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**Govenden, Prinola**

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# “Toothless regulator?” A critical analysis of ICASA’s regulation of the SABC so that it functions as a public service broadcaster.

By

Prinola Govenden

A thesis submitted in fulfilment of the
requirements for the degree of

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## Declaration

This serves to confirm that this Dissertation is my own work and I have not plagiarized. This Dissertation has never been published.

## Abstract

This study critically analyses whether ICASA effectively regulates the SABC so that it plays its role as a public service broadcaster in the public interest and promotes democracy. The study applies a combination of critical political economy of the media, theories of regulation and public service broadcasting as an analytical framework, and employs document analysis and qualitative interviews as methods.

The study finds that in relation to monitoring the SABC's license conditions, ICASA is to a large degree effective in the regulatory practices it employs. However ICASA tends to take a problematic stance by limiting its regulatory mandate to only monitor the license conditions. The study argues that ICASA's mandate is and should be broader. Further, the study identifies an antagonistic relationship between ICASA and the SABC, which undermines the regulator's ability to effectively regulate the SABC.

The study also finds that ICASA's regulation in general is characterized by a lack of pro-active regulation in several areas. In this regard, the study demonstrates that ICASA has a regulatory practice that can be characterized as silent. The areas in which ICASA is silent when it should act include the SABC's problematic commercial funding model which undermines its public service role. Editorial biases towards those in authority and controversial practices like withdrawing programmes and "blacklisting" commentators who are considered too critical of those in power, in ways that undermines its editorial and programming independence. The suspensions of the SABC's two Executive members and calls for the SABC board to step down, which undermine the institutional independence that a public service broadcaster should possess.

The study identifies a number of ICASA's institutional weaknesses, which include its lack of independence in reality, its "politicised" appointment process, a lack of skilled personnel and "poaching", "politicised" and inefficient accountability mechanisms, a lack of clarity of mandate and power regarding the SABC, as well as a lack of adequate and independent funding which result in ineffective regulatory practices. Finally the study makes recommendations for the strengthening of ICASA so that it becomes in an effective regulator functioning in the public interest.

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# Chapter 1

## Introduction

This study investigates ICASA's level of effectiveness in its regulation of the SABC so that it functions as public service broadcaster. Through critically analysing the actions or lack thereof ICASA has taken, in holding the SABC accountable to policy and regulation as well fulfilling their license conditions. It also seeks to investigate the factors that influence ICASA's ability to effectively regulate the SABC.

### 1.1 Motivation

ICASA is the target of constant criticism and debate with regards to its performance and institutional independence. The major print media repeatedly raises questions about its inability to fulfil its role of an effective regulator. A leading media activist organisation, the *Freedom of Expression Institute* argues that there is growing evidence that ICASA councillors are doing the bidding of the ruling African National Congress (ANC), which raises questions about its independence. The Goedgedacht Forum for Social Reflection dialogue in February 2007, comprising of the Minister in the Presidency, leading media academics and leading media workers concluded that the SABC has not been transformed into a public service broadcaster and is sliding back into being a state broadcaster, whilst ICASA is doing very little to prevent this slide. Marcel Golding the Chief Executive Officer of E-TV in a paper presented in 2003 on "Privatisation" at the "Conference on Competition and Development" argues that "a lack of regulatory control over the SABC is a major concern" (Golding 2008). This study is therefore significant as it assesses ICASA's effectiveness in performing its fundamental mandate regarding the public service broadcaster.

The topic of this study is furthermore significant because evidence suggests that the SABC is a shadow of what a public service broadcaster should be, and ICASA is mandated with a crucial role regarding the SABC. Numerous organisations voice their concerns at the current state of the SABC as a public service broadcaster. A civil society coalition called *Save Our SABC* (*SOS*) was formed in June 2008 "to address the crisis at the SABC". The *Save Our SABC* coalition represents key trade unions, non-governmental organisations, independent producer organisations and prominent academics.

A study involving ICASA and the SABC is both appealing and relevant as it delves into their effectiveness as institutions. The effectiveness of institutions is crucial in achieving a healthy South African democracy. A situation where both ICASA and SABC do not perform their roles, critics argue, needs to be changed if South Africa is to foster a healthy democracy.

Lastly, most studies tend to focus on either the public service broadcaster or the regulator and not the relationship between the two. Therefore, this study is unique in that it critically analyses the relationship between ICASA as a regulator and the SABC which is regulated by ICASA. This study adds to existing knowledge and research on effective independent regulation and a public service broadcaster, as critically important to serving the public interest and democracy.

