

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



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO 23 OF 2013/2014

“When Governance and Ethics Fail”

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

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February 2014

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

Former member of the SABC Board

Executive Summary

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

February 2014

members, irregular employee appointments and irregular salary increases, including Mr Motsoeneng's own 3 salary increases taking his remuneration increments, package from R1.5 million per annum to R2.4 million per annum in a single year.

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

February 2014

- (f) Whether Mr Motsoeneng irregularly increased the salaries of various staff members, including a shop steward, resulting in a salary bill increase in excess of R29 million and if this amounted to financial mismanagement and accordingly improper conduct and maladministration;
 - (g) Whether there were systemic corporate governance failures at the SABC and the causes thereof; and
 - (h) Whether the Department and former Minister of Communications unduly interfered in the affairs of the SABC, giving unlawful orders to the SABC Board and staff and if the said acts constitute improper conduct and maladministration.
- (vi) The investigation included research and analysis of relevant laws and other applicable regulatory prescripts, correspondence, sourcing and analysis of corporate documents, telephonic and face to face interviews with current and former officials of the SABC and the Department of Communications (DOC), former Board Members of the SABC and the former Minister of Communications.
- (vii) In arriving at the findings, I have been guided by the standard approach adopted by the Public Protector South Africa as an institution, which simply involves asking: What happened? What should have happened? Is there a discrepancy between what happened and what should have happened? If there is a discrepancy, does the conduct amount to improper conduct or maladministration and, in this case, also abuse of power?
- (viii) As is customary, the “what happened” enquiry is a factual question settled on the assessment of evidence and making a determination on a balance of probabilities. I must indicate though that we rely primarily on official documents such as memoranda and minutes and less on *viva voce*

February 2014

evidence. The question regarding what should have happened on the other hand, relates to the standard that the conduct in question should have complied with. In determining such standard I was guided, as is customary, by the Constitution, national legislation and applicable policies and guidelines, including corporate policies and related sector and international benchmarks. Key among corporate policies, were the general SABC Articles of Association and the Broadcasting Act 4 of 1999. The benchmarks considered included guidelines contained in the King III Report on corporate governance.

- (ix) Principles developed in relevant previous Public Protector Reports, referred to as *touchstones*, were also taken into account as customary and in pursuit of consistency. A key report relied on in regard to corporate governance is the report titled *“Not Above Board”*, report no 2 of 2013/14 dealing with findings and remedial action relating to allegations of maladministration by the Eastern Cape Gambling Board relating to the irregular appointment of the Chief Executive Officer.
- (x) I also took into account submissions made by relevant parties, including former employees, the current SABC Board and the complainants, following the Provisional Report being made available to them.
- (xi) In compiling their responses to the Provisional Report, all implicated recipients were assisted by their attorneys. Ms Pule, MP and DOC Acting Deputy Director General (DDG) Mr. Themba Phiri, were assisted by Malan and Mohale Attorneys. Mr. Mngqibisa was assisted by F R Pandelani Incorporated Attorneys. Mr. Motsoeneng was assisted by Majavu Incorporated Attorneys. Ms. Duda was assisted by Ndlovu and Sedumedi Attorneys Incorporated while the SABC was assisted by Mchunu Attorneys.
- (xii) It must be noted upfront that the arguments presented by some of the respondents, including Mr Motsoeneng, the current chairperson of the

February 2014

SABC Board and Mr Mngqibisa, in response to my Provisional Report, are, with respect, premised on a misunderstanding of the issues investigated and the laws regulating the operations of my office.

