made. The application to intervene in the proceedings will assist the court with relevant information, expertise or insight that has a bearing on the issues in this case by presenting all the evidence and findings made to court. Thus the SIU will be able to

advise the court of relevant, additional information or arguments that the court might wish to consider.

- As part of the court proceedings, the SIU will be joining the proceedings instituted by Mjayeli as fifth respondent, to request an order to review and set aside the decision by the SABC to award the contract, under Bid number RFP/LOG/2017/3, to Mafoko and alternatively, to remit the tender for reconsideration by the SABC, as well as a just and equitable relief for the recovery of monies lost due to the irregularity in the awarding of this contract.
- The SIU is intending to submit a referral and recommendations to the chairperson of the SABC Board, upon the outcome of the current proceedings, for the SABC bring an application, jointly with the SIU, under Section 162 of the Companies Act to declare the former SABC Interim Board delinquent directors or to have them placed under an order of probation for breach of their fiduciary duties and failing to act in the best interest of the SABC.
- The SIU is preparing a referral to NPA in terms of section 86(2) of the PFMA, for criminal action against the former accounting authority in this instance, the Directors of the Interim SABC Board, due to financial misconduct committed by its members.
- A disciplinary referral will be made against the executive directors/officers who were part of the process when the SABC Interim Board decision was made to appoint Mafoko as a preferred service provider, for contravening sections 81(1) (b), 38 and 45 of the PFMA and SABC policies and for failing to act in the best interest of the SABC.

## 8. FINAL CONCLUSION AND SIGN OFF

We anticipate that this investigation will be finalised by 31 March 2019, where after a Final Presidential report will be issued.



Adv. JL Mothibi

Head of the Special Investigating Unit

Date:

30/11/2018

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**POISED TO STRIKE**  
*against corruption*

## **Special Investigating Unit**

Final Report to the  
President of the Republic of South Africa  
His Excellency, President MC Ramaphosa  
on

**The investigation conducted in respect of the procurement of, or  
contracting for goods, works or services by or on behalf of the SABC  
from Mafoko Security Patrols (Pty) Ltd.**

**Proclamation R19 of 2018 amending Proclamation R29 of 2017**

June 2019

**DISTRIBUTION LIST**

<b>Copies to</b>	<b>Addressees:</b>
Copy 1 of 2	Mr Matamela Cyril Ramaphosa: The Honourable President of the Republic of South Africa
Copy 2 of 2	Advocate JL Mothibi: Head of the Special Investigating Unit



## ABBREVIATIONS

LIST OF ABBREVIATIONS	
Abbreviation	Description
ACOO	Acting Chief Operating Officer
ACFO	Acting Chief Financial Officer
AGCEO	Acting Group CEO
AGSA	Auditor- General of South Africa
BAC	Bid Adjudication Committee
BBBEE	Broad Base Black Economic Empowerment
BEC	Bid Evaluation Committee
BSC	Bid Specification Committee
FIPT	Finance, Investment, Procurement and Technology Committee
GE	Group Executive
Mabotwane	Mabotwane Security (Pty) Ltd
Mafoko	Mafoko Security Patrols (Pty) Ltd
Mjayeli	Mjayeli Security (Pty) Ltd
National Treasury Instruction dated 31 May 2011	National Treasury Instruction Note on enhancing compliance monitoring and improving transparency and accountability in Supply Chain Management dated 31 May 2011
National Treasury Practice Note 8 of 2007/2008	Practice Note 8 of 2007/2008: Threshold values for the procurement of goods, works and services by means of petty cash, verbal or written price quotations or competitive bids
National Treasury Practice Note 2 of 2005	Practice Note SCM 2 of 2005: Threshold values for the procurement of goods and services by means of petty cash, verbal or written price quotations and competitive bids
NPA	National Prosecuting Authority
NT	National Treasury

<b>LIST OF ABBREVIATIONS</b>	
<b>PACOCOA</b>	Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004
<b>PFMA</b>	Public Finance Management Act, Act No. 1 of 1999
<b>PPPFA</b>	Preferential Procurement Policy Framework Act, Act No. 5 of 2000
<b>PSA</b>	Public Service Act, Act No. 103 of 1994
<b>RFP</b>	Request for Proposal
<b>SABC</b>	South African Broad Casting Corporation
<b>SABC Board</b>	The Board of the SABC referred to in section 12 of the Broadcasting Act, Act No. 4 of 1999
<b>SABC Interim Board</b>	The Board of the SABC referred to in section 15A (3a) of the Broadcasting Act, Act No.4 of 1999
<b>SABC Group Executive Committee</b>	EXCO
<b>SCM Procedures Manual dated 1 September 2016</b>	SABC Supply Chain Manual Procedures Manual dated 1 September 2016
<b>SIU</b>	The Special Investigating Unit established by Proclamation R118 of 31 July 2001 under section 2(1) of the SIU Act
<b>SIU Act</b>	Special Investigating Units and Special Tribunals Act, Act No. 74 of 1996
<b>The Constitution</b>	The Constitution of the Republic of South Africa, 1996
<b>Treasury Regulations dated March 2005</b>	Treasury Regulations for departments, trading entities, constitutional institutions and public entities, issued in terms of the Public Finance Management Act dated March 2005
<b>TVOB</b>	Television Outside Broadcast
<b>VAT Act</b>	Value-Added Tax Act, Act No. 89 of 1991



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## EXECUTIVE SUMMARY

The Special Investigating Unit ("SIU") was mandated in terms of Proclamation No. R29 of 2017, as published in the Government Gazette on 1 September 2017, and extended by Proclamation No. R19 of 2018, published on 6 July 2018 to include the investigation of the award of the SABC Security Contract.

This is a final Report on the SABC Security Contract investigation conducted in respect of Proclamation No. R19 of 2018 and details the SIU findings on the focus of the investigation.

The SIU submitted an Interim Report to the Presidency on 30 November 2018 which summarised the findings, recommendations and outcomes of the investigation into the procurement of, or contracting for goods, works or services by or on behalf of the SABC from Mafoko Security Patrols (Pty) Ltd ("Mafoko"). The detailed findings are discussed in more detail under paragraph 5 ("Summary of Findings and Outcomes") below.

In summary, the SIU found evidence which indicated that there were irregularities in the procurement of the services from and subsequent awarding of the contract to Mafoko by the Interim Board of the SABC to the value of R185 519 426.61. Although the Interim Board approved an additional R8 831 252.54 in lieu of the delay in the adjudication of the tender, the contract that was eventually signed was to the value of R185 519 426.61. In essence, the SIU's investigation found that the BEC was irregularly constituted, there was financial misconduct and contravention of sections 83(1)(b) and 86(3) of the PFMA on the part of the Interim Board. As an accounting authority they failed to act in the best interest of the SABC. There was also a contravention of sections 83(3) of the PFMA in respect of the officials of the SABC who were present when the Interim Board made a decision to award the contract to Mafoko.

As a result of these findings the SIU launched a joinder application on 12 March 2019 to join as a party in the current proceedings between Mjayeli and SABC, and that application was successful. The SIU now seeks to have the contract between the SABC and Mafoko reviewed and set aside and that the tender be remitted for reconsideration. The SIU also seeks the court to make a just and equitable order in an effort to recover monies that have been lost due to this irregular contract.

Details of the outcomes of the individual matters investigated include the following:

Criminal referral: The SIU made criminal referrals on 14 May 2019 to the National Prosecuting Authority in terms of section 86(2) of the PFMA against the members of the Interim Board, as per the findings of our investigation which revealed irregularities in the contract awarded to

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Mafoko. The implicated members are K Kweyama, MG Tsedu, J Matisohn, K Naidoo, FC Potgieter-Gqubule, T Ralitabo, BL Tugwana and TS Dlamini.

Civil recovery: The SIU has succeeded in bringing an application to be joined in the current proceedings between Mjayeli (the bidder that was not awarded the contract) and the SABC, as a Respondent party, to seek an order to set aside the contract between Mafoko and the SABC and to have the tender remitted for reconsideration by the SABC. This relief is consistent with the findings of the SIU and the SIU is opposed to an application by Mjayeli to have the contract awarded to Mjayeli. The SIU is in the process of filing its answering affidavit.

Disciplinary referral: The SIU has made a disciplinary referral on 14 May 2019 to the SABC in respect of one executive director, Ms TS Dlamini, who was present when the Interim SABC Board decision was made to appoint Mafoko as a preferred service provider, for contravening section 83(3) of the PFMA and SABC policies and failing to act in the best interest of the SABC. Other executive directors who were also present are no longer in the employ of the SABC. SIU had intended to make a referral to the Minister in respect of the conduct of interim Board members but unfortunately such members have now resigned as members of the SABC Board.

Other referrals: Directors' declaration of delinquency or placement on probation: The SIU intends bringing an application in terms of section 162 of the Companies Act, to declare the Interim Board members delinquent or to place them under probation, once the civil proceedings are finalised, due to their breach of their fiduciary duties, by their gross negligently in causing harm to the SABC and failing to act in the best interest of the SABC. In terms of section 162 of the Act, the directors that have left the SABC will not escape liability as the application may be brought against them if they were directors in the 24 months preceding the application.

Any other referral that will be identified will be made and a final update will be included in the final report to the President on all SABC investigations.

A handwritten signature in black ink, appearing to be a stylized 'S' followed by a series of loops and a final flourish.

## **1. SUMMARY OF OUTCOMES**

### **1.1 Evidence referred for the institution or defence of civil proceedings**

The SIU has succeeded in bringing an application to court to be joined as a party in the current proceedings between Mjayeli and the SABC. The SIU seeks an order to set aside the contract between the SABC and Mafoko Security Patrols. The value of the contract is R185 519 425.67 but an additional R8 831 252.54 in lieu of the delay in the adjudication of the tender was approved by the interim Board, even though the actual contract signed was to the value of R185 519 425.67. As part of the court proceedings, the SIU also seeks a just and equitable order seeking to recover monies lost by the SABC.

### **1.2 Referrals to the relevant Prosecuting Authority**

The SIU has made a referral to the NPA on 14 May 2019 in terms of section 86(2) of the PFMA, for criminal action against the former accounting authority who in this matter were the directors of the Interim SABC Board who allegedly committed a financial misconduct in committing the SABC to a contract that was irregularly awarded. The implicated members are K Kweyama, MG Tsedu, J Matisohn, K Naidoo, FC Potgieter-Gqubule, T Ralitabo, BL Tugwana and TS Dlamini.

### **1.3 Referrals made for disciplinary, executive and/or administrative action**

The SIU intends to refer the matter to the current chairperson of the SABC Board with a recommendation to bring an application under Section 162 of the Companies Act of 2008, to declare the former Directors of the Interim SABC Board delinquent directors and or to have them placed under an order of probation for failing to act in the best interest of the SABC. However, SIU will embark on this application jointly with the SABC upon the outcome of the current litigation between Mjayeli and the SABC. As a party in the current proceedings, SIU seeks the review and setting aside of the contract and the remittance of the tender for reconsideration by the SABC. It will be premature to bring an application of delinquency against the respective members of the interim Board until the litigation against the SABC has been finalised, as this will be added consideration to the SIU's intended declaratory application against the members.



The SIU has made a disciplinary referral on 14 May 2019 against one executive director, Ms TM Dlamini, who is still in the employ of SABC and who was present when the Interim Board's decision was made to appoint Mafoko as a preferred service provider, for contravening section 83(3) of the PFMA and thus failing to act in the best interest of the SABC. The three (3) former interim Board members who became members of the current Board have subsequently resigned on or about December 2018, therefore the SIU will not be making a referral to the shareholder in respect of their conduct, as was intended.

## **2. INTRODUCTION**

### **2.1 Background**

On 1 March 2018, the Head of the SIU was requested by the chairperson of the Board of the South African Broadcasting Corporation ("SABC"), Mr BE Makhathini, to investigate the award of the SABC tender for the provision of physical security services at Auckland Park and Television Outside Broadcast ("TVOB") to Mafoko.

The matter did not fall within the terms of reference of Proclamation No. R29 of 1 September 2017 which mandated the SIU to investigate certain affairs of the SABC.

The SIU entered into a Secondment Agreement on the 29 March 2018 with the SABC and also applied for an amendment to Proclamation No. R29 of 2017 which was published as Proclamation No. R19 of 2018 on 6 July 2018 and authorized the SIU to investigate the matter at hand.

This final report summarises the findings, recommendations and outcomes of the above matter that the SIU investigated to date.

The investigation into the allegations of corruption has been concluded and no evidence pointing to corruption has been uncovered.

### **2.2 The SIU's Mandate and scope of investigation**

In terms of Presidential Proclamation R29 of 2017, as published in the Government Gazette on 1 September 2017, read together with the relevant provisions of the SIU Act, the SIU was (for the purposes of this investigation) mandated to investigate:



*"any alleged—*

- (a) serious maladministration in connection with the affairs of the SABC;*
- (b) improper or unlawful conduct by board members, officials or employees of the SABC (hereinafter referred to as "the personnel of the SABC");*
- (c) unlawful appropriation or expenditure of public money or property;*
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;*
- (e) intentional or negligent loss of public money or damage to public property;*
- (f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the SABC; or*
- (g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,*

*which took place between 1 November 2011 and the date of publication of this Proclamation or which took place prior to 1 November 2011 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the SABC or the State, in relation to the said matters in the Schedule."*

The nature of *"the matters mentioned in the Schedule"* (which are reported on herein), is apparent from the wording of the Schedule, which reads as follows:

*"1. The procurement of, or contracting for goods, works or services by or on behalf of the SABC from Lornavision (Pty) Ltd, Vision View Productions CC, SekelaXabiso CA Incorporated, Lezaf Consulting CC, Gekkonomix (Pty) Ltd (trading as Infonomix), Asante Sana (Pty) Ltd, Foxton Communicating (Pty) Ltd and Mott MacDonald (Pty) Ltd and payments made in respect thereof, in a manner that was—*

- (a) not fair, competitive, transparent, equitable or cost-effective;*
- (b) contrary to applicable—*
  - (i) legislation;*



- (ii) *manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or*
- (iii) *manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the SABC,*

*and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the SABC or the State.*

2. *Maladministration in the affairs of the SABC and any losses or prejudice suffered by the SABC or the State as a result of such maladministration in relation to—*

- (a) *the mismanagement of the finances, rights, assets or liabilities of the SABC;*
- (b) *the selling of assets or rights which were owned by the SABC which was not to the advantage of the SABC;*
- (c) *business transactions that were concluded by or on behalf of the SABC and which were not viable or to the advantage of the SABC;*
- (d) *the irregular appointment and promotion of staff; or*
- (e) *the payment of salaries, increases, bonuses and other forms of remuneration that were not due, owing or payable or were made in a manner that was contrary to applicable—*
  - (i) *legislation; or*
  - (ii) *manuals, policies, procedures, directives, instructions or practices of or applicable to the SABC*

*including the causes of such maladministration and any related unauthorised, irregular or fruitless and wasteful expenditure suffered by the SABC or the State.*

3. *Any undisclosed or unauthorised interest that certain members of the personnel of the SABC may have had with regard to —*

- (a) *contractors, suppliers or service providers who bid for work or did business with the SABC; or*
- (b) *contracts awarded by or on behalf of the SABC."*

In terms of Presidential Proclamation No. R19 of 2018 on 6 July 2018, an amendment of Proclamation No. R29 of 2017, and authorized the SIU to investigate the matter as published in Government Gazette number 41754,





*"Under section 2(4) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996), I hereby amend Proclamation No. R. 29 of 2017, by—*

- (a) the further extension of the period referred to in the fourth paragraph of the Proclamation to the date of publication of this Proclamation; and*
- (b) the substitution for paragraph 1 of the Schedule to the Proclamation of the following paragraph:*

*"1. The procurement of, or contracting for goods, works or services by or on behalf of the SABC from Lornavision (Pty) Ltd, Vision View Productions CC, Sekela Xabiso CA Incorporated, Lezaf Consulting CC, Gekkonomix (Pty) Ltd (trading as Infonomix), Asante Sana (Pty) Ltd, Foxton Communicating (Pty) Ltd, Mott MacDonald (Pty) Ltd and Mafoko Security Patrols (Pty) Ltd and payments made in respect thereof, in a manner that was—*

- (a) not fair, competitive, transparent, equitable or cost-effective; (b) contrary to applicable—*
- (i) legislation;*
- (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or*
- (iii) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the SABC,*

*and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the SABC or the State."*

### **2.3 Objectives of the investigation**

The primary objectives of this investigation were to:

- Review compliance with the prescribed legislative/policy frameworks and contractual terms in respect of the procurement of services from Mafoko;
- Identify and review payments made in respect of the procurement of services from Mafoko, confirm compliance with the prescribed legislative, policy and contractual terms and conditions;
- To investigate allegations of corruption;
- Take steps to effect recoveries in respect of any identified irregular and/or fruitless and wasteful expenditure;





- Facilitate disciplinary action in respect of identified officials;
- Assist or facilitate any criminal investigation and prosecution relating to any act of fraud/theft and/or corruption and maladministration (in partnership with the NPA, SAPS and AFU); and
- Undertake a systemic review and make associated recommendations.