- (xiii) If we take the issue regarding the matric certificate, for instance; the issue was not whether or not the SABC Board and management knew that Mr Motsoeneng did not have a matric certificate on appointment to various posts at the SABC. The issue was simply whether or not Mr Motsoeneng had fraudulently misrepresented his qualifications to get a job he was not entitled to as the job required a matric certificate. An ancillary issue was whether it could be reasonably concluded that he had something to do with the disappearance of his human resources file and the changed qualification requirements for the COO post when it was advertised while he held the post on an acting capacity.
- (xiv) The other issue misunderstood by the current SABC Board, whose submission I have since been advised, was prepared by a lawyer on the instructions of the current Chairperson and to the exclusion of the rest of the Board, involves failure to appreciate the distinction between jurisdiction and discretion. In the body of the report, I explain that there is no bar on my handling a matter that is older than 2 years and that the requirement is that if I am requested to investigate a matter that is older than 2 years, the Complainant must furnish me with compelling reasons why I should consider the request favourably. It is not for me to convince the respondent that I have compelling reasons to accept an investigation as argued. If that were the case the discretionary power would shift to the respondent. In any event the main complaint related to alleged ongoing systemic governance problems and harassment of senior staff by Mr Motsoeneng allegedly because some of them question his qualifications or alleged fraudulent misrepresentation about same. For example, the first complainant, Ms Ntombela-Nzimande alleged that her contract was terminated prematurely

February 2014

because she had raised several corporate governance issues with the then Acting GCEO, Mr Nicholson. She alleged that many of the issues she had raised related to the alleged irregular employment and subsequent conduct of Mr Motsoeneng.

- (xv) The current Board Chairperson, Ms Zandile Tshabalala and Mr Motsoeneng also argued that the provisions of section 9 of the Public Protector Act preclude me from “investigating matters that have become litigious”.
- (xvi) In the body of the report I point out that the objections are primarily due to a failure to understand the relevant provisions of the Constitution and the Public Protector Act. Suffice to say that section 182(3) of the Constitution and section 6(6) of the Public Protector Act, prohibit the review of court decisions. There is no bar on investigating matters that were not canvassed in or decided by a court of law. I have clarified that the investigation did not investigate alleged unfair labour practices. It was simply confined to testing the allegation that Mr Motsoeneng systematically purged senior staff in a manner that flaunted legal and corporate procedures resulting in the loss of millions of Rand.
- (xvii) I am accordingly satisfied that the complaints lodged regarding the propriety of various actors at the SABC were correctly lodged in accordance with section 182 of the Constitution and sections 6 and 7 of the Public Protector Act, and accordingly fall within my remit.
- (xviii) Other odd arguments made by Mr Motsoeneng and the submission ostensibly made on behalf of the current SABC Board, are fully addressed in the body of the report. I must indicate that in this regard I found it rather discouraging that the current SABC Board appears to have blindly sprung to Mr Motsoeneng’s defense on matters that precede it and which, in my considered view, require a Board that is serious about ethical governance to

February 2014

raise questions with him. In fact at times the Board submission appeared more defensive on his behalf than himself. This is the case on the alleged fraudulent misrepresentation of his qualifications. The submission appeared to be unconcerned over the allegation that:

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

- (xix) In contrast, **Mr Motsoeneng admitted**, during his recorded interview, **that he had falsified his matric qualifications and blamed a Mrs Swanepoel, whom he said** gave him the application form **to fill in anything** to get the job. On the completed application form availed by one of the Complainants, Mr Motsoeneng indicated that he passed Standard 10 ('matric') in 1991 at the age of 23 years and indicated five(5) symbols he had purported to have obtained in this regard.
- (xx) Mr Motsoeneng further conceded during his interview, as did other Members of the erstwhile board during their recorded interview, that there were systemic corporate governance lapses in the SABC, although Mr Motsoeneng took no responsibility for any of such lapses, blaming everything on the Board, fellow executives and the Department of communications.
- (xxi) During my informal meeting with the SABC Board Chairperson, Mrs Tshabalala, on Friday 14 February 2014, she graciously acknowledged that the submission she forwarded in response to the provisional report was prepared by her lawyer who had been assisting the SABC prior to her appointment as she was not familiar with the issues then and that she had considered it unnecessary to involve the current Board Members, as members would not have been privy to the issues.