## 2.4 Limitations

The report is based on the facts established from documentation provided and information obtained during the course of the investigation. Although all reasonable attempts were made to obtain the relevant information, the SIU cannot and does not guarantee that it has had sight of all relevant documentation. The SIU cannot further confirm that it has been given access to all information that may be in existence, or that the contents of any documentation at its disposal or any statements or information obtained by or made available to it, are true and correct.

Should any further information become available, or should any of the contents of any documentation or statements or information at its disposal not be true or correct, it may influence the SIU's conclusions and recommendations. In such circumstances, the SIU will apprise the President accordingly in future reports.

## 3. LEGISLATIVE FRAMEWORK

### 3.1 The Constitution of the Republic of South Africa, 1996 ("the Constitution")

Section 217 of the Constitution stipulates that *"when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective."*

The Constitution further stipulates that subsection (1) *"does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for –*

- categories of preference in the allocation of contracts;*
- the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination."*



### 3.2 Public Finance Management Act, 1999 (Act No 1 of 1999) ("PFMA")

The PFMA defines "fruitless and wasteful expenditure" as *"expenditure made in vain, which could have been avoided had reasonable care been exercised."*

The PFMA further stipulates to the effect that wilful or negligent failure to comply with general and/or delegated responsibilities constitutes financial misconduct. Section 51 ((b)(ii) states that

*"an accounting authority for a public entity—*

*(b) must take effective and appropriate steps to—*

- (ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and*

In terms of section 83 of the PFMA: Financial misconduct by accounting authorities and officials of public entities:

- (1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently-*
  - (a) fails to comply with a requirement of section 50, 51, 52, 53, 53 or 55*
  - (b) makes or permits an irregular expenditure or fruitless and wasteful expenditure.*
- (2) If the accounting authority is a Board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.*
- (3) An official of a public entity to whom a power or duty is assigned, in terms of section 56, commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.*

In terms of section 86(2) of the PFMA:

*"An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding 5 years, if that accounting authority wilfully or in a grossly negligent way fails to comply with section 50, 51 or 55."*

### 3.3 Preferential Procurement Policy Framework Act No. 5 of 2000 ("PPPFA")

This Act gives effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution; and to provide for matters connected therewith. The Act is applicable to the procurement of goods and/or services by all organs of State.

The matter is further regulated by section 2(1)(f) of the PPPFA which provides that:

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*"the contract must be awarded to the tenderer who scores the highest points unless objective criteria in addition to those contemplated in paragraph (d) and (e) justify the award to another the tenderer"*

*"Clause (d) provides that the specific goals may;*

*(i ) include contracting with the person or categories of persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability;*

*(ii ) implementing the programmes of the Reconstruction and Development Programme as published in the Government Gazette.*

*Clause (e) provides that any specific goals for which a point may be awarded must be clearly specified in the invitation to submit a tender".*

### **3.4 The Companies Act, Act No. 71 of 2008**

**Section 162: Application to declare director delinquent or under probation:**

Section 162 (2) states that: *A company, a shareholder, director, company secretary or prescribed officer of a company, a registered trade union that represents employees of the company or another representative of the employees of a company may apply to a court for an order declaring a person delinquent or under probation if—*

*(a) the person is a director of that company or, within the 24 months immediately preceding the application, was a director of that company; and*

*(b) any of the circumstances contemplated in—*

*(i) subsection (5) (a) to (c) apply, in the case of an application for a declaration of delinquency; or*

*(ii) subsections (7) (a) and (8) apply, in the case of an application for probation.*

*In terms of section 162(5)(c), a court must make an order declaring a person to be a delinquent director if the person while a director-*

*(i ) grossly abused the position of director;*

*(ii) took personal advantage, inflicted harm upon the company or a subsidiary of the company, contrary to section 76(2)(a);*

*(iii) acted in a manner-*

*(aa) that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of the director's functions within, and duties to, the company; or*

*(bb) contemplated in section 77(3)(a), (b) or (c).*

#### **4. SABC SUPPLY CHAIN MANAGEMENT PROCEDURE MANUAL, 2016**

In terms of paragraph two of section 5.6 (i) of the SABC SCM Procedures Manual, relating to the BEC, the BEC must be composed in the following manner:

*"The composition of the Bid Evaluation Committee will vary depending on the nature and complexity of the specific project but should at all times have a minimum of three (3) individuals. For more complex projects, strategic projects or projects of a value above R10 million, the members of the BEC must be senior managers in the employ of the SABC. The Bid Evaluation Committee should always include a representative from SCM and the Business Unit concerned. A representative from Legal must be included for high value and strategic bids."*

In terms of section 9.10.f.2(d) of the SABC's SCM Procedures Manual relating to functionality evaluation and scoring, moderation of the BEC scores can take place under the following circumstances:

*"Where there are significant differences in scoring of a particular criterion, then the team members will discuss this amongst themselves, as this may indicate a misunderstanding or an error in the assessment. If this is the case, then the evaluator will be able to amend his score at this point. Such evaluator is however not obligated to amend his score..."*

#### **5. SUMMARY OF FINDINGS AND OUTCOMES IN RESPECT OF MAFOKO SECURITY PATROLS (PTY) LTD**

The SIU's investigation focused on the second of the two tender processes with a review of the first tender process. We will deal with the high level findings under each of the two tender processes. The SIU findings were set out in detail in the interim report submitted on 31 October 2018.

##### **5.1 The First Tender Number RSK/APS0B/15/01**

5.1.1 It deems mentioning that although the SIU perused and considered all available information and documentation with regards to this tender, a detailed investigation was



not conducted, as this matter has been comprehensively dealt with by the SABC. The SIU concurred with the final outcome of that process in which the tender was formally cancelled.

## **5.2 The Second Tender Number RFP/LOG/2017/3**

- 5.2.1 As was previously reported in the SIU interim report, in the SABC Board resolution of 28 September 2016, approval was granted to the SABC Supply Chain Management (“SCM”) to issue a new bid for the provision of physical security at the SABC Auckland Park and TVOB.
- 5.2.2 The BSC convened a meeting on 17 January 2017 and the tender, RFP/LOG/2017/3, was advertised on 20 January 2017. A non-compulsory briefing session was held on 1 February 2017 and the closing date of the bid was 10 February 2017.
- 5.2.3 After the normal SCM process was followed, Mjayeli was recommended by the BEC as the highest scoring bidder and recommendations were made to appoint them as the preferred service provider. This recommendation was accepted by the Bid Adjudicating Committee and the SABC Group EXCO.
- 5.2.4 When this matter was referred to the SABC’s Finance, Investment, Procurement and Technology Committee (“FIPT”), the committee did not make a recommendation as to the acceptance of the recommendation of the preferred service provider as they needed more time to consider the matter. A resolution was made to reconvene at a later stage for their final recommendation. However, before the FIPT could reconvene and decide on the matter, the Interim SABC Board on 30 June 2017 made a decision to award the tender to the second highest scoring bidder, same being Mafoko. The most prevalent reason stated that they had a higher BBBEE status than Mjayeli. The contract was awarded for a period of five years, from 1 August 2017 to 31 July 2022, with a total value of **R185 519 425.61**.

## **5.3 Review of SCM process for Tender RFP/LOG/2017/3**

- 5.3.1 The SIU conducted a review of the entire SCM process, which included the scrutinising of all available SCM documents and minutes and recordings of meetings in relation to this tender. Interviews were also conducted with various role players.



5.3.1.1 The SIU's findings to date include that the BEC was constituted irregularly in that it was inconsistent with the SABC SCM Procedures Manual dated 1 September 2016.

## **6. RIGHT OF REPLY LETTERS SENT TO BOARD MEMBERS**

The Interim Board Members were each provided with an opportunity to submit their responses to the SIU's findings in this investigation. This is a standard procedure of the SIU when there are possible negative findings to be made against any person implicated in the SIU's report. In all instances, such persons are provided with the SIU adverse findings against them and afford them an opportunity to respond prior to the submission of the report to the President. They all submitted their replies to the SIU within the stipulated time. As a result of their response and the SIU findings in respect of a decision by the Board to award the tender to Mafoko, the SIU is pursuing the review and setting aside of the contract and the matter is pending in court.

The SIU investigated the allegations of corruption as reported by a whistle-blower against the Interim Board members, Ms Khanyisile Kweyama ("Ms Kweyama") and Mr Mathata Tsedu ("Mr Tsedu") as well as against an SABC official, Mr Simon Mathebula ("Mr Mathebula"). Other officials considered in the corruption investigation included Mr Simon Molaudzi ("Mr Molaudzi") and Ms Ayanda Mkhize ("Ms Mkhize").

The following information was obtained through the use of section 5 of the SIU Act:

- ITC requests from Transunion;
- Information from the Financial Intelligence Centre ("FIC");
- Telephone records;
- E-Natis; and
- Bank statements from financial institutions.

The information received were analysed for possible collusion and corrupt payments from either Mafoko or Mjayeli to any SABC officials or Board members.

The SIU's investigation did not reveal any evidence of a corrupt relationship as per the allegations received.





## **7. REMEDIAL ACTIONS TO FOLLOW ON COMPLETION OF THE SIU INVESTIGATION**

- 7.1** The SIU's findings to date include that the BEC was constituted irregularly in that it was inconsistent with the SABC's SCM Procedures Manual dated 1 September 2016, as amended by Group EXCO Resolution No 20/04/2017-G2051. It is also our finding, based on the evidence collected thus far, that the Interim SABC Board decision to award the contract to Mafoko was irregular. The SIU intends to refer the matter to the current chairperson of the SABC Board with a recommendation to bring an application under Section 162 of the Companies Act of 2008, to declare the former Directors of the Interim SABC Board delinquent directors and or to have them placed under an order of probation for failing to act in the best interest of the SABC. The investigation has revealed that the Interim Board had irregularly awarded the security contract to the bidder that scored the second highest points, justifying their decision by using BBBEE level status, a factor that has already been evaluated as an objective criteria and which cannot be used as valid basis thereof. This action by the Board has been found to be wrongful and irregular. Even though they may have doubts about awarding the contract to the highest bidder, they were supposed to consider launching an investigation or cancel the tender or remitting it for reconsideration and they have failed to discharge their fiduciary duties in that respect and failed to act in the best interest of the SABC.
- 7.2** Since the findings have revealed that the manner in which the BEC was constituted was irregular, it is SIU opinion that this irregularity may form sufficient grounds to set aside the contract awarded to Mafoko as a nullity *ab initio*.
- 7.3** The SIU has successfully been joined in the current proceedings between Mjayeli Security and the SABC as the fifth respondent, as the SIU has vested interest in the matter.
- 7.4** As part of the court proceedings, the SIU as a fifth respondent party in the proceeding instituted by Mjayeli, seeks an order to review and set aside the decision by the SABC to award the contract, under Bid number RFP/LOG/2017/3, to Mafoko and to remit the tender for reconsideration by the SABC, as well as a just and equitable relief for the recovery of monies lost due to the irregularity in the awarding of this contract.
- 7.5** The SIU is intending to submit a referral and recommendations to the chairperson of the SABC Board, upon the outcome of the current proceedings, to bring an application, jointly with the SIU, under Section 162 of the Companies Act of 2008, to declare the



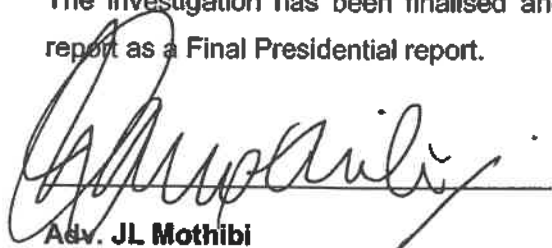


former Interim SABC Board delinquent directors or to have them placed under an order of probation for breach of their fiduciary duties and failing to act in the best interest of the SABC.

- 7.6 The SIU has made a referral to NPA on 14 May 2019 in terms of section 86(2) of the PFMA, for criminal action against the former accounting authority in this matter are the Directors of the Interim SABC Board due to financial misconduct committed by its members.
- 7.7 A disciplinary referral has been made on 14 May 2019 against an executive director, Ms TM Dlamini, who is still in the employ of the SABC and who was present when the SABC Interim Board's decision was made to appoint Mafoko Security as a preferred service provider, for contravening section 83(2) of the PFMA and SABC policies and for failing to act in the best interest of the SABC. Other executive members who were also present have subsequently resigned.

#### 8. FINAL CONCLUSION AND SIGN OFF

The investigation has been finalised and findings have been made. The SIU is issuing this report as a Final Presidential report.



Adv. JL Mothibi

Head of the Special Investigating Unit

Date: 13 JUNE 2019.







**POISED TO STRIKE**  
*against corruption*

## **Special Investigating Unit**

Interim Report to the  
**President of the Republic of South Africa**  
His Excellency, President MC Ramaphosa  
on  
**Phase 1 investigations conducted into certain affairs of the**  
**South Africa Broadcasting Corporation Limited**  
**Proclamation No. R29 of 2017**

September 2018

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Copies to	Addressees
Copy 1 of 2	Mr Matamela Cyril Ramaphosa: Honourable President of the Republic of South Africa
Copy 2 of 2	Advocate Jan Lekhoa Mothibi: Head of the Special Investigating Unit



**ACKNOWLEDGEMENTS**

The SIU appreciates the co-operation received from the various individuals interviewed during the course of the investigation.