February 2014

(xxii) I must indicate that, I would not recommend a similar approach in the future. As the Chairperson of the SABC Board is not an executive chairperson, Board decisions should be made by the Board. Furthermore, the issues raised in my provisional report needed to be brought to the attention of the current Board for it to apply its mind to the corporate governance and ethical challenges it was stepping into. During our meeting I shared my views on the role of a non-executive chairperson with Ms Tshabalala, who did not object to such views.

(xxiii) The essence of the allegations investigated was that there was systemic corporate governance failure at the SABC at the core of which was a expediency, acutely poor human resources management and a dysfunctional Board, all of which was said to be primarily due to manipulative scheming by the SABC’s Acting COO, who allegedly lacked the requisite competencies for the post and manipulated, primarily new Boards and GCEOs to have his way and to purge colleagues that stood in his way.

(xxiv) My findings are the following:

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

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

February 2014

Broadcasting Act, which regulates acting appointments and this constitute improper conduct and maladministration.

- 2) The former SABC Board's Chairperson, Dr Ben Ngubane further acted irregularly when he ordered that the qualification requirements for the appointment to the position of COO be altered to remove academic qualifications as previously advertised, which was clearly aimed at tailor making the advert to suit Mr Motsoeneng's circumstances and this constitutes improper conduct maladministration and abuse or unjustifiable exercise of power.
- 3) The allegation that Mr. Motsoeneng's salary progression was irregular is also substantiated in that Mr Motsoeneng received salary appraisals three times in one year as alleged hiking his salary as Executive Manager Stakeholder Relations from R 1.5 million to R2.4 million. His salary progression as the Acting Chief Operations Officer concomitantly rose irregularly from R122 961 to R211 172 (63% increase) in 12 months and was in violation of Part IV of SABC's Personnel Regulations and SABC Policy No HR002/98/A-Acting in Higher Scale and this constitute improper conduct and maladministration.
- 4) While I have accepted the argument presented by Mr Motsoeneng, the current GCEO and the chairperson of the current Board that salary increases at the SABC are negotiated without any performance contracts or notch increase parameters, I am unable to rule out bad faith in Mr Motsoeneng in the circumstances that allowed 3 salary increases in one fiscal year resulting in Mr Motsoeneng's salary being almost doubled. My discomfort with the whole situation is accentuated by the fact that all were triggered by

February 2014

him presenting his salary increase requests to new incumbents who would have legitimately relied on him for guidance on compliance with corporate prescripts and ethics. It cannot be said that he did not abuse power and/or his position to unduly benefit himself although on paper the decisions were made by other people. The approval of Mr Motsoeneng's salary increments by the GCEO's and the Chairperson of the Board at the time, Dr Ben Ngubane was, accordingly, irregular as it was in violation of Part IV of SABC's Personnel Regulations and SABC Policy No HR002/98/A-Acting in Higher Scale and constitutes improper conduct, abuse of power and maladministration.

- 5) The SABC Human Resources Department failed to keep proper records regarding Mr Motsoeneng's documentation and other Human resources matters dealt with in this report and this constitutes improper conduct and maladministration.
- 6) The SABC Board's failure to exercise its fiduciary obligations in the appointment and appropriate remuneration for the Acting Chief Operations Officer for the SABC was improper and constitutes maladministration.

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

- 1) The allegation that Mr Motsoeneng committed fraud by stating in his application form that he had completed matric from Metsimantsho High School, is substantiated. By his own admission, Mr Motsoeneng provided stated in his application form

February 2014

that he had passed standard 10 (matric), filled in made-up symbols in the same application form and promised to supply a matric certificate to confirm his qualifications when he knew he had not completed matric and did not have the promised certificate, was admitted by him during his interview. His blaming of Mrs Swanepoel and the SABC management that stating that they knew he had not passed matric is disconcerting. If anything, this defence exacerbates his situation as it shows lack of remorse and ethical conduct. The conduct is improper and constitutes a dishonest act as envisaged in 6(4)(a)(ii) and (iii) of the Public Protector Act.