## ABBREVIATIONS

LIST OF ABBREVIATIONS	
Abbreviation	Description
AGSA	The Auditor-General of South Africa
Asante Sana	Asante Sana (Pty) Ltd
BAC	Bid Adjudication Committee
CCSC	The Customer Communication Services Company (Pty) Ltd
CFO	Chief Financial Officer
CIPC	Companies and Intellectual Property Commission
COO	Chief Operations Officer
DAF	Delegation of Authority Framework
EXCO	The SABC Group Executive Committee
Foxton	Foxton Communicating (Pty) Ltd
GCEO	Group Chief Executive Officer
GNC	The Governance and Nominations Committee
Infonomix	Gekkonomix (Pty) Ltd trading as Infonomix
Lezaf	Lezaf Consulting CC
Lornavision	Lornavision (Pty) Ltd
Mott MacDonald	Mott MacDonald Africa (Pty) Ltd
Mr Aguma	Mr James Aguma (former Chief Financial Officer)
Mr Basson	Mr Frans Lodewyk Basson (Director of Lornavision (Pty) Ltd)
Mr Buthelezi	Mr Promise Buthelezi (Reporting Specialist: Finance Division)




LIST OF ABBREVIATIONS	
Abbreviation	Description
Mr Mahlaule	Mr Nyiko Mahlaule (Fixed Assets Manager)
Mr Matthews	Mr Jimi Matthews ( Acting GCEO)
Mr Moliwa	Mr Morobadi Phileon Moliwa (General Manager: Policy and Regulatory Affairs)
Mr Molaudzi	Mr Simon Molaudzi (Head of Procurement: SABC Radio Park)
Mr Moodliar	Mr Anand Moodliar (Group Secretary)
Mr Moosa	Mr Nabeweya Moosa (Learning and Development Specialist)
Mr Motsoeneng	Mr Motsoeneng (former Chief Financial Officer)
Mr Mulaudzi	Mr Tshifhiwa Mulaudzi (The Group Executive: Commercial Enterprises)
Mr Padayachee	Mr Kubendhran Padayachee (Acting Group Executive: Technology)
Mr Rawoot	Mr Zakir Rawoot (The Operations Committee Member)
Mr Tseitsi	Mr Itani Tseitsi (General Manager)
Ms Cupido	Ms Iris Cupido (CEO: SABC Foundation)
Ms Duda	Ms Gugu Duda (Chief Financial Officer)
Ms Khumalo	Ms Thobekile Khumalo (Personal Assistant)
Ms Mkhize	Ms Ayanda Mkhize (Consultant)
Ms Motsweni	Ms Sully Miranda Motsweni (Group Executive: Sport)
Ms Ndlovu	Ms Thandeka Ndlovu (The General Manager in the CFO's Office)
Ms Philiso	Ms Priscilla Nomsa Philiso (Acting Chief Executive Officer)
Ms Raphela	Ms Audrey Raphela (General Manager Finance and Reporting)





LIST OF ABBREVIATIONS	
Abbreviation	Description
Ms Tugwana	Ms Bessie Tugwana (the former Acting Chief Operating Officer)
National Treasury Instruction dated 31 May 2011	National Treasury Instruction Note on enhancing compliance monitoring and improving transparency and accountability in Supply Chain Management dated 31 May 2011
NPA	National Prosecuting Authority
NT	National Treasury
PACOCOA	Prevention and Combating of Corrupt Activities Act No. 12 of 2004
PFMA	Public Finance Management Act No. 1 of 1999
PPPFA	Preferential Procurement Policy Framework Act No. 5 of 2000
Practice Note 8 of 2007/2008	Practice Note 8 of 2007/2008: Threshold values for the procurement of goods, works and services by means of petty cash, verbal or written price quotations or competitive bids
Practice Note 2 of 2005	Practice Note SCM 2 of 2005: Threshold values for the procurement of goods and services by means of petty cash, verbal or written price quotations and competitive bids
PSA	Public Service Act No. 103 of 1994
SABC	South African Broadcasting Corporation Limited
SABC Board	The Board of the SABC referred to in section 12 of the Broadcasting Act
SAPS	South African Police Service
SCM	Supply Chain Management
SekelaXabiso	SekelaXabiso CA Incorporated
SIU	The Special Investigating Unit established by <i>Proclamation R118 of 31 July 2001</i> under section 2(1) of the SIU Act



LIST OF ABBREVIATIONS	
Abbreviation	Description
SIU Act	Special Investigating Units and Special Tribunals Act No. 74 of 1996
The Constitution	The Constitution of the Republic of South Africa, 1996
Treasury Regulations dated March 2005	Treasury Regulations for departments, trading entities, constitutional institutions and public entities, issued in terms of the Public Finance Management Act dated March 2005
VAT Act	Value-Added Tax Act No. 89 of 1991
Vision View	Vision View Productions CC



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## EXECUTIVE SUMMARY

The Special Investigating Unit ("SIU") was mandated in terms of Proclamation No. R29 of 2017, as published in the Government Gazette on 1 September 2017, to investigate various categories of irregularities and maladministration (more fully elaborated upon in the body of this report).

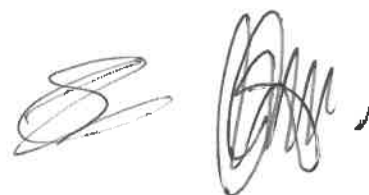
The SIU adopted a phased approach as the investigation methodology. This was due to the significant volume of matters to be investigated. This is an Interim Report on the status of the matters investigated as part of Phase 1, over the period 1 September 2017 to date. A Final Report will be submitted on conclusion all Phase 1 and Phase 2 investigations.

This Interim Report summarises the findings, recommendations and outcomes of the 18 matters that the SIU investigated in Phase 1. The detailed findings on each of these matters are elaborated on in paragraph 3 ("Summary of Findings and Outcomes") below.

In summary, the SIU found evidence that indicated that there were irregularities in the procurement of the services from and subsequent awarding of contracts to the following service providers: Lornavision (Pty) Ltd ("**Lornavision**"), Vision View Productions CC ("**Vision View**"), SekelaXabiso CA Incorporated ("**SekelaXabiso**"), Lezaf Consulting ("**Lezaf**"), Gekkonomix (Pty) Ltd (trading as Infonomix) ("**Infonomix**"), Asanta Sana (Pty) Ltd ("**Asante Sana**"), Foxton Communicating (Pty) Ltd ("**Foxton**") and Mott MacDonald (Pty) Ltd ("**Mott MacDonald**"). Evidence obtained also indicated that there were irregularities in the award of a success fee to the former Chief Operating Officer ("**COO**") of the SABC, Mr George Hlaudi Motsoeneng ("**Mr Motsoeneng**"), as well as in various appointments and salary increases effected by Mr Motsoeneng. An investigation performed earlier by the Public Protector established that the appointment and/or salary increases of the following SABC staff members were irregular: Ms Sully Motsweni ("**Ms Motsweni**"), Ms Thobekile Khumalo ("**Ms Khumalo**") and Ms Guga Duda ("**Ms Duda**").

The SIU found no evidence to support the allegations of irregularities regarding the appointments of Mr Itani Tseitsi ("**Mr Tseitsi**"), Mr Promise Buthelezi ("**Mr Buthelezi**"), Mr Nyiko Mahlaule ("**Mr Mahlaule**"), Ms Ayanda Mkhize ("**Ms Mkhize**") and Ms Audrey Raphela ("**Ms Raphela**").

The investigation produced evidence which was referred to Senior Counsel with a view to institute civil action (in four instances/matters), defend civil action (in one matter) as well as



evidence which was referred to the National Prosecuting Authority ("NPA") with a view to institute criminal action (in three instances) and to the Board of the SABC ("SABC Board") with a view to consider the institution of disciplinary action (in 23 instances).

In some of the matters investigated, such as the matters involving procurement from Asanta Sana (Pty) Ltd and Foxton Communicating (Pty) Ltd, there were irregularities detected in respect of which the SIU did not pursue the institution of civil litigation. This is the case as the contracts were concluded, the services were rendered and there was no evidence to indicate that value for money was not received.

The SIU has followed up with the NPA to determine the status of the referrals made to them. Criminal cases have been opened in both matters against the three parties. The SIU is also monitoring the progress of the disciplinary referrals made to the SABC Board, and we are pleased to report that disciplinary proceedings have been initiated in all the matters referred and four SABC officials have been dismissed or left the employ of the SABC. Further details on the referrals are provided below and the current status of each of the referrals is set out in Table 1 and 2 below in order to avoid repetition. We will continue to monitor the status of these matters.

Details of the outcomes of the individual matters investigated include the following:

#### 1. Procurement of the services of Lornavision (Pty) Ltd

Criminal referral: The SIU has, on 6 June 2018, referred evidence to the NPA pointing towards Mr Frans Lodewyk Basson ("**Mr Basson**"), a director of Lornavision, having committed the criminal offences of attempted fraud and theft, in that he and/or Lornavision, with the intention to permanently deprive the SABC, intentionally and unlawfully failed to disclose to the SABC that he had diverted an amount of R7 308 741.95, which was due and payable to the SABC (and in fact due to be transferred into the SABC's Standard Bank Account), to his own benefit and into the bank account of an entity named The Customer Communication Services Company (Pty) Ltd ("**CCSC**"), of which he is the only Director. The criminal case was registered at the SAPS with Brixton CAS number 1677/7/2018.

Civil litigation: The contract concerned between Lornavision and the SABC has been set aside by the High Court following litigation between the two parties. On 11 May 2018, the SIU submitted evidence to the SABC's attorneys (i.e. Werksmans, who represent the SIU as well) with a view to support a civil claim of R62 733 556.61 against Lornavision and Mr

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James Aguma ("**Mr Aguma**") (former Chief Financial Officer of the SABC) ("**CFO**") and with a view to join the SIU as a co-plaintiff. Whereas the joinder application was been set down for hearing on 14 August 2018, Lornavision has since filed a second exception.

Disciplinary referral: Evidence pointing towards misconduct by two SABC officials in respect of the irregular and unlawful procurement of the services of Lornavision was referred to the SABC Board on 25 June 2018. The officials concerned are Ms Priscilla Nomsa Philiso (Acting Chief Executive Officer) ("**Ms Philiso**") and Mr Morobadi Phileon Moilwa (General Manager: Policy and Regulatory Affairs) ("**Mr Moilwa**"). The misconduct essentially comprise the breach of SABC policies as well as certain provisions of the PFMA and the Constitution.

Other: The irregular expenditure in the amount of R62 733 556.61 resulting from the irregular procurement concerned was reported to the SABC with a view to enable them to report it to the Auditor-General South Africa ("**AGSA**") and to National Treasury ("**NT**").

## 2. Procurement of the services of Vision View Productions CC

Civil litigation: On 12 March 2018, the SIU submitted evidence to the SABC's attorneys (i.e. Werksmans, who represent the SIU as well) with a view to institute appropriate civil action aimed at the setting aside of the contract between the SABC and Vision View to the value of approximately R52 million. The consequent Notice of Motion was filed on 24 April 2018 and registered under case number 18/15870. Vision View filed its answering affidavit on 29 May 2018, upon which a replying affidavit was about to be filed at the date of compilation of this report. To date, the SABC has paid Vision View an amount of R34 444 729.28 for services rendered in terms of the contract.

Disciplinary referral: Evidence pointing towards misconduct by seven SABC officials in respect of the irregular and unlawful procurement of the services of Vision View was referred to the SABC Board. The officials concerned and the dates when the evidence was referred are as follows:

- Acting Group Executive: Technology, Mr Kubendhran Padayachee ("**Mr Padayachee**") on 29 November 2017;
- The former Acting Chief Operating Officer, Ms Bessie Tugwana ("**Ms Tugwana**") on 26 March 2018;
- The Head of Procurement: SABC Radio Park, Mr Simon Molaudzi ("**Mr Molaudzi**") on 9 April 2018;





- The Operations Committee member, Mr Zakir Rawoot ("Mr Rawoot") on 30 May 2018;
- The Group Secretary, Mr Anand Moodliar ("Mr Moodliar") on 30 May 2018;
- Acting Chief Executive Officer, Ms Philiso on 25 June 2018; and
- General Manager: Policy and Regulatory Affairs, Mr Maitwa on 25 June 2018.

The misconduct essentially comprise the breach of SABC policies as well as certain provisions of the PFMA and the Constitution.

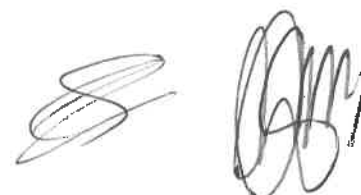
Other: The irregular expenditure in the amount of R34 444 729.28 resulting from the irregular procurement concerned was reported to the SABC with a view to enable them to report it to the AGSA and to NT.

### 3. Procurement of the services of SekelaXabiso CA Incorporated

Civil litigation: During December 2017, the SABC submitted an application to have the award of a procurement contract to the value of R9 816 023.52, entered into between themselves and SekelaXabiso, set aside (case number 17/49870, High Court of South Africa, Gauteng Local Division, Johannesburg). During April 2018, the SIU submitted additional evidence to the SABC's attorneys (i.e. Werksmans, who represent the SIU as well) with a view to support the application and be joined as a co-applicant in the matter. The SIU's application to join proceedings was granted on 5 June 2018. The civil proceedings are progressing.

Disciplinary referral: Evidence pointing towards misconduct by three SABC officials in respect of the irregular and unlawful procurement of the services of SekelaXabiso was referred to the SABC Board. The officials concerned are the Head of Procurement: SABC Radio Park, Mr Molaudzi, the General Manager Finance and Reporting, Ms Raphela and the General Manager: Compliance, Monitoring and Evaluation Mr Rawoot. The misconduct essentially comprised the breach of SABC policies as well as certain provisions of the PFMA and the Constitution.

Other: Irregular expenditure in the amount of R31 247 240.07 resulting from the irregular procurement of six contracts between SekelaXabiso and the SABC was reported to the SABC with a view to enable them to report it to the AGSA and to NT.



#### 4. Procurement of the services of Lezaf Consulting CC

Disciplinary referral: On 25 June 2018, evidence pointing towards misconduct by two officials, namely Ms Philiso, Acting Chief Executive Officer and Mr Mollwa, General Manager: Policy and Regulatory Affairs was referred to the SABC. The misconduct comprised breach of the SABC policies, the PFMA and the Constitution.

Other: Irregular expenditure in the amount of R6 053 000 resulting from the irregular procurement of the services of Lezaf was reported to the SABC with a view to enable them to report it to the AGSA and to NT.

#### 5. Procurement of the services of Gekkonomix (Pty) Ltd trading as Infonomix

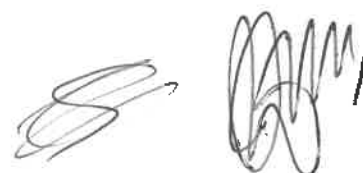
Civil recovery: The SIU has briefed Senior Counsel in this matter and civil litigation is imminent.

Disciplinary referral: Evidence obtained which points towards misconduct was referred to the SABC with a view to assist with pending disciplinary cases against the following officials on the following dates:

- The Head of Procurement: SABC Radio Park, Mr Molaudzi (evidence referred on 21 June 2018);
- The General Manager: Compliance, Monitoring and Evaluation, Ms Raphela (evidence referred on 29 June 2018);
- The Group Executive: Commercial Enterprises, Mr Tshifhiwa Mulaudzi ("Mr Mulaudzi"), (evidence referred on 17 July 2018);
- The General Manager in the CFO's Office, Ms Thandeka Ndlovu ("Ms Ndlovu"), (evidence referred on 17 July 2018); and
- The General Manager: Supply Chain Management, Governance and Special Projects Ms Mkhize, (evidence referred on 17 July 2018).

#### 6. Procurement of the services of Mott MacDonald Africa (Pty) Ltd

Civil litigation: The investigation into the lawfulness of the procurement concerned and the prospects of having the contract set aside on this basis is still in progress. Evidence obtained thus far indicates that the CFO at the time, Mr Aguma accepted Mott MacDonald's proposal and thus entered into an agreement with Mott MacDonald without proper authorisation.



Disciplinary referral: Mr Aguma, ("Mr Aguma") the key role player in the alleged procurement irregularities concerned, has left the employ of the SABC and therefore there has been no referral of evidence with a view to pursue potential disciplinary action.

Other referrals: The evidence gathered points to Mr Aguma having failed in his fiduciary responsibilities to act in the best interests of the SABC. The SIU will advise the SABC to consult Senior Counsel with a view to bringing an application to the High Court to have Mr Aguma declared a delinquent director.

## **7. Success fee paid to Mr Motsoeneng, former Chief Operating Officer of the SABC**

Civil litigation: Following evidence obtained by the SIU, the SIU and SABC jointly issued summons against Mr Motsoeneng on 5 February 2018 in the High Court of South Africa, Gauteng Local Division, Johannesburg (case number 18/04253). The claim against Mr Motsoeneng relates to an undue payment in the amount of R11 508 549.12 made to him as a "success fee" and damages in amount of R10 235 453.20 caused by him due to irregular appointments, salary increments, suspensions and unlawful terminations of employment that he sanctioned, facilitated and/or condoned. Mr Motsoeneng entered an Appearance to Defend and thereupon filed an Exception to the Particulars of Claims. The SIU is awaiting the allocation of a court date for argument in respect of the Exception.

Disciplinary referral: No disciplinary referrals were made thus far as the SIU is in the process of finalising this aspect of the investigation.

## **8. Irregular Appointments**

- **Mr Motsoeneng's role in irregular appointments and salary increments; suspensions and unlawful terminations of employment**

Civil litigation: As indicated above, following evidence obtained by the SIU, the SIU and SABC jointly issued summons against Mr Motsoeneng on 5 February 2018 in the High Court of South Africa, Gauteng Local Division, Johannesburg (case number 18/04253) in respect of, inter alia, damages resulting from his complicity in this regard.