- 2) The allegation that Mr Motsoeneng was appointed to several posts at the SABC despite having no qualifications as required for such posts, including a matric certificate, is substantiated and this constitutes improper conduct and maladministration.
- 3) Mr Motsoeneng would have never been appointed in 1995 had he not lied about his qualifications and that he repeated that lie in 2003 when he applied for the post of Executive Producer: Current Affairs to which he accordingly should never have been appointed.
- 4) The SABC management and Human Resources unit failed to exercise the necessary prudence to avoid the misrepresentation and/or to act decisively when the misrepresentation was discovered. This constitutes improper conduct and maladministration.
- 5) I am also concerned that Mr Motsoeneng's file disappeared amid denying ever falsifying his qualifications and that at one point he used the absence of evidence to support his contention that there was no evidence of his alleged fraudulent misrepresentation. The

February 2014

circumstantial evidence points to a motive on his part although incontrovertible evidence to allow a definite conclusion that he did in fact cause the disappearance of his employment records, particularly his application forms and CV, could not be found.

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

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

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

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

February 2014

- 2) Ms Duda, who was appointed to the position of CFO during February 2012, was not an applicant for the position, which was advertised. Interviews were conducted and a recommendation was made by the SABC board to the Minister of Communications, Ms Pule as the shareholder, to appoint Mr Msulwa Daka. Mr Phiri, from the Department of Communications, and Mr Motsoeneng, from the SABC orchestrated the appointment of Ms Duda long after the recruitment and selection process had been closed. Ms Duda was interviewed on 07 February 2012, without having applied for said position and was after the submission of the Board's recommendation, of the appointment of a legitimately selected candidate, Mr Daka, submitted to Ms Pule on 31 January 2012, which, recommendation was rejected by her.
- 3) The conduct of the SABC management, particularly Mr Motsoeneng and the Board in the appointment of Ms Duda as the CFO of the SABC, was in violation of the provisions of section 19.1.1 of the Articles of Association and Broadcasting Act and accordingly unlawful. The appointment was grossly irregular and actions involved constitute improper conduct, maladministration and abuse of power.
- 4) Although I could not find conclusive evidence that Ms Pule personally ordered that Ms Duda's CV be handed over to the SABC and that the Board interview her against the law as alleged, there is sufficient evidence that suggests an invisible hand from her direction and that of Mr Mngqibisa, to which we can legitimately attribute this gross irregularity. In any event, if we accept that Ms Pule was not involved as per her denial, it is unclear why she would have speedily approved the appointment

February 2014

as she did on, when the irregularities were obvious. The conduct of Ms Pule as Minister of communications was accordingly improper and constitutes maladministration.

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

- 1) The allegation that Mr Motsoeneng purged senior staff members leading to the avoidable loss of millions of Rand towards salaries in respect of unnecessary and settlements for irregular terminations of contracts is justified in the circumstances SABC human resources records of the circumstances of termination and Mr Motsoeneng's own account show that he was involved in most of these terminations of abuse of power and systemic governance failure involving irregular termination of employment of several senior employees of the SABC and that the SABC lost millions of Rand due to procedural and substantive injustices confirmed in findings of the CCMA and the courts. Some of these matters were settled out of court with the SABC still paying enormous amounts in settlements.
- 2) SABC records show that Mr Motsoeneng played the following role in the dismissals:

Direct involvement

- (aa) Mr Motsoeneng directly initiated the termination of the employment of Messrs Bernard Koma, Hosia Jiyane, Sello

February 2014

Thulo, Montlonyane Diphoko and Mesd Mapule Mbalathi and Ntswoaki Ramaphosa who participated in Mr Motsoeneng’s disciplinary hearing held in Bloemfontein.

Advise to the board

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

History of conflict

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

February 2014

The results of certain individual labour disputes with the SABC are canvased below:

- (aa) Mr Bernard Koma – Mr Motsoeneng directly initiated the termination of employment of Mr Koma who was the lead witness in his disciplinary hearing. Mr Koma received 12 months’ settlement award at the CCMA with his attorneys on condition that he withdrew his civil case against the SABC after spurious charges had been levelled against him;
- (bb) Mr Montlennyane Diphoko – Mr Motsoeneng directly initiated the termination of the employment of Mr Diphoko who had testified against him in his disciplinary hearing. Mr Diphoko was reinstated after CCMA ruling, almost three years after SABC had terminated his contract;
- (cc) Mr Hosia Jiyane – Mr Motsoeneng directly initiated the termination of the employment of Mr Diphoko who had testified against him in his disciplinary hearing. Disciplinary proceedings against him dragged for two years before he won the case against the SABC. However, Mr Motsoeneng opposed the finding of not guilty;
- (dd) Dr Saul Pelle won his case at the Labour court for reinstatement but SABC refused to reinstate him and offered him 12 months’ settlement payout;

February 2014

- (ee) Ms Ntsiepe Masoetsa – Reinstated after her labour dispute case against the SABC dragged for three years in the Labour court ;
- (ff) Ms Cecilia Phillips – Suspended for four months without charges being brought against her by the SABC;
- (gg) Mr Sello Thulo – Mr Motsoeneng directly initiated the termination of the employment of Mr Thulo who had testified against him in his disciplinary hearing. Instructed the disciplinary committee to ‘get that man out of the system’;
- (hh) Mr Thabiso Lesala – Substantial settlement award offered to him through his attorney at the CCMA and he was asked to withdraw his case as a condition of the settlement;
- (ii) Ms Charlotte Mampane – Employment contract was terminated prematurely in March 2012 instead of October 2013 for being redundant. A settlement award was given to her for the remainder of her contract;
- (jj) Ms Phumelele Ntombela-Nzimande – Her employment contract was terminated prematurely, and she was awarded settlement payment for the remainder of 13 months of her contract;
- (kk) Ms Gugu Duda – Suspended indefinitely since September 2012 to date without expeditious finalisation of the disciplinary proceedings against her;

February 2014

- (ll) Ms Sundi Sishuba – Suspended for two and half years, so far no charges have been brought against her;
 - (mm) Ms Loraine Francois - Suspended for months but won her case at the CCMA and was reinstated to her post; and
 - (nn) Ms Nompilo Dlamini – Won her case in the Labour court, the SABC appealed the ruling to the High court, matter due to be heard in April 2014.
- 3) The allegations of maladministration, including financial mismanagement, at the level of the SABC management are also substantiated. The records show that the majority of these cases were handled without following proper procedure as all 14 suspensions and terminations were successfully challenged in court. Numerous disputes were settled out of court at enormous unnecessary cost to the Corporation.
- 4) The substantial amounts of money paid to SABC’s employees as settlements during protracted suspensions, terminations and/or long drawn-out labour dispute proceedings and protracted litigations caused unnecessary and avoidable costs to the National Broadcaster, thus resulting in fruitless and wasteful expenditure. The allegation that the avoidable legal fees, settlement awards and acting allowances for persons in suspension, contributed to the National Broadcaster’s unprecedented salary bill escalation by R29 million.
- 5) The acts and omissions of the SABC management Board in regard to the unnecessary and/ or procedurally irregular suspensions, dismissals and forced resignations amount to fruitless and wasteful

February 2014

expenditure and the conduct accordingly constitutes improper conduct and maladministration.

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

- 1) The allegation that Mr Motsoeneng irregularly increased the salaries of various staff members is substantiated.
- 2) Mr Motsoeneng unilaterally increased salaries of, Ms Sully Motsweni, Ms Thobekile Khumalo, Mr Hannes Du Buisson and certain freelancers without following Part IV of the SABC Personnel Regulations.
- 3) These irregular and rapid salary progressions contributed to the National Broadcaster's unprecedented salary bill escalation by R29 million.
- 4) Mr Motsoeneng's conduct in this regard was irregular and amounts to improper conduct and maladministration.