- **The alleged irregular appointment of Ms Motsweni and other allegations**

Ms Motsweni's irregular appointments and salary progression:

As indicated above, the SIU and SABC jointly issued summons against Mr Motsoeneng on 5 February 2018 in the High Court of South Africa, Gauteng Local Division, Johannesburg (case number 18/04253) in respect of, inter alia, damages resulting from his complicity in the irregular payments made to Ms Motsweni.

In her February 2014 Report "When Governance and Ethics Fail", the Public Protector decreed that appropriate remedial action be taken by the SABC Board to ensure that "Any fruitless and wasteful expenditure that had been incurred as a result of irregular salary increments to ...Ms Motsweni *et al* is recovered from appropriate persons."

As a result, the SIU addressed a letter dated 16 April 2018 to the Chairperson of the SABC Board calling upon the Board to urgently act on the Public Protector's instructions by pursuing the setting aside of irregular appointments and any other appropriate action. Ms Motsweni has since been dismissed.

Civil litigation: The recovery of the amount of R45 184.56 and any other monies owing by Ms Motsweni to the SABC will be dealt with as part of the pending criminal and/or disciplinary processes.

Criminal referral: The investigation also revealed evidence that pointed towards Ms Motsweni having committed fraud in relation to travel claims to the value of R45 184.56 which she and her relatives benefitted from. The evidence concerned was referred to the NPA on 5 April 2018 and the SIU, working with the SAPS Commercial Crime Unit, registered a criminal case at the Brixton Police Station on 15 May 2018 with the SAPS case number CAS156/5/2018. On 30 May 2019, Ms Motsweni appeared in the Commercial Crime Court in Johannesburg on 11 counts of fraud. She was released on R5 000 bail and has appeared several further times, the next court date is 17 September 2018.

Disciplinary referral: Evidence pointing towards Ms Motsweni's misconduct in relation to the travel claims concerned was referred to the SABC on 29 March 2018 for charges relating to abuse and possible defrauding of the travel funds. In addition, evidence pointing towards misconduct by Ms Motsweni and two other SABC Foundation officials namely Mr Nabeweya Moosa ("Mr Moosa"), Learning and Development Specialist and Ms Iris Cupido

("Ms Cupido"), (CEO: SABC Foundation) in relation to the incurring of fruitless and wasteful expenditure of SABC Foundation funds, was also referred to the SABC.

- **Guga Duda**

Civil litigation: As indicated above, the SIU and SABC jointly issued summons against Mr Motsoeneng on 5 February 2018 in the High Court of South Africa, Gauteng Local Division, Johannesburg (case number 18/04253) in respect of, inter alia, damages resulting from his complicity in the irregular appointment of and/or irregular payments made to Ms Duda.



## 1. SUMMARY OF OUTCOMES

### 1.1 Evidence referred for the institution or defence of civil proceedings

- 1.1.1 The contract concerned between Lornavision and the SABC has been set aside by the High Court following litigation between the two parties. On 11 May 2018, the SIU submitted evidence to the SABC's attorneys (i.e. Werksmans, who represent the SIU as well) with a view to support a civil claim in the amount of R62 733 556.61 against Lornavision and Mr Aguma (former Chief Financial Officer of the SABC) ("CFO") and with a view to join the SIU as a co-plaintiff. Whereas the joinder application has been set down for hearing on 14 August 2018, Lornavision has since filed a second exception.
- 1.1.2 On 12 March 2018, the SIU submitted evidence to the SABC's attorneys (i.e. Werksmans, who represent the SIU as well) with a view to institute appropriate civil action aimed at the setting aside of the contract between the SABC and Vision View to the value of approximately R52 million. The consequent Notice of Motion was filed on 24 April 2018 and registered under case number 18/15870. Vision View filed its answering affidavit on 29 May 2018, upon which a replying affidavit was about to be filed at the date of compilation of this report. To date, the SABC has paid Vision View an amount of R34 444 729.28 for services rendered in terms of the contract.
- 1.1.3 During December 2017, the SABC submitted an application to have the award of a procurement contract to the value of R9 816 023.52, entered into between themselves and SekelaXabiso, set aside (case number 17/49870, High Court of South Africa, Gauteng Local Division, Johannesburg). During April 2018, the SIU submitted additional evidence to the SABC's attorneys (i.e. Werksmans, who represent the SIU as well) with a view to support the application and be joined as co-applicant in the matter. The SIU's application to join proceedings was granted on 5 June 2018.
- 1.1.4 Following evidence obtained by the SIU, the SIU and SABC jointly issued summons against Mr Motsoeneng on 5 February 2018 in the High Court of South Africa, Gauteng Local Division, Johannesburg (case number 18/04253). The claim against Mr Motsoeneng relates to an undue payment in the amount of R11 508 549.12 made to him as a "success fee" and damages in amount of R10 235 453.20 caused by him due to irregular appointments, salary increments, suspensions and unlawful



terminations of employment that he sanctioned, facilitated and/or condoned. Mr Motsoeneng entered an Appearance to Defend and thereupon filed an Exception to the Particulars of Claims. The SIU is awaiting the allocation of a court date for argument in respect of the Exception.

- 1.1.5** In the Asanta Sana matter the SIU provided evidence gathered in order to assist the SABC to defend the claim by Asanta Sana for R350 000. This claim resulted from the fact that the SABC has refused to pay Asante Sana for their duly rendered services – purely on the basis that the procurement was suspected to have been irregular and despite them not having suffered any losses.

## **1.2 Referrals to the relevant Prosecuting Authority**

**Table 1: Referrals to the Relevant Prosecuting Authority**

<b>No</b>	<b>Entity referred to</b>	<b>Date of referral</b>	<b>Name and Surname</b>	<b>Job Title</b>	<b>Nature of offence and value</b>	<b>Status of referral</b>
1.	NPA	06/06/2018	1) Frans Lodewyk Basson 2) Lorna-vision	Director Lorna-vision	Attempted fraud and theft R7 308 741.95	Criminal case opened, Brixton CAS 167/7/2018 refers. The SIU is working with the SAPS.
2.	NPA	05/04/2018	Sully Motsweni		Fraud in relation to travel claims  R45 184.56	Criminal case opened, BrixtonCAS 156/5/2018 refers. Ms Motsweni appeared in the Commercial Crime Court on 30/5/2018 on 11 counts of fraud. She was released on R5000 bail. The next court appearance is on 17/9/2018.



### 1.3 Referrals made for disciplinary, executive and/or administrative action

Table 2: Referrals made for disciplinary, executive and/or administrative action						
No	Entity referred to	Date of referral	Name and Surname	Job Title	Nature of offence	Status of referral
1.	SABC Board	25/06/2018	Priscilla Nomsa Philiso	Acting Chief Executive Officer	Irregular and unlawful procurement re Lornavision	Employee to submit reasons why they should not be disciplined by 14/9/2018
2.	SABC Board	25/06/2018	Priscilla Nomsa Philiso	Acting Chief Executive Officer	Irregular and unlawful procurement re Vision View	Employee to submit reasons why they should not be disciplined by 14/9/2018
3.	SABC Board	25/06/2018	Priscilla Nomsa Philiso	Acting Chief Executive Officer	Misconduct: Breach of SABC policies, PFMA and Constitution re Lezaf	Employee to submit reasons why they should not be disciplined by 14/9/2018
4.	SABC Board	25/06/2018	Morobadi Phileon Moliwa	General Manager: Policy and Regulatory Affairs	Irregular and unlawful procurement re Lornavision	Employee to submit reasons why they should not be disciplined by 14/9/2018
5.	SABC Board	25/06/2018	Morobadi Phileon Moliwa	General Manager: Policy and Regulatory Affairs	Irregular and unlawful procurement re Vision View	Employee to submit reasons why they should not be disciplined by 14/9/2018

Table 2: Referrals made for disciplinary, executive and/or administrative action

No	Entity referred to	Date of referral	Name and Surname	Job Title	Nature of offence	Status of referral
6.	SABC Board	25/06/2018	Morobadi Phileon Moliwa	General Manager: Policy and Regulatory Affairs	Misconduct: Breach of SABC policies, PFMA and Constitution re Lezaf	Employee to submit reasons why they should not be disciplined by 14/9/2018
7.	SABC Board	29/11/2017	Kubendhran Padayachee	Acting Group Executive: Technology	Misconduct: Breach of SABC policies, PFMA and Constitution re Vision View	Employee resigned after disciplinary action was instituted
8.	SABC Board	26/03/2018	Bessie Tugwana	Former Acting Chief Operating Officer	Misconduct: Breach of SABC policies, PFMA and Constitution re Vision View	Employee retired after disciplinary referral was made
9.	SABC Board	09/04/2018	Simon Molaudzi	The Head of Procurement: SABC Radio Park	Misconduct: Breach of SABC policies, PFMA and Constitution re Vision View	The disciplinary hearing took place on 25-26/6/2018. Outcome and sanction awaited.
10.	SABC Board	08/05/2018	Zakir Rawoot	Operations Committee member	Misconduct: Breach of SABC policies, PFMA and Constitution re SekelaXabiso	Disciplinary hearing schedule for 18-19/10/ 2018




Table 2: Referrals made for disciplinary, executive and/or administrative action

No	Entity referred to	Date of referral	Name and Surname	Job Title	Nature of offence	Status of referral
11.	SABC Board	30/05/2018	Anand Moodliar	The Group Secretary	Misconduct: Breach of SABC policies, PFMA and Constitution	The disciplinary hearing took place on 11/9/2018. Outcome and sanction awaited.
12.	SABC Board	08/05/2018	Simon Molaudzi	Head of Procurement: SABC Radio Park	Misconduct: Breach of SABC policies, PFMA and Constitution re SekelaXabiso	The disciplinary hearing took place on 25-26/6/2018. Outcome and sanction awaited.
13.	SABC Board	07/05/2018	Audrey Raphela	General Manager Finance and Reporting	Misconduct: Breach of SABC policies, PFMA and Constitution re SekelaXabiso	Employee resigned after the disciplinary referral was made.
14.	SABC Board	30/05/2018	Zakir Rawoot	General Manager: Compliance, Monitoring and Evaluation	Misconduct: Breach of SABC policies, PFMA and Constitution re Vision View	Disciplinary hearing schedule for 18-19/10/ 2018.
15.	SABC Board	21/06/2018	Simon Molaudzi	The Head of Procurement: SABC Radio Park	Misconduct: Breach of SABC policies, PFMA and Constitution re	The disciplinary hearing took place on 25-26/6/2018.






Table 2: Referrals made for disciplinary, executive and/or administrative action

No	Entity referred to	Date of referral	Name and Surname	Job Title	Nature of offence	Status of referral
					Infonomix	Outcome and sanction awaited.
16.	SABC Board	29/06/2018	Audrey Raphela	The General Manager: Compliance, Monitoring and Evaluation	Misconduct re Infonomix	Employee resigned after the disciplinary referral was made.
17.	SABC Board	17/07/2018	Tshifhiwa Mulaudzi	The Group Executive: Commercial Enterprises	Misconduct re Infonomix	Disciplinary hearing schedule for 17-19/9/ 2018.
18.	SABC Board	17/07/2018	Thandeka Ndlovu	The General Manager in the CFO's Office	Misconduct re Infonomix	Disciplinary hearing schedule for 20-21/9/ 2018.
19.	SABC Board	17/07/2018	Ayanda Mkhize	The General Manager: Supply Chain Management, Governance and Special Projects	Misconduct re Infonomix	Disciplinary hearing schedule for 26-27/9/ 2018.
20.	SABC Board	29/03/2018	Sully Motsweni	Group Executive: Sport	Misconduct for charges relating to abuse and possible fraud relating to travel claims	Found guilty in absentia on 11 of the 12 charges. Services of the employee terminated




Table 2: Referrals made for disciplinary, executive and/or administrative action

No	Entity referred to	Date of referral	Name and Surname	Job Title	Nature of offence	Status of referral
						thereafter.
21.	SABC Board	29/03/2018	Nabeweya Moosa	Learning and Development Specialist	Incurring of fruitless and wasteful expenditure of SABC Foundation funds	Disciplinary proceedings instituted, charges served on employee and disciplinary hearing date to be confirmed.
22.	SABC Board	29/03/2018	Iris Cupido	CEO: SABC Foundation	Incurring of fruitless and wasteful expenditure of SABC Foundation funds	Disciplinary proceedings instituted, charges served on employee and disciplinary hearing date to be confirmed.
23.	SABC Board	29/03/2018	Sully Motsweni	Group Executive: Sport	Acting dishonestly contrary to the SABC Disciplinary Code re SABC Foundation Bursaries	Found guilty in absentia on 11 of the 12 charges. Services of the employee terminated thereafter.

#### 1.4 Other

1.4.1 The SIU identified fruitless and wasteful expenditure which resulted from the irregular procurement of certain service providers and the irregular salary progression and bonuses paid to certain staff members (including the former Chief Operating Officer of the SABC, Mr Motsoeneng). The details of the SIU's findings of fruitless and wasteful as well as irregular expenditure are in the table below.

1.4.2 These findings have been reported to the SABC with a view to enable them to report it to the AGSA and to NT.

No.	Beneficiary of the expenditure incurred	Irregular Expenditure	Fruitless and Wasteful Expenditure
1.	Lornavision (Pty) Ltd	R62 733 556.61	
2.	Vision View Productions CC	R34 444 729.28	
3.	Lezaf Consulting CC	R6 053 000.00	
4.	SekelaXabiso CA Incorporated	R31 247 240.07	
5.	Asante Sana Consulting	R 18 497 605.00	
6.	Foxton Communicating (Pty)Ltd	R1 282 500,00	
7.	Mott MacDonald Africa (Pty) Ltd	R5 612 703.13	
8.	Success fee paid to Mr Motsoeneng	R11 508 549.12 (before tax) R10 253 453.20 (after tax)	R11 508 549.12 (before tax) R10 253 453.20 (after tax)
9.	Sully Miranda Motsweni	+R4 000 000 (salary progressions) <u>R 512 597.92</u> (bursary application)	R18 290.12  R512 597.92





## 2. INTRODUCTION

The SIU is honoured to present this Interim Report to His Excellency, President MC Ramaphosa, in terms of section 4(1)(f) of the Special Investigating Units and Special Tribunals Act No. 74 of 1996 ("SIU Act").

### 2.1 Background

Via reports in the media, the SIU became aware of certain matters ventilated at the Ad Hoc Committee of Parliament's inquiry into the affairs of the South African Corporation Limited ("SABC"). Further details of the matters concerned came to the attention of the SIU via a review of the Committee's subsequent report.

In addition to the above and subsequent to a resolution to this effect adopted by the SABC Interim Board on 26 April 2017, the SIU was requested by the said Interim Board to investigate certain matters of the SABC.

### 2.2 The SIU's mandate and scope of investigation

In terms of Presidential Proclamation R29 of 2017, as published in the Government Gazette on 1 September 2017, read together with the relevant provisions of the SIU Act, the SIU was (for the purposes of this investigation) mandated to investigate:

*"any alleged—*

- (a) serious maladministration in connection with the affairs of the SABC;*
- (b) improper or unlawful conduct by board members, officials or employees of the SABC (hereinafter referred to as "the personnel of the SABC");*
- (c) unlawful appropriation or expenditure of public money or property;*
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;*
- (e) intentional or negligent loss of public money or damage to public property;*
- (f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the SABC; or*
- (g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,*



*which took place between 1 November 2011 and the date of publication of this Proclamation or which took place prior to 1 November 2011 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the SABC or the State, in relation to the said matters in the Schedule."*

The nature of "the matters mentioned in the Schedule" (which are reported on herein), is apparent from the wording of the Schedule, which reads as follows:

- "1. The procurement of, or contracting for goods, works or services by or on behalf of the SABC from Lornavision (Pty) Ltd, Vision View Productions CC, SekelaXabiso CA Incorporated, Lezaf Consulting CC, Gekkonomix (Pty) Ltd (trading as Infonomix), Asante Sana (Pty) Ltd, Foxton Communicating (Pty) Ltd and Mott MacDonald (Pty) Ltd and payments made in respect thereof, in a manner that was—
  - (a) not fair, competitive, transparent, equitable or cost-effective;
  - (b) contrary to applicable—
    - (i) legislation;
    - (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or
    - (iii) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the SABC,
 and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the SABC or the State.
  
2. Maladministration in the affairs of the SABC and any losses or prejudice suffered by the SABC or the State as a result of such maladministration in relation to—
  - (a) the mismanagement of the finances, rights, assets or liabilities of the SABC;
  - (b) the selling of assets or rights which were owned by the SABC which was not to the advantage of the SABC;
  - (c) business transactions that were concluded by or on behalf of the SABC and which were not viable or to the advantage of the SABC;
  - (d) the irregular appointment and promotion of staff; or
  - (e) the payment of salaries, increases, bonuses and other forms of remuneration that were not due, owing or payable or were made in a manner that was contrary to applicable—

- (i) *legislation; or*
- (ii) *manuals, policies, procedures, directives, instructions or practices of or applicable to the SABC*

*including the causes of such maladministration and any related unauthorised, irregular or fruitless and wasteful expenditure suffered by the SABC or the State.*

3. *Any undisclosed or unauthorised interest that certain members of the personnel of the SABC may have had with regard to —*
  - (a) *contractors, suppliers or service providers who bid for work or did business with the SABC; or*
  - (b) *contracts awarded by or on behalf of the SABC."*

### **2.3 Objectives of the investigation**

The SIU embarked on the investigation with a view to attain the following objectives:

- identify irregular and/or unlawful conduct on the part of SABC employees and/or third parties;
- identify and quantify losses incurred by the SABC;
- facilitate the recovery of losses incurred by the SABC;
- collect lawfully admissible evidence with a view to facilitate the institution of any suitable civil and/or criminal and/or disciplinary action against complicit parties;
- facilitate the institution of disciplinary proceedings in appropriate cases through, *inter alia*, providing the SABC with disciplinary case files containing evidence collected of misconduct;
- facilitate the registration of criminal cases with the South African Police Service ("SAPS") and provide the SAPS with support in finalising their investigations; and
- identify systemic weaknesses and appropriate recommendations in this regard.

### **2.4 Limitations**

This report is based on the facts established from documentation provided and/or information obtained during the course of the investigation. Although reasonable attempts were made to obtain all relevant documentation, the SIU cannot and does not guarantee that it has had sight of all relevant documentation or access to all information that may be in existence or that the contents of any documentation at its disposal or any statements or information obtained by or made available to it, are true and correct.



Should any further information come to light, or should any of the contents of any documentation or statements or information at its disposal not be true or correct, it may influence the SIU's findings, conclusions and recommendations. The SIU reserves the right to amend the findings and conclusions reflected in this report, should such additional information and/or documentation be presented to the SIU after the date of this report.

Due to the volume of the matters under investigation, it was decided to adopt a phased approach in investigating and reporting on the matter. This interim report only deals with outcomes achieved in phase 1. It must be noted that the SIU have commenced with phase 2 which will be reported on in due course.

### 3. LEGISLATIVE FRAMEWORK

The relevant legislation and policies applicable to the investigations are as follows:

#### The Constitution of the Republic of South Africa, 1996 ("the Constitution")

Section 217 of the Constitution stipulates that *"when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective."*

The Constitution further stipulates that subsection (1) *"does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for –*

- (a) *categories of preference in the allocation of contracts;*
- (b) *the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination."*

#### Public Finance Management Act No. 1 of 1999 ("PFMA")

The PFMA defines "fruitless and wasteful expenditure" as *"expenditure made in vain, which could have been avoided had reasonable care been exercised."*

The PFMA further stipulates to the effect that wilful or negligent failure to comply with general and/or delegated responsibilities constitutes financial misconduct. Section 45 (c) states that *"an official in a department, trading entity or constitutional institution –*

- (c) *must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due."*

Preferential Procurement Policy Framework Act No. 5 of 2000 ("PPPFA")

This Act gives effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution; and to provide for matters connected therewith. The Act is applicable to the procurement of goods and/or services by all organs of State.

Prevention and Combating of Corrupt Activities Act No. 12 of 2004 ("PACOCOA")

Section 17(1) of this Act stipulates that *"any public officer who, subject to subsection (2), acquires or holds a private interest in any contract, agreement or investment emanating from or connected with the public body in which he or she is employed or which is made on account of the public body, is guilty of an offence."*

Public Service Act No. 103 of 1994 ("PSA")

Section 30(1) of this Act stipulates that *"no employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the relevant department, except with the written permission of the executive authority of the department."*

Value-Added Tax Act No. 89 of 1991 ("VAT Act")

Section 23(1)(a) of this Act stipulates that *"every person who, on or after the commencement date, carries on any enterprise and is not registered, becomes liable to be registered at the end of any month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month in the course of carrying on all enterprises has exceeded R1 million."*

National Treasury Practice Note SCM 2 of 2005: Threshold values for the procurement of goods and services by means of petty cash, verbal or written price quotations and competitive bids ("Practice Note 2 of 2005")

In terms of this Practice Note accounting officers or authorities are required to apply the threshold values provided for in the practice note, when procuring goods or services, hiring or letting anything, acquiring or granting any right or disposing of movable state property.

National Treasury Practice Note 8 of 2007/2008: Threshold values for the procurement of goods, works and services by means of petty cash, verbal or written price quotations or competitive bids ("Practice Note 8 of 2007/2008")



This Practice Note, which was issued in terms of section 76(4)(c) of the Public Finance Management Act, was intended to regulate the threshold values within which accounting officers or authorities may procure goods, works and services by means of petty cash, verbal or written price quotations or competitive bids.

National Treasury Instruction Note on enhancing compliance monitoring and improving transparency and accountability in Supply Chain Management dated 31 May 2011  
**("National Treasury Instruction dated 31 May 2011")**

Paragraph 3.9 of the Instruction Note provides for the *"Management and expansions of variation orders against the original contract."* Paragraph 3.9.3 stipulates that *"in order to mitigate against such practices, accounting officers and authorities are directed that, from the date of this instruction note taking effect, contracts may be expanded or varied by not more than 20% or R20 million (including all applicable taxes) for construction related goods, works and/or services and 15% or R15 million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount. The relevant treasuries may, however, decrease these thresholds for institutions reporting to them."*

Paragraph 3.9.4 further stipulates that *"any deviation in excess of these thresholds will only be allowed subject to the prior written approval of the relevant treasury. Whilst provision is made for deviations, it is imperative to note that requests for such deviations may only be submitted to the relevant treasury where good reasons exist."*

Treasury Regulations for departments, trading entities, constitutional institutions and public entities, issued in terms of the Public Finance Management Act dated March 2005  
**("Treasury Regulations dated March 2005")**

Section 16A8.4 of these Treasury Regulations stipulates that *"If a supply chain management official or other role player, or any close family member, partner or associate of such official or other role player, has any private or business interest in any contract to be awarded, that official or other role player must –*

- (a) *disclose that interest; and*
- (b) *withdraw from participating in any manner whatsoever in the process relating to that contract."*

#### 4. SUMMARY OF FINDINGS AND OUTCOMES IN RESPECT OF PHASE 1

The SIU adopted a phased approach in investigating the various matters concerned. This was due to the significant volume of matters to be investigated. This report constitutes an interim report on the status of the matters investigated as part of Phase 1, over the period 1 September 2017 to date. A final report will be submitted on conclusion of the investigation of all Phase 1 and Phase 2 matters.

Kindly refer to Tables 1 and 2 above for the current status of all the SIU's referrals.

##### 4.1 Lornavision (Pty) Ltd

###### Allegation

It was alleged that irregular SCM processes were followed in procuring the services of Lornavision with a view to assist the SABC with audit queries and revenue collection in respect of TV licences. In total, Lornavision was paid an amount of R62 733 556.61 in collection fees.

###### Findings

On 26 July 2017, the High Court, Gauteng Local Division Johannesburg, declared the contract between Lornavision and the SABC unlawful and set it aside. Lornavision took this decision on appeal. Their appeal was dismissed on 19 April 2018 (case number 19502/2017).

###### Irregular SCM Process

The evidence obtained indicates that the SABC Group Executive Committee ("EXCO") approved the appointment of Lornavision purely based on representations made by Mr Aguma the former CFO. They ignored the provisions of the Delegation of Authority Framework ("DAF") which required requests and/or motivations for such "deviation" (from the normal procurement process) approvals to flow from the relevant Operations Manager to EXCO. They also disregarded certain provisions of the Procurement Policy and appointed Lornavision on a deviation (from the normal procurement process) basis - which could not be justified in terms of paragraph 13.19 of the Procurement Policy.

The evidence obtained indicated that EXCO never approved the appointment of Lornavision to assist with collections of arrear TV license fees. Notwithstanding this, the Head of Legal





and the former CFO concluded a contract with Lornavision in terms of which they were to construct and implement a pilot program with a view to assist with the collection of TV license fees from pirate viewers as well as with the collection of arrear TV license fees. In total, the SABC paid Lornavision an aggregate amount of R62 733 556.61, of which R56 050 289.63 constituted payments for successful collections on arrear accounts, an arrangement which EXCO never approved and which Lornavision was therefore never entitled to.

On 23 May 2016, Mr Aguma submitted incorrect, inflated statistics in respect of the collection-performance of Lornavision. On 27 May 2015 and on the basis of the inflated statistics submitted to them, EXCO approved the amendment of Lornavision's contract to their (Lornavision's) benefit and ultimately to the prejudice of the SABC.

The SIU uncovered evidence indicating attempted fraud and theft in that Lornavision and/or their sole director diverted an amount of R7 308 741.95 to a bank account under the sole director's control. This was done with the knowledge and consent of the SABC and despite the fact that such monies were due to have been paid into an SABC bank account. The Director of Lornavision subsequently admitted that they are indeed in possession of the funds and claimed that they are retaining the funds in terms of an alleged retention right pending the outcome of their appeal against a High Court ruling referred to above.

#### **Outcomes**

The investigation conducted by the SIU has produced the following outcomes:

Criminal referral: The SIU has, on 6 June 2018, referred evidence to the NPA pointing towards Mr Basson, a Director of Lornavision, having committed criminal offences of attempted fraud and theft, in that he and/or Lornavision had, with the intention to permanently deprive the SABC, intentionally and unlawfully failed to disclose to the SABC that he had diverted an amount of R7 308 741.95, which was due and payable to the SABC (and in fact due to be transferred into the SABC's Standard Bank Account), to his own benefit and into the bank account of an entity named The Customer Communication Services Company (Pty) LTD, of which he is the only director. The criminal case was registered at the SAPS with Brixton CAS number 167/7/2018. The SIU will monitor the progress of this criminal matter.

Civil recovery: The contract concerned between Lornavision and the SABC has been set aside by the High Court following litigation between the two parties. On 11 May 2018, the SIU submitted evidence to the SABC's attorneys (i.e. Werksmans, who represent the SIU as well) with a view to support a civil claim in the amount of R62 733 556.61 against Lornavision



and Mr Aguma (former CFO of the SABC) and with a view to join the SIU as a co-plaintiff. Whereas the joinder application has been set down for hearing on 14 August 2018, Lornavision has since filed a second exception.

Disciplinary referral: Evidence pointing towards misconduct by two SABC officials in respect of the irregular and unlawful procurement of the services of Lornavision was referred to the SABC Board on 25 June 2018. The officials concerned are Ms Philiso (Acting Chief Executive Officer) and Mr Moliwa (General Manager: Policy and Regulatory Affairs) and the misconduct essentially comprise the breach of SABC policies as well as certain provisions of the PFMA and the Constitution. As Mr Aguma is no longer employed by the SABC or elsewhere in government, there has been no basis for the referral of evidence with a view to pursue potential disciplinary action against him.

Other: The irregular expenditure in the amount of R62 733 556.61 resulting from the irregular procurement concerned was reported to the SABC with a view to enable them to report it to the AGSA and to NT.

## **4.2 Vision View Productions CC**

### **Allegation**

It was alleged that irregular SCM processes were followed in procuring the services of Vision View, with a view to construct a multipurpose studio and set at a cost of R39 380 000 (excluding VAT).

### **Findings**

On 20 July 2015, the Operations Committee (a sub-committee of EXCO) of the SABC resolved to recommend that a deviation from the normal tender process be approved to appoint Vision View for the construction of the multipurpose studio and set. They made this recommendation to EXCO without ensuring that:

- a) The prescribed deviation template required for purposes of this request was submitted to the Procurement Division;
- b) The Bid Adjudication Committee ("BAC") signed off on the deviation as required in terms of sub-paragraph 13.19.8 of the Procurement Policy;
- c) The reasons and motivation for the deviation were in line with the provisions of the Procurement Policy and the Delegation of Authority Framework; and

- d) The business case for the procurement of the multipurpose set and studio had been presented to and supported to the Technical Investment Committee as prescribed by section E10 of the DAF.

On 1 August 2015, Mr Moodliar, the then Group Secretary sent an e-mail to EXCO members informing them that the round robin approval for deviation from normal procurement process for the multi-purpose set and studio was successful. A majority of EXCO members is required to approve the round robin before it can be declared a valid EXCO resolution. Contrary to the advice contained in Mr Moodliar's email, the evidence obtained revealed that no valid resolution was obtained from EXCO to approve the deviation, as the majority of EXCO members did not support the proposed resolution.

### Outcomes

The investigation conducted by the SIU has resulted in the following referrals:

Civil recovery: On 12 March 2018, the SIU submitted evidence to the SABC's attorneys (i.e. Werksmans, who represent the SIU as well) with a view to institute appropriate civil action aimed at the setting aside of the contract between the SABC and Vision View to the value of approximately R52 million. The consequent Notice of Motion was filed on 24 April 2018 and registered under case number 18/15870. Vision View filed its answering affidavit on 29 May 2018, upon which a replying affidavit was about to be filed at the date of compilation of this report. To date, the SABC has paid Vision View an amount of R34 444 729.28 for services rendered in terms of the contract.

Disciplinary referral: Evidence pointing towards misconduct by seven SABC officials in respect of the irregular and unlawful procurement of the services of Vision View was referred to the SABC Board. The officials concerned and the dates when the evidence was referred are as follows:

- Acting Group Executive: Technology, Mr Padayachee - on 29 November 2017;
- The former Acting Chief Operating Officer, Ms Tugwana - on 26 March 2018;
- The Head of Procurement: SABC Radio Park, Mr Molaudzi - on 9 April 2018;
- An Operations Committee member, Mr Rawoot - on 30 May 2018;
- The Group Secretary, Mr Moodliar - on 30 May 2018;
- Acting Chief Executive Officer, Ms Philiso - on 25 June 2018; and
- General Manager: Policy and Regulatory Affairs, Mr Molwa - on 25 June 2018.



The misconduct essentially comprise the breach of SABC policies as well as certain provisions of the PFMA and the Constitution.

Other: The SIU has reported the irregular expenditure in the amount of R34 444 729.28 resulting from the irregular procurement concerned to the SABC with a view to enable them to report it to the AGSA and NT.

#### **4.3 SekelaXabiso CA Incorporated**

##### **Allegation**

It was alleged that the procurement of, or contracting for goods, works or services by or on behalf of the SABC from SekelaXabiso and payments made in respect was not in line with Section 217(1) of the Constitution and that these appointments were all irregular. A total of five contracts were awarded to SekelaXabiso over three years to the value of R31 247 240.07.

##### **Findings**

The evidence obtained indicated that, the appointment of SekelaXabiso was unlawful, invalid and in breach of the system of procurement for goods and services in terms of relevant provisions of section 217 of the Constitution and section 38(1)(iii) of the PFMA as well as its Supply Chain Management Policy ("SCM") dated 21 February 2013 clause 13.9 sub-clause 13.9.1, 13.17 and 13.18.

The SABC did not follow a competitive process and in terms of Section 51(1)(a) of the PFMA which states that an accounting authority for a public entity must ensure that the particular public entity has and maintains an appropriate procurement and provisioning system which, echoing the words of the Constitution, is fair, equitable, transparent, competitive and cost-effective. In terms of clause 13.18 SABC Supply Chain Policy that competitive open bidding shall be used for procurement above R2 million. The fact of the matter is that SABC failed to comply in terms of the Constitution and its own procurement policy and justified it with a deviation.