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

- 1) All the above findings are symptomatic of pathological corporate governance deficiencies at the SABC, including failure by the

February 2014

SABC Board to provide strategic oversight to the National Broadcaster as provided for in the SABC Board Charter and King III Report.

- 2) The Executive Directors (principally the GCEO, COO and CFO) failed to provide the necessary support, information and guidance to help the Board discharge its fiduciary responsibilities effectively and that, by his own admission Mr Motsoeneng caused the Board to make irregular and unlawful decisions.
- 3) The Board was dysfunctional and on its watch, allowed Dr Ngubane to effectively perform the function of an Executive Chairperson by authorizing numerous salary increments for Mr Motsoeneng.
- 4) Mr Motsoeneng has been allowed by successive Boards to operate above the law, undermining the GCEO among others, and causing the staff, particularly in the human resources and financial departments to engage in unlawful conduct.

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

- 1) Former Minister Pule acted improperly in the manner in which she rejected the recommendation made by the Board for the appointment of the CFO and orchestrated the inclusion of Ms Duda's CV. Her conduct accordingly constitutes a violation of the Executive Ethics Code and amounts to abuse of power.

February 2014

- 2) Mr Phiri the Acting DDG of Department of Communication, acted unlawfully in submitting Ms Duda’s CV to Mr Motsoeneng for her inclusion in the subsequent interview by the Board after the selection process had been concluded and recommendations already submitted to the Minister for approval of the CFO’s appointment and his conduct in this regard was improper and constitutes maladministration.
 - 3) Mr. Motsoeneng acted unlawfully in accepting the CV from Mr Phiri and ordering that Ms Duda’s CV be included and she be interviewed after the selection process had been concluded with recommendations for appointment already submitted to the former Minister and his conduct in this regard was improper and constitutes maladministration.
- (xxv) Appropriate remedial action to be taken on my findings of maladministration as envisaged by section 182(1) (c) of the Constitution and section 6(4)(c)(ii) is the following:

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

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

February 2014

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

- 1) To institute disciplinary proceedings against Mr Themba Phiri in respect of his conduct with regard to his role in the irregular appointment of Ms Duda as the SABC CFO.
- 2) To take urgent steps to fill the long outstanding vacant position of the Chief Operations Officer with a suitably qualified permanent incumbent within 90 days of this report and to establish why GCEO's cannot function at the SABC and leave prematurely, causing operational and financial strains.
- 3) To define the role and authority of the COO in relation to the GCEO and ensure that overlaps in authority are identified and eliminated.
- 4) To expedite finalization of all pending disciplinary proceedings against the suspended CFO, Ms Duda within 60 days of this report.

(c) The SABC Board to ensure that:

- 1) All monies are recovered which were irregularly spent through unlawful and improper actions from the appropriate persons.
- 2) Takes appropriate disciplinary action against the following:
 - (aa) Mr Motsoeneng for his dishonesty relating to the misrepresentation of his qualifications, abuse of power and improper conduct in the appointments and salary increments

February 2014

of Ms Sully Motsweni, and for his role in the purging of senior staff members resulting in numerous labour disputes and settlement awards against the SABC;

- (bb) Ms Lulama Mokhobo, the outgoing GCEO for her improper conduct in the approval of the salary increment of Mr Motsoeneng;
- (cc) To ensure that any fruitless and wasteful expenditure that had been incurred as a result of irregular salary increments to Mr Motsoeneng, Ms Motsweni, Ms Khumalo and the freelancers, is recovered from the appropriate persons;
- (dd) To ensure that in future there is strict and collective responsibility by the SABC Board members through working as a collective and not against each other, in compliance with the relevant legislation, policies and prescripts that govern the National Broadcaster; and
- (ee) To issue a public apology to Ms P Ntombela-Nzimande, Ms C Mampane and all its former employees who had suffered prejudice due to the SABC management and Board's maladministration involving failure to handle the administration of its affairs in accordance with the laws, corporate policies and principles of corporate governance.
- (ff) To review all their HR processes pertaining to creation of new posts, appointments and salary scales and progressions.