The acquisition of SekelaXabiso as a service provider to the SABC did not follow normal bidding processes, and does not satisfy the deviation criteria as set out in the National Treasury (NT Instruction Note 3 of 2016/17 (sole supplier or emergency)). Therefore, no individual or committee within the SABC had the delegation to approve such deviation, which could only be approved by National Treasury. All contracts between SekelaXabiso and the

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SABC are irregular and all expenditure incurred under these contracts are deemed irregular expenditure. Any officials who have approved such deviations with SekelaXabiso should have reasonably known that they could not approve such deviations, bearing in mind that the reasons provided for deviation were unreasonable.

In the five contracts entered into between the SABC and SekelaXabiso to the value of R31 247 240.07 the basis for the deviation does not establish an impracticality to invite other service provider for competitive bidding. In all of these contracts they provided the same reasons for deviations which is unreasonable. The evidence obtained indicated that reasons provided for deviations did not meet the requirements of the SABC Supply Chain Management Policy, PFMA and section 217 of the Constitution.

It is apparent that the SCM processes and approvals, as prescribed by the relevant legislation, were not complied with during the procurement and appointment of SekelaXabiso. Therefore, the entire transactions, and all resultant expenditure are irregular. The matter was referred to court for setting aside of that contract which is valued at R9 816 023.52, which the SABC still owes an amount of R6 140 758.80.

The SIU has made a recommendation to the SABC that the expenditure, to the value of R32 383 683.07 relating to this contract, is irregular and should be declared to the Auditor-General of South Africa ("AGSA") and NT as such.

#### Outcomes

The investigation conducted by the SIU has resulted in the following outcomes:

Civil recovery: During December 2017, the SABC submitted an application to have the award of a procurement contract to the value of R9 816 023.52, entered into between themselves and SekelaXabiso, set aside (case number 17/49870, High Court of South Africa, Gauteng Local Division, Johannesburg). During April 2018, the SIU submitted additional evidence to the SABC's attorneys (i.e. Werksmans, who represent the SIU as well) with a view to support the application and be joined as co-applicant in the matter. In addition, an application was filed to join the SIU's application to join proceedings, which was granted on 5 June 2018. The status of the civil litigation is that the parties are currently exchanging pleadings.

Disciplinary referral: Evidence pointing towards misconduct by three SABC officials in respect of the irregular and unlawful procurement of the services in respect of the five contracts concluded with SekelaXabiso was referred to the SABC Board. The officials concerned are



the Head of Procurement: SABC Radio Park, Mr Molaudzi, the General Manager Finance and Reporting, Ms Raphela and the General Manager: Compliance, Monitoring and Evaluation Mr Rawoot. The misconduct essentially comprise the breach of SABC policies as well as certain provisions of the PFMA and the Constitution.

Other: Irregular expenditure in the amount of R31 247 240.07 resulting from the irregular procurement of five contracts between SekelaXabiso and the SABC was reported to the SABC with a view to enable them to report it to the AGSA and to NT.

#### **4.4 Lezaf Consulting CC**

##### **Allegation**

It was alleged that irregular SCM processes were followed to appoint Lezaf, with a view to assist the SABC with audit queries. In total, Lezaf was paid an amount of R6 053 000 for professional services.

##### **Findings**

The evidence obtained indicated that EXCO failed to comply with the relevant SCM policies and the prescribed legislative prescripts when they appointed Lezaf. All expenditure incurred in respect of the appointment of Lezaf amounts to irregular expenditure as their appointment on a deviation cannot be justified in terms of any of the conditions stipulated in paragraph 13.19 of the Procurement Policy.

In addition, EXCO approved the extension of the Lezaf contract without knowing what the full financial implications would be for the SABC.

##### **Outcomes**

The investigation conducted by the SIU has resulted in the following outcomes:

Disciplinary referral: On 25 June 2018, evidence pointing towards misconduct by two officials, namely Ms Philiso, Acting Chief Executive Officer and Mr Moliwa, General Manager: Policy and Regulatory Affairs was referred to the SABC. The misconduct comprised breach of the SABC policies, the PFMA and the Constitution.

Other: Irregular expenditure in the amount of R6 053 000 resulting from the irregular procurement of the services of Lezaf was reported to the SABC with a view to enable them to report it to the AGSA and to NT.



#### 4.5 Gekkonomix (Pty) Ltd (trading as Infomix)

##### **Allegation**

It was alleged that the procurement of, or contracting for goods, works or services by or on behalf of the SABC from Infonomix was irregular in terms of an SCM compliance perspective and that all payments made was in contravention of applicable legislation.

##### **Findings**

This matter is still under investigation. Whereas the evidence obtained indicated that no competitive bidding process was followed, it is also apparent that the officials involved considered this authorised in terms of a specific section of the SABC's procurement policy. Evidence from National Treasury is still outstanding with a view to determine the validity and/or implications of these and certain other provisions in the SABC's procurement policy in the light of a certain National Treasury Practice Note.

##### **Outcomes**

The investigation conducted by the SIU has resulted in the following outcomes:

Civil recovery: The SIU has briefed Senior Counsel in this matter and civil litigation is imminent.

Disciplinary referral: Evidence obtained so-far during the course of the investigation was referred to the SABC with a view to assist with the pending disciplinary cases in respect of the following officials on the following dates:

- The Head of Procurement: SABC Radio Park, Mr Molaudzi (evidence referred on 21 June 2018);
- The General Manager: Compliance, Monitoring and Evaluation, Ms Raphela (evidence referred on 29 June 2018);
- The Group Executive: Commercial Enterprises, Mr Mulaudzi, (evidence referred on 17 July 2018);
- The General Manager in the CFO's Office, Ms Ndlovu, (evidence referred on 17 July 2018); and
- The General Manager: Supply Chain Management, Governance and Special Projects Ms Mkhize, (evidence referred on 17 July 2018).





#### 4.6 Asante Sana (Pty) Ltd

##### Allegation

It was alleged that Asante Sana, a service provider to the SABC, was awarded nine contracts to a total value of R21 017 285 through a deviation procurement process and that the reasons for the deviation were not justified.

##### Findings

The table below sets out all the contracts, and the contract values concerned, entered into between the SABC and Asante Sana over the past six years.

Table 3: Breakdown of contracts and contract values

Contract Number	Contract period	Contract amount
7010	20 March 2012 to 28 June 2012	R802 575
8345	15 July 2013 to 15 October 2013	R1 717 105
8791 (1 <sup>st</sup> addendum)	28 October 2013 to 13 December 2013	R844 000
9017 (2 <sup>nd</sup> addendum)	14 December 2013 to 15 May 2014	R1 815 625
5830 (3 <sup>rd</sup> addendum)	16 May 2014 to 31 July 2014	R1 809 625
6047 (4 <sup>th</sup> addendum)	1 August 2014 to 30 November 2014	R1 638 000
9854 (5 <sup>th</sup> addendum)	1 December 2014 to 31 July 2015	R5 000 000
10960	1 December 2015 to 31 March 2016	R7 040 355
12485	14 March 2017 to 29 March 2017	R350 000
	<b>Total value</b>	<b>R21 017 285</b>

With the exception of the first and the second contract (i.e. contract number 7010 to the value of R802 575 and contract number 8345 to the value of R1 717 105), our investigation essentially confirmed the findings of the SABC's forensic investigation to the effect that the other contracts were entered into on (technically) an irregular basis and that the resulting payments made constitute irregular expenditure. The word "technically" is used with a view to distinguish between a situation where procurement prescripts were not strictly complied with (which was the case in this instance) and a situation where there are indications of serious



culpability and/or undue benefits obtained and/or significant prejudice/losses suffered (which appears not to be the case in this instance).

The important question that remained for the SIU to determine was whether additional SIU investigation work could potentially serve any meaningful purpose and/or achieve any meaningful outcomes in terms of cancellation of unlawfully procured contracts and/or recovery of losses. We also considered the prospects of criminal action and/or disciplinary action.

It appeared that all the contracts concerned have expired and that (except for the very last contract, i.e. contract number 12485 to the value of R350 000), Asante Sana had been paid in full. Considering this, the only potentially meaningful outcome in terms of civil court proceedings in respect of the expired contracts would have been in the event that any quantifiable loss could be claimed. Without any proof of a quantified loss, there was no reasonable prospects of recovery. In this instance, the evidence obtained pointed towards Asante Sana having duly rendered the services to the extent that they would have been entitled to claim for undue enrichment had they not been paid at the time.

In respect of the expired contracts the evidence and information obtained indicated to the effect that, in all instances:

- the services concerned were duly rendered by Asante Sana;
- that they in fact "fulfilled their obligations in terms of the contracts";
- that they "delivered in terms of their mandate";
- that the SABC "has received value for money",
- that Asante Sana has not inflated their prices; and
- that they have in fact "charged below market related prices".

### Outcomes

As the evidence obtained indicated that the services concerned have been duly rendered and that the SABC has received more than fair value for money, no losses have been suffered. As such, there has not been any basis to pursue civil action. As the officials responsible for the irregular procurement, Mr Motsoeneng and Mr Aguma, are no longer employed by the SABC or elsewhere in government, there has been no basis for the referral of evidence with a view to pursue potential disciplinary action against them. Due to the above, there were no outcomes in terms of referral of evidence for purposes of any potential civil, criminal or disciplinary action. The SIU did however provide the evidence gathered in



order to assist the SABC to defend the claim by Asanta Sana for R350 000. This claim resulted from the fact that the SABC has refused to pay Asante Sana for their duly rendered services – purely on the basis that the procurement was suspected to have been irregular and despite them not having suffered any losses. As such and as no losses have been suffered, no claims against any officials are applicable either.

Other: Irregular expenditure in the amount of R18 497 605 resulting from the irregular procurement of the services of Asanta Sana was reported to the SABC with a view to enable them to report it to the AGSA and to NT.

#### **4.7 Foxton Communicating (Pty) Ltd**

##### **Allegation**

It was alleged that irregular SCM processes were followed during the appointment of Foxton, and that Foxton received a monthly fee of R350 000 for advisory services rendered to the SABC.

##### **Findings**

The evidence obtained indicated that irregular SCM processes were followed in the appointment of Foxton. The Head of SCM, Mr Molaudzi, confirmed that the SCM department has no documents relating to the appointment of Foxton in its possession, which on its own is highly irregular. This contract, however, has since concluded as the contract between Foxton and the SABC was signed for the period 28 August 2012 to 29 November 2013.

There is no evidence to support the allegation that Foxton received a monthly fee of R350 000 for advisory services to the SABC; however the evidence obtained indicated that Foxton did receive a monthly retainer fee of R85 500 (including VAT) in this regard, as per the terms of the relevant contract. The SABC paid a total amount of R 1 282 500 to Foxton for its services to the SABC. Evidence obtained indicated that the services were duly rendered.

Considering the fact that the contract has expired and been paid, the only potentially meaningful outcome in terms of civil court proceedings would therefore have been in the event that any quantifiable loss could be claimed. Without any proof of a quantified loss, there would in our view be no reasonable prospects of recovery. This is even more so the case in circumstances where the evidence obtained points towards Foxton having duly rendered the services to the extent that they would have be entitled to claim for undue



enrichment had they not been paid at the time. In any event, even if there were to have been a basis for a claim in respect of losses suffered, it would have prescribed more than two years ago.

Other: Irregular expenditure in the amount of R1 282 500 resulting from the irregular procurement of the services of Foxton was reported to the SABC with a view to enable them to report it to the AGSA and to NT.

#### **Outcomes**

There were no referrals made in this matter.

### **4.8 Mott MacDonald (Pty) Ltd**

#### **Allegation**

It was alleged that the SABC entered into an irregular contract with a supplier, Mott MacDonald, without following internal procurement processes and other legislation that governs procurement by public entities. The contract related to the provision of consulting services which were described as "...the assessment, rehabilitation and or renewal of ... 36 existing lifts; five escalators within the buildings; and two new lift installations" at a price of R7 033 464.00 (excluding VAT).

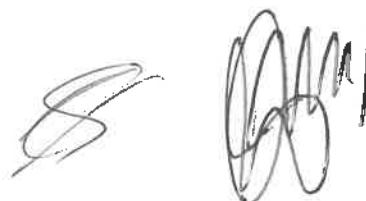
#### **Findings**

At a Special Meeting of the EXCO dated 26 March 2015, Mr Aguma, the former CFO, was given the responsibility to undertake full accountability for the lift tender and maintenance matters. This resolution came after Mr Aguma had proposed that an independent external company be engaged to undertake the procurement process in the lift tender matter.

Mr Aguma thereupon addressed a letter to Mott MacDonald requesting a meeting to discuss their capabilities in sourcing suppliers to offer the service the SABC needed to replace and or refurbish 36 lifts and six escalators.

On 8 June 2015, Mr Aguma introduced officials from Mott McDonald to the EXCO According to the minutes of this meeting, Mott McDonald was supposed to provide an independent, detailed analysis of the SABC Auckland Park lifts within three weeks. However, the SIU investigation could not obtain any evidence that the EXCO adjudicated this matter again.

On 12 June 2015, Mott McDonald, referring to a project-briefing meeting on 5 May 2015 and  
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the presentation to the SABC Board, addressed a letter to Mr Aguma wherein they dealt with: (i) Scope of work; (ii) Stages of consulting service; (iii) Fee and (v) Appointment. On 6 July 2015, Mr Aguma, in his capacity as CFO, signed acceptance of the above proposal to the value of R7 033 464 (excl VAT).

The investigation into the lawfulness of the procurement concerned and the prospects of having the contract set aside on this basis is still in progress. Evidence obtained thus far indicates that Mr Aguma's acceptance of Mott MacDonald's proposal occurred without proper authorisation.

Matt McDonald has been paid R5 612 703.13 of the quoted amount. The total amount payable has now increased to R9 011 718.95. Mott McDonald has since (on 9 April 2018) issued summons out of the Magistrate Court of Johannesburg for an amount of R191 756.69 allegedly due and owing to them by the SABC, but this claim has since been withdrawn.

#### **Outcomes**

The investigation conducted by the SIU has resulted in the following outcomes:

Civil recovery: The investigation into the lawfulness of the procurement concerned and the prospects of having the contract set aside on this basis is still in progress. As indicated above, evidence obtained thus far indicates that Mr Aguma accepted Mott MacDonald's proposal and thus entered into an agreement with Mott MacDonald without proper authorisation. At this stage there has been no indications to the effect that the services concerned were overpriced and/or that the contract translated into a loss to the SABC, but should the outstanding investigation reveal to the contrary, the SIU will pursue the recovery of losses against both Mr Aguma and Mott MacDonald (as we do in all instances where officials could be held responsible and/or co-responsible for losses).

Other civil referrals: The evidence gathered points towards Mr Aguma potentially having failed in his fiduciary responsibilities to act in the best interests of the SABC. The SIU will advise the SABC, who is the only entity with *locus standi* in this situation, to consult with Senior Counsel with a view to bringing an application to the High Court to have Mr Aguma declared a delinquent director.

Criminal referral: Should the outstanding evidence confirm that Mr Aguma entered into the agreement with Mott MacDonald without proper authorisation, the evidence will be referred to

the NPA with a view to consider pursuit of a criminal charge of contravention of section 86(3) of the PFMA.

Disciplinary referral: Mr Aguma, who played a prominent role in the appointment of the supplier irregularly has left the SABC, therefore disciplinary action will not be possible. Evidence is currently being evaluated to determine the level of involvement or lack of involvement in the matter by the remaining members of the EXCO, which may warrant disciplinary action to be taken against them.

Other: Irregular expenditure in the amount of R5 612 703.13 resulting from the irregular procurement of the services of Mott MacDonald was reported to the SABC with a view to enable them to report it to the AGSA and to NT.

#### **4.9 Success fee paid to Mr Motsoeneng**

##### **Allegation**

It was alleged that the approval and payment of a success fee in the amount of R11 508 549.12 (before tax deduction) to the former COO, Mr Motsoeneng on 12 and 13 September 2016 was irregular and unlawful.

##### **Findings**

The evidence obtained indicated that the former acting Group Chief Executive Officer ("GCEO"), Mr Aguma, presented a submission to a Board Sub-Committee, the Governance and Nominations Committee ("GNC"), which motivated for the payment of the success fee to Mr Motsoeneng. The motivation for the success fee was based on R1.19 billion revenue purportedly raised by Mr Motsoeneng in respect of various contracts. The raising of these funds were considered to be outside Mr Motsoeneng's duties as an Executive Director and COO. The success fee was, however, later calculated on only the payments received in respect of two contracts entered into with MultiChoice, which amounted to R460 341 964.80 (excluding VAT).

On 19 August 2016, the GNC irregularly approved the payment of the success fee to Mr Motsoeneng. The approval and payment of the success fee was not approved by, nor brought to the attention of the SABC Board, and there is no evidence to suggest that the SABC Board issued a delegation to the GNC in this regard.



In addition to the above, the approval and payment of the success fee was indeed irregular and unlawful as:

- There was no approved policy at the SABC which made provision for the payment of a success fee to an Executive Director, such as the COO (i.e. the position that Mr Motsoeneng held at the time).
- Mr Motsoeneng's employment contract did not make provision for such fee either – neither did it form part of an annual performance bonus, as there was no performance agreement entered into with Mr Motsoeneng.

The success fee was subsequently calculated by the former acting CFO, Ms Raphela, at 2.5% of the R460 341 964.80 (excluding VAT).

On 12 September 2016, Ms Raphela and Mr Aguma instructed the Payroll division and the Treasury division to process the success fee payment of R11 508 549.12 (before taxes) to Mr Motsoeneng as a matter of urgency. On 12 and 13 September 2016, the success fee was paid to Mr Motsoeneng in two instalments, and a total of R6 790 043.98 (after taxes) was transferred into Mr Motsoeneng's bank account. The payment of the success fee was based solely on the GNC resolution taken on 19 August 2016.

#### **Outcomes**

The investigation conducted by the SIU has resulted in the following outcomes:

Civil recovery: Following evidence obtained by the SIU, the SIU and SABC jointly issued summons against Mr Motsoeneng on 5 February 2018 in the High Court of South Africa, Gauteng Local Division, Johannesburg (case number 18/04253). The claim against Mr Motsoeneng relates to an undue payment in the amount of R11 508 549.12 made to him as a "success fee" and damages in amount of R10 235 453.20 caused by him due to irregular appointments, salary increments, suspensions and unlawful terminations of employment that he sanctioned, facilitated and/or condoned. Mr Motsoeneng entered Appearance to Defend and thereupon filed an Exception to the Particulars of Claims. The SIU is awaiting the allocation of a court date for argument in respect of the Exception.

Disciplinary referral: No disciplinary referrals were made thus far as the SIU is in the process of finalising this aspect of the investigation.





#### 4.10 Irregular Appointments and Maladministration

##### 4.10.1 Mr Motsoeneng's role in irregular appointments and salary increments; suspensions and unlawful terminations of employment

###### *Payments by Mr Motsoeneng*

- During the period November 2011, while employed as the Group Executive: Stakeholder Relations since April 2011, Mr Motsoeneng was also appointed Acting COO of the SABC.
- The Public Protector, in her report under the heading "When Governance and Ethics Fail" dated February 2014, found that, during his engagement as the Acting Chief Operating and General Manager: Stakeholder Relations, Mr Motsoeneng abused his position and conducted himself improperly in relation to irregular appointments, salary increments, suspensions and unlawful terminations of employment that he sanctioned, facilitated and/or condoned.

###### **Outcomes**

The investigation conducted by the SIU has resulted in the following outcomes:

Civil recovery: Largely based on the findings of the Public Protector's report and the binding nature of it, supported by certain evidence and information obtained by the SIU, the SIU and SABC jointly issued summons against Mr Motsoeneng on 5 February 2018 in the High Court of South Africa, Gauteng Local Division, Johannesburg (case number 18/04253). An amount of R10 235 453.20 of this claim relates to damages caused by him due to irregular appointments, salary increments, suspensions and unlawful terminations of employment that he sanctioned, facilitated and/or condoned. Mr Motsoeneng entered Appearance to Defend and thereupon filed an Exception to the Particulars of Claims. The SIU is awaiting the allocation of a court date for argument in respect of the Exception.

##### 4.10.2 The alleged irregular appointment of Ms Motsweni and other allegations

###### **Allegations**

Ms Motsweni is the Group Executive: Sport who is currently on suspension. The following allegations were investigated:

- Allegations of Ms Motsweni's irregular appointments and career progression;



- Allegations that Ms Motsweni is a director of various companies that she did not declare her interest therein and there was conflict of interest in that she used SABC time and resources in conducting the affairs of her private companies;
- Allegations that Ms Motsweni abused SABC travel funds for the benefit of herself and her relatives;
- Allegations that Ms Motsweni that the SABC Foundation funds were irregularly used for Ms Motsweni's two daughter's tertiary education bursary;
- Allegations that Ms Motsweni irregularly used the SABC and the SABC Foundation funds at Badanisile Home in Daveyton for a Mandela Day Event, and to fund an NGO known as Cancervive; and
- Allegations that Ms Motsweni irregularly approved transactions on SAP.

#### ***4.10.2.1 Allegations of Ms Motsweni's irregular appointments and career progression***

##### **Findings**

Mr Motsoeneng irregularly appointed numerous persons into the employ of the SABC and awarded salary increments to various other employees, in that he, amongst others:

- In contravention of G3 of the Delegation of Authority Framework and Clauses 4 and 5 of Part IV of the SABC Personnel Regulations:
  - Appointed Ms Motsweni into the position of General Manager: Compliance and Operations and Stakeholder Relations Provinces on 30 June 2011 to 31 January 2012; Head: Compliance and Operations on 1 February 2012; Acting Group Executive: Risk and Governance on June 2012;
  - Unilaterally caused her salary to be increased from R490 132 per annum to R2 229 563.76 per annum within a period of four (4) years, resulting in a 454.89% increase; and
- Mr Motsoeneng's unlawful increases of Ms Motsweni's salary, resulted in the SABC loss which is calculated on the following basis:
  - An unlawful increase of 454.89% on the amount of R490 132 over 4 years, resulting in an annual salary of R2 229 563.86; and
  - A salary increase of 10% per annum over 4 years on the annual package of R490 132, which would have resulted in an annual salary increase of R717 602.25.



In all three instances the procedure required by sub-section G3 of SABC's DAF to have prior approval of Exco was not complied with.

In her February 2014 Report "When Governance and Ethics Fail", the Public Protector decreed that appropriate remedial action be taken by the SABC Board to ensure that "any fruitless and wasteful expenditure that had been incurred as a result of irregular salary increments to ....Ms Motsweni et al is recovered from appropriate persons."

As a result, the SIU addressed a letter dated 16 April 2018 to the Chairperson of the SABC Board calling upon the Board to urgently act on the Public Protector's instructions by pursuing the setting aside of irregular appointments and any other appropriate action.

#### Outcomes

The investigation conducted by the SIU has resulted in the following outcomes:

Civil recovery: As indicated above, following evidence obtained by the SIU, the SIU and SABC jointly issued summons against Mr Motsoeneng on 5 February 2018 in the High Court of South Africa, Gauteng Local Division, Johannesburg (case number 18/04253) in respect of, inter alia, damages resulting from his complicity in this regard.

**4.10.2.2 Allegations that Ms Motsweni is a director of various companies, which she did not declare her interest therein and there was conflict of interest in that she used SABC time and resources in conducting the affairs of her private companies.**

#### Findings

The SIU has established through searches at the Companies and Intellectual Property Commission ("CIPC"), that Ms Motsweni is a Director of the following five companies;

Table 4: Breakdown of companies registered in Ms Motsweni's name		
Name of Company	Registration Number	Registration Date
Rashuma Consulting	2002/018761/23	2002/03/05
Versatex Trading	2002/022526/07	2002/09/10

Table 4: Breakdown of companies registered in Ms Motsweni's name

Name of Company	Registration Number	Registration Date
The KZN Science Center	2007/026726/08	2007/09/13
Imazi Holdings	2016/253869/07	2016/06/24
Men In the Making	2017/449800/08	2017/10/12

The SIU investigation received confirmation from the SABC and established that Ms Motsweni did in fact declare her interest in the above companies as evidenced by the declaration of interest information extracted from the SAP system by the SAP Manager.

It was also established during the SIU questioning of Ms Motsweni under oath in terms of the Section 5(2)(c) of the SIU Act, that she had purchased two vehicles to start operating as taxis with Uber. There was no evidence of this business on the CIPC records. The SIU obtained and analysed Ms Motsweni's bank statements to establish any evidence of payments made to or received from Uber. No such evidence was found.

The SABC has a Conflict of Interest policy that governs officials' private interests and which is intended to assist the SABC in recognising and managing conflicts between employees' private interests, their interests and duties as employees of a state owned entity and to facilitate ethical decision making at the SABC and to promote public confidence in the integrity of the SABC. The policy also informs employees what is expected of them from an ethical point of view, both with regard to their individual conduct and in their relationships with others. Compliance with this policy is expected to enhance professionalism and ensure service confidence in the SABC. As Ms Motsweni had declared all her private business, no evidence have been obtained to the effect that she has contravened the applicable section of the policy.

The SIU investigation did not detect any payments made to any of her above listed companies by the SABC as recorded on the SABC's SAP System. No evidence was obtained to the effect that she was conducting her private businesses during office hours.

#### Outcomes

There were no referrals made in respect of this allegation.



**4.10.2.3 Allegations that Ms Motsweni abused SABC travel funds for the benefit of herself and her relatives and that Ms Motsweni irregularly approved transactions on SAP.**

**Findings**

The SIU's investigation revealed evidence that points towards dishonesty, contravention of the SABC rules and regulations and the commission of the criminal offence of fraud by Ms Motsweni. The evidence obtained indicated that Ms Motsweni, on or about 12 April 2017, instructed her subordinate to make a false misrepresentation to the SABC in respect of her official travels to include her two children at the expense of the SABC. By means of the false Travel Plan and not presenting the children as her own children but as SABC stakeholders, this enabled the children to travel to Cape Town as if they were Two Oceans Marathon runners for the SABC. By means of the false Travel Plan and motivation, this enabled Ms Motsweni to benefit from a business trip for which the SABC paid the travel and accommodation expenses. Due to this misrepresentation the SABC suffered an actual prejudice of R18 290.12.

The investigation revealed that Ms Motsweni did not have authority to approve SAP transactions. However affidavits from SABC officials who are subject matter experts of SAP system and travel policies have been obtained to confirm and corroborate the transgressions committed resulted from Ms Motsweni giving instructions to subordinates who had certain rights on SAP and Travel System.

**Outcomes**

The investigation conducted by the SIU has resulted in the following outcomes:

**Criminal referral:** The evidence obtained indicated that the offence of fraud was committed in relation to eleven fraudulent travel claims that Ms Motsweni and her relatives benefitted from to the value of R18 290.12. The evidence obtained was referred to the NPA on 5 April 2018. The SIU, working with the SAPS Commercial Crime Unit, registered a criminal case at the Brixton Police Station on 15 May 2018 with the SAPS case number Brixton CAS156/5/2018. On 30 May 2018, Ms Motsweni appeared in the Commercial Crime Court in Johannesburg on fraud charges. She was released on R5 000 bail by the Magistrate and the court case was postponed, her next appearance date is 17 September 2018. The SIU will continue to monitor the progress on this case.



Disciplinary referral: A disciplinary referral for Ms Motsweni was made to the SABC on 29 March 2018 for charges relating to abuse and possible defrauding of the travel funds.

**4.10.2.4 Allegations that the SABC Foundation funds were irregularly used for Ms Motsweni's two daughter's tertiary education bursary.**

**Findings**

The SIU investigation obtained evidence that points towards three SABC officials being guilty of acts or omissions, which we submit amount to misconduct. The officials are:

- Ms Motsweni: Group Executive: Sport
- Mr Moosa: Learning and Development Specialist
- Ms Cupido: SABC Foundation CEO

The SIU found that the officials abused their positions and approved bursaries of the daughters of Ms Motsweni, being fully aware that the bursaries according to the Certificate of Incorporation, are for poor and needy children. Due to this misrepresentation, which amounts to misconduct, the SABC suffered an actual prejudice of R512 597.12. The SABC officials had full knowledge or ought to have reasonably known that the applicants did not qualify for these bursaries which resulted in a loss to the SABC.

**Outcomes**

The investigation conducted by the SIU has resulted in the following outcomes:

Disciplinary referral: A disciplinary referral for Ms Motsweni and two other SABC Foundation officials, namely; Mr Moosa: Learning and Development Specialist and Ms Cupido: CEO: SABC Foundation, for the misconduct that resulted in the SABC suffering an actual prejudice of R512 597.12.

Civil recovery: The SIU has recommended to the SABC to freeze the pension of Ms Motsweni in order to recover the losses suffered by the SABC due to Ms Motsweni's conduct.



**4.10.2.5 Allegations that Ms Motsweni irregularly used SABC funds and the SABC Foundation funds at Badanisile Home in Daveyton for a Mandela Day Event, and to fund an NGO known as Cancervive.**

**Findings**

The SIU investigators made an enquiry into a Mandela Day event at an NGO, namely Badanisile Children's Home in Daveyton. In this instance a supplier was sourced to conduct repairs and renovations at this home. The funds that were used to pay the supplier was from the SABC as well as the SABC Foundation. After a site visit was conducted as well as after interviewing several witnesses the SIU could not find any evidence that could yield any outcomes against Ms Motsweni.

On the activities of Cancervive our investigation could not establish any activities of Ms Motsweni could amount to any misconduct.

**Outcomes**

In these allegations there was no compelling evidence that could yield any outcomes.

**4.10.3 Thobekile Khumalo**

**Allegation**

It was alleged Ms Khumalo, the Personal Assistant to Mr Motsoeneng, had her salary irregularly increased by Mr Motsoeneng.

**Findings**

The evidence obtained indicated that Ms Khumalo started working for SABC in 2006 as an intern. She submitted her CV through Quest Recruitment Agency earning a salary of R3 300 per month. In 2007 she applied for a position as an Admin Clerk and she was successful. She was offered a salary of R110 220 per annum (code 405).

Ms Khumalo has the following qualifications:

- a Matric Certificate;
- a Certificate in Data Capturing (10 April 2006 - 25 April 2006); and
- a Call Centre Certificate (29 May 2006 - 15 June 2006).

In 2009, she was transferred to Employee Relations.

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In 2011, she was moved to Group Executive Stakeholder Management and Regions. She became Mr Motsoeneng's Personal Assistant. There was no advert. Her salary was adjusted to code 402, earning a salary of R218 018 per annum.

In 2012 when Mr Motsoeneng became acting COO, she moved with him and her salary code was adjusted to code 401-300, and her salary was adjusted to R370 759 per annum.

In July 2016 a Secretarial Dispensation was performed on three secretaries and one board secretary, who were all Personal Assistants to the General Executives of SABC at the time. As a result of the secretarial dispensation, Ms Khumalo was offered a salary code 301, which equated to a salary of R965 021.21 per annum. She was given a salary that is above the midpoint of R873 314 whereas others were offered the midpoint which multiplied by three from her previous 2012 salary.

Mr Jacobus van Staden, a Remuneration and Information Management Specialist at the SABC, provided the SIU with further information on the Secretarial Dispensation that was introduced by the SABC over the years. During the early 2000s the role of the Personal Assistant to the GCEO was upgraded to scale 300 (Junior Management Level). Due to the decentralised nature of Human Resources during the period 2000 to 2007, a number of anomalies developed in both the job titles and salary scales for secretaries. As a result of these anomalies, a recommendation was made to the GCEO on a new Secretarial Dispensation during May 2012, which dispensation meant only the Personal Assistant to the CFO and Acting COO (Group Executive: Stakeholder Relations and Provinces) received salary scale increases at this stage. The gap that resulted from this process between the Secretaries of the Executive Directors who were on scale 300 and the Secretaries of other Group Executives on scale 402, led to the adoption by the SABC of a new dispensation of 4 July 2016. In line with the new dispensation, Secretaries of the Board Chairperson and the Executive Directors were moved to scale 130 (Middle Management Level). As the COO's Secretary at the time, Ms Khumalo also had to be moved to the midpoint of scale 130, being R837 314 per annum. Instead of her being moved to a scale of 130 midpoint, Ms Khumalo was irregularly moved to a scale above the midpoint, being R965 021.30. In terms of clause 2.3 of the 7 February 2008 SABC Remuneration Directive, *"Appointments that need to be made higher than the midpoint of the range, must be motivated in full indicating the reasons clearly as well as confirming that other employees in similar/same ranks will not lay a claim to the same treatment. These motivations must pass the office of the Group Executive: Human Capital Services."*



The Directive was not complied with when Ms Khumalo was moved to a scale higher than the midpoint. Despite a thorough search, record of such a motivation could not be produced by the SABC. It would appear that the requisite motivation was not done. The only document that SABC could locate was a letter signed by the late Mr Lephaka, then GE: Human Resources, effectively advising her that in a new role she would be offered a salary of R965 021.21.

In June 2018, she was seconded to Corporate Affairs reporting to the GM: Operations.

### Outcomes

The investigation conducted by the SIU has resulted in the following outcomes:

Civil recovery: There is a finding in the 2014 Public Protector Report "When Governance and Ethics Fail" that Mr Motsoeneng unilaterally increased the salary of Ms Khumalo without following Part IV of the SABC Personnel Regulations. This irregular salary progression contributed to the SABC's unprecedented salary bill escalation by R29 million. The remedial action by the Public Protector, which is binding, was that all money must be recovered from Ms Khumalo. All fruitless and wasteful expenditure as a results of Ms Khumalo's irregular salary increases must be recovered and Ms Khumalo's salary is to be regularised. The Public Protector's findings are to be implemented. This recovery forms part of the civil litigation that is pending against Mr Motsoeneng in case number 18/0253.

### Recommendation

It is recommended that Ms Khumalo's salary should be returned to the midpoint salary scale. The SIU has written to the SABC recommending that commencement of an internal process to have Ms Khumalo's salary regularised.

#### 4.10.4 Itani Tseitsi

### Allegation

It was alleged that Mr Tseitsi was irregularly appointed at SABC.

### Findings

The evidence obtained indicated that, Mr Tseitsi started working for SABC in 2003 as a General Manager (COO's office) and occupied various positions as follows:

- 2003 August – May 2005 (General Manager in the COO's Office);
- 2005 June – April 2008 (General Manager: News Division Finance);
- 2008 May – February 2010 (Chief Financial Controller);



- 2010 March – June 2012 (Group Executive: Risk and Governance);
- 2012 July – June 2013 (Chief Financial Officer); and
- 2013 July – September 2016 Group Executive (Risk Management and Governance) which he occupied until September 2016, when he resigned.

The analysis of his personnel file revealed that Mr Tseitsi has the following qualifications:

- Bachelor of Commerce in Accounting in 1995
- Bachelor of Commerce Honours in Accounting 1997 from the University of Venda.

These qualifications were verified with KreditInform by Anne Pratt and Associates Employment Agency.

During the investigation no evidence was uncovered that supports the allegation that there may have been irregularities in the Human Resources processes regarding the appointment of Mr Tseitsi. Human Resources documents obtained reveals the last position of Group Executive: Risk Management, the process of recruitment was awarded to a recruitment agency (Anne Pratt & Associates) to undertake the process on behalf of the SABC. His application was submitted accordingly to the recruitment agency and he was interviewed by the Interim Board of the SABC and was subsequently afforded the position. For the position of CFO, the position had become vacant. The position was advertised internally. Mr Tseitsi applied and was appointed in the position. Evidence that he applied for positions at SABC was obtained and substantiated by the Manager: Human Resources: Mr Mzu Ndlovu.

The investigation conducted by the SIU has found no evidence supporting the allegation that there were irregularities in respect of the appointment of Mr Tseitsi at SABC.

#### **Outcomes**

There were no referrals made in respect of this matter.

#### **4.10.5 Guga Duda**

##### **Allegation**

It was alleged Ms Duda was irregularly appointed to the position of the Chief Financial Officer.



### Findings

The evidence obtained indicated that Ms Duda was irregularly appointed. The investigation into Ms Duda's appointment does fall within the time frames and scope of Proclamation R29 of 2017, but this allegation was investigated under Proclamation R62 of 2014 and was finalised. The SIU had obtained evidence that indicated that Ms Duda was irregularly appointed at SABC.

Ms Duda was placed on suspension from the 13 September 2012 with full pay on the allegation of misconduct by an investigation conducted by the Group Internal Audit.

Ms Duda's employment at SABC was terminated on the 19 March 2014 due to her being found guilty on several other unrelated charges including, fruitless and wasteful expenditure for the employment of consultants in her office, fraud, misrepresentation, gross dishonesty and insubordination, dereliction of duty and breach fiduciary duty according to the CCMA pre-dismissal arbitration hearing held on 19 March 2014, between Ms Duda and SABC.

The investigation conducted by the SIU per previous investigation found that Ms Duda was irregularly appointed and recommendations were made. The SIU has quantified that, as a result of her irregular appointment, the SABC suffered losses to the value of R2.7 million which consisted of the salary paid to Ms Duda stemming from her irregular appointment.

### Outcomes

The investigation conducted by the SIU has resulted in the following outcomes:

Civil litigation: The SIU and SABC jointly issued summons on 5 February 2018 (as mentioned in the sections dealing with Mr Motsoeneng's involvement in the irregular appointments and forming part of the same civil action) in the High Court of South Africa, Gauteng Local Division, Johannesburg against Mr Motsoeneng. The losses suffered by the SABC in respect of Ms Duda form part of the second leg of the claim for the recovery of R10 235 453.20 for the irregular appointments and salary increments; suspensions and unlawful terminations of employment. The civil litigation process is underway and case number 18/04253 refers. Mr Motsoeneng entered an appearance to defend and raised an Exception to the Particulars of Claims. The SIU is waiting for the allocation of the date for arguments of the exception.



#### 4.10.6 Promise Buthelezi

##### **Allegation**

It was alleged that Mr Buthelezi was irregularly appointed to the position of Reporting Specialist: Finance Division. It was further alleged that Mr Buthelezi was directly involved in the Audit for the SABC for the financial years 2014/2015 and 2015/2016.

##### **Findings**

Mr Buthelezi was headhunted and appointed into the position of Reporting Specialist by the SABC on 9 January 2017. He was previously employed by the Auditor-General of South Africa as an Audit Manager. He was part of the team that conducted the SABC audit for the 2015/2016 financial year on behalf of the Auditor-General's office.

Mr Buthelezi was appointed to the SABC after the approval of a motivation submitted to the then acting GCEO, Mr Jimi Matthews (**"Mr Matthews"**), by the then SABC CFO, Mr Aguma, for a deviation from the normal recruitment process. Mr Buthelezi was appointed to the SABC after the approval of a motivation dated 17 December 2015 submitted to the then acting GCEO (Mr Matthews) by the then SABC Chief Financial Officer, Mr Aguma, supported by Mr JMabaso, Group Executive: Human Capital Services, for a deviation from the normal recruitment process. In his approval of the motivation for headhunting of Mr Buthelezi, the GCEO opined that *"Where scarce skills are identified we will headhunt to deal with operational requirements."*

During the investigation, the SIU found no evidence that Mr Buthelezi was irregularly appointed. The Recruitment and Selection Policy of the SABC provided for deviations from the normal recruitment process. The Policy allowed the line manager to prepare a memorandum/submission to the GE: Human Resources, CFO and the Group Chief Executive Officer to request permission to deviate from the normal recruitment process and headhunt candidates. The deviation process as provided for in the Recruitment and Selection Policy was complied with.

##### **Outcomes**

There were no referrals made in respect of this matter.



#### 4.10.7 Nyiko Mahlaule

##### **Allegation**

It was alleged that Mr Mahlaule was irregularly appointed at the SABC and that he was the official directly involved in choosing the samples to be audited so as not to place the SABC in a bad light.

##### **Findings**

Mr Mahlaule was headhunted and appointed to the SABC on 1 February 2017 as a Fixed Assets Manager. He was previously employed by the Auditor General of South Africa as an Audit Manager. He was part of the team that conducted the SABC audit for the 2015/2016 financial year on behalf of the Auditor General's office. Mr Mahlaule was appointed to the SABC after the approval of a motivation, dated 17 December 2015 submitted to the then Acting GCEO (Mr Matthews) by the then SABC CFO, Mr Aguma supported by J Mabaso, Group Executive: Human Capital Services, for a deviation from the normal recruitment process. In his approval of the motivation for headhunting of Mr Buthelezi, the GCEO opined that *"Where scarce skills are identified we will headhunt to deal with operational requirements."*

During the investigation, the SIU found no evidence that Mr Mahlaule was irregularly appointed. The Recruitment and Selection Policy of the SABC provided for deviations from the normal recruitment process. The Policy allowed the line manager to prepare a memorandum/submission to the GE: Human Resources, CFO and the GCEO to request permission to deviate from the normal recruitment process and headhunt candidates. The deviation process as provided for in the Recruitment and Selection Policy was therefore complied with.

##### **Outcomes**

There were no referrals made in respect of this matter.

#### 4.10.8 Ayanda Mkhize

##### **Allegation**

It was alleged that Ms Mkhize was irregularly appointed at the SABC.



### Findings

The evidence obtained indicated that, Ms Mkhize started working as Consultant for SABC at the office of the CFO in 2 February 2015 to 13 March 2015. As her contract was coming to an end on 31 July 2016, the then Acting Head of Supply Chain, Mr Molaudzi, motivated for the extension of her contract for a further six (6) months to 31 January 2017. Whilst the extension of the contract was awaiting approval, on 29 July 2016, Ms Raphela, then Acting CFO, motivated to the then Acting GCEO, Mr Aguma, for the creation of a General Manager Supply Chain Management: Governance and Special Projects position and for the appointment of Ms Mkhize into the position. The SIU found that there was advert however there was no interview conducted nor was the shortlisting exercise conducted. The position was further not profiled by Human Resources. The request for the approval to create a fixed term contract position to review the procurement process within the office of the CFO was done by Mr Aguma. The COO (then Mr Motsoeneng) by virtue of the delegated powers of the GCEO he held, approved the appointment of Ms Mkhize.

The Selection and Recruitment Policy of the SABC provided for deviations from the normal recruitment process. The Policy allowed the line manager to prepare a memorandum/ submission to the GE: Human Resources, Chief Financial Officer and the GCEO to request permission to deviate from the normal recruitment process and headhunt candidates. Ms Raphela stated in her affidavit dated 28 February 2018 that she was advised by Mr Mzukisi Ndlovu, HR Manager that all HR processes for a deviation had been complied with.

The headhunting itself was done by Mr Aguma and Human Resources in terms of the motivation approved by Mr Aguma, Mr J Mabaso and the Acting GCEO, Mr Matthews.

Clause 7.2.5 of the SABC's Recruitment and Selection Policy No. HCS/001/2013 (applicable at the time) stated that "Head-hunting through recruitment agencies and executive search companies will be used for critical and scarce skills in instances where the internal and external recruitment process has yielded no positive results."

Clause 7.2.6 of the same policy makes mention of Talent sourcing mechanisms. It states that "These mechanisms would include solicited and unsolicited applications. Talent sourcing mechanisms are not limited to head-hunting, referrals, walking in, dropped curriculum vitae and internal database of suitable applicants for consideration etc."

The analysis of Ms Mkhize's personnel file revealed the following qualifications:

- Bachelor of Commerce in 1995; and

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- Bachelor of Commerce Honours in 2002.

#### Outcomes

There were no referrals made in respect of this matter.

#### 4.10.9 Audrey Raphela

##### Allegation

It was alleged that Ms Raphela was irregularly appointed at the SABC.

##### Findings

Ms Raphela was previously employed by Magalies Water as a CFO. Mr Aguma approached and/or headhunted her to assist with the 2012/2014 SABC disclaimers. She had known Mr Aguma from the days when he was a Senior Audit Manager in the Auditor-General's office responsible for conducting Audits at Magalies Water.

She was initially appointed as a GM: Financial and Management Reporting for a fixed term contract of five (5) years from 1 February 2016 to 31 January 2021 at the SABC. She stated in her affidavit that she was not aware of the internal process followed by the SABC when it appointed her.

On 28 June 2016, she was appointed to act as CFO after a sudden departure of Mr Matthews who was acting GCEO and with Mr Aguma appointed to act as GCEO. She was to act as a CFO for a period of three (3) months but her acting appointment was extended until 27 June 2017.

The analysis of her personnel file (including her curriculum vitae) revealed that Ms Raphela has the following qualifications:

- Bachelor of Commerce from the University of Bophuthatswana obtained in 1990;
- B Compt (Honours) from Unisa obtained on 03 May 1999;
- B Compt (Hons) CTA, Unisa;
- CA (SA), South African Institute of Chartered Accountants; and
- Executive Development Program, GIBS

During the investigation no evidence was found that supports the allegation that there may have been irregularities in the Human Resources processes regarding the appointment of



Ms Raphela. The process of recruitment was done after the approval of creation and funding of critical position within the finance structure.

The evidence further indicated that the motivation for a deviation from normal recruitment procedure was done by Mr Aguma. On or about 17 December 2015, Human Resources received documents from him motivating for dispensing with the normal recruitment process in a bid to capacitate the CFO's office. The letter was signed by Mr Aguma as the requestor, supported by the Group Executive: Human Capital Services, J Mabaso and approved by the Acting GCEO, Mr Matthews.

Clause 7.2.5 of the SABC's Recruitment and Selection Policy No. HCS/001/2013 (applicable at the time) stated that "Head-hunting through recruitment agencies and executive search companies will be used for critical and scarce skills in instances where the internal and external recruitment process has yielded no positive results."

Clause 7.2.6 of the same policy makes mention of Talent sourcing mechanisms. It states that "*These mechanisms would include solicited and unsolicited applications. Talent sourcing mechanisms are not limited to head-hunting, referrals, walking in, dropped curriculum vitae and internal database of suitable applicants for consideration etc.*"

It can therefore not be said that clause 7.2.5 was complied with in that no evidence of involvement of recruitment agencies and executive search companies could be found in the appointment of Ms Raphela. However, there seems to have been compliance with clause 7.2.6 of the recruitment policy in that she seems to have been recruitment via the talent sourcing mechanism.

#### **Outcomes**

There were no referrals made in respect of this matter.

### **5. SYSTEMIC RECOMMENDATIONS**

The SIU will make systemic recommendations in the Final Presidential Report.



## 6. ON-GOING INVESTIGATION: PHASE 2

The SIU is continuing the investigation under the authority of Proclamation R29 of 2017, extended by Proclamation R19 of 2018, into the following matters:

- Irregular appointments
- Irregular payment of bonuses
- Legends and SABC Heritage Concert
- Rapid Blue: X-Factor Season 1
- Irregular Expenditure (R5.2 billion)
- Conflicts of Interest
- Irregular procurement of Lease at the Nelspruit SABC
- Irregularities at the SABC North West Offices
- Mafoko Security Contract
- TNA Breakfast
- MultiChoice contract and addendums

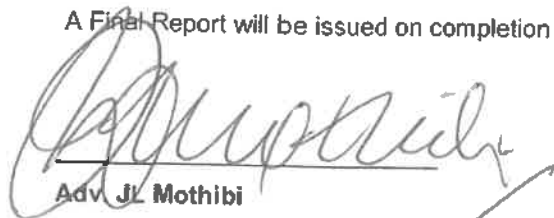
The Final Presidential Report will be submitted on the conclusion of the above matters.

## 7. FINAL CONCLUSION AND SIGN OFF

This is an Interim Report on the status of the Phase 1 investigations to date, which investigations were conducted under the authority of Proclamation R29 of 2017.

An Interim Report on the amendment to the above proclamation, effected by way of Proclamation R19 of 2018, which authorised the SIU to investigate the award of a security contract by SABC to Mafoko Security Services, will be submitted in the near future.

A Final Report will be issued on completion of all investigations.



Adv. J.L. Mothibi

Head: Special Investigating Unit

Date: 18/09/2018