## 1.2 Historical context

Prior to 1993 the SABC was like all media in South Africa, it was regulated, owned and controlled by the state and used as a vital role in creating and supporting the apartheid structures (Teer- Tomaselli 2001; Berger 2001; Tomaselli 1994). The SABC was also used by the apartheid state in its efforts to combat anti-apartheid forces including the ANC in exile and other forces internally (Teer- Tomaselli 2001).

From 1991 a process of restructuring of the SABC began, which was part of a prolonged campaign to "free the airwaves" (Horwitz 2001). After various initiatives a new "vision and value" framework was created for the SABC, in the task of transforming the "state broadcaster" into a "public service broadcaster" (Teer- Tomaselli 2001). As the transformation of the South African political landscape took place, it was no longer an option for the SABC to be the voice of the apartheid government (Orgeret 2006). Further, because of democracy it was no longer desirable for the state to be a regulator (Orgeret 2006).

In this context ICASA's predecessor, the Independent Broadcasting Authority (IBA) was created before democracy in 1993 to ensure that the SABC plays an impartial role in the first democratic elections. The IBA was also created to regulate broadcasting activities in South Africa, in the public interest (Horwitz 2001). Amidst the regulator's first duties was to conduct a wide-ranging policy inquiry known as the Triple Inquiry, which concentrated on the viability of the public service broadcaster (Teer-Tomaselli 2004; Government Communication and Information System 2008). The Triple Inquiry Report laid out the regulator's conclusions on these matters, one of its most important recommendations concerned the nature and funding of the public service broadcaster (Teer-Tomaselli 2004). The IBA was charged with the key role of repositioning the SABC into a public service broadcaster. The *IBA Act* stipulated that the IBA is required to monitor the public service broadcaster's Charter (*Independent Broadcasting Authority Act 1993*). This Act enabled the IBA to more fully play a role in safeguarding the integrity of the broadcaster (Stiftung 2003). The IBA merged with the South African Telecommunications Authority (SATRA) in 2000 to become ICASA and regulate the telecommunications and broadcasting industries, and more recently postal services (*ICASA Act 2000* as amended).

## 1.3 The case against ICASA

This study is relevant because it provides insight into ICASA's regulation of the SABC, the SABC cannot become or exist as a public service broadcaster without effective regulation, which ensures that it maintains its independence and broadcasts in the public interest. ICASA's mandate establishes that it occupies a key role through effective regulation. The SABC operates within the limits of the *Constitution of the Republic of South Africa 1996*, its powers and functions, as well as its rights and obligations flow from the *Broadcasting Act 1999* as amended, its Editorial Charter, the licence conditions of each television and radio station, as well as regulations that are issued from time to time by ICASA. It is ICASA's duty and responsibility to monitor and enforce compliance with the SABC Charter and the SABC's television and radio licenses, inspect and review editorial policies, enforce the SABC's Code of Practice as well as ensure compliance with the SABC's Code of Conduct.

This study is also significant in that it provides insight into ICASA's organisational weaknesses, which are constantly reported by the major print media. For example, the *Financial Mail* reported in September 2006 that the media and certain consumer groups view ICASA as a "toothless regulator" and question its effectiveness, credibility as well as legitimacy. There is also continuous debate about the extent or lack of ICASA's independence from government, which are said to be a result of under-resourcing because of an inappropriate funding model, lack of accountability and an appointment process that is controlled by the ruling party and government. Some also point to an increased workload, which is beyond ICASA's capacity, partly stemming from the merger of the IBA (the former broadcasting regulator) and SATRA (the former telecommunications regulator). Further, ICASA's chair Paris Mashile has been quoted stipulating that the organisation is under resourced and inundated with "too much work". ICASA itself contends that that it faces an exodus of top staff and is crippled by staff shortages in critical departments. Some legislators from both the ruling party and opposition have also been quoted stating that the organisation is plagued by financial irregularities which are attributed to lack of proper corporate governance. This study provides insight into ICASA's organisational weaknesses and assesses the validity of these claims. ICASA cannot effectively regulate the SABC into a public service broadcaster if its inadequacies are not addressed.

### 1.4 The case against the SABC

The SABC's fulfillment of its role as a public service broadcaster and its lack thereof is a topical and controversial issue. ICASA's role in the SABC functioning as a public service broadcaster is fundamental, hence the pertinence of this study. A leading media activist organisation, the *Freedom of Expression Institute* has voiced concern that the SABC is becoming more of a state broadcaster than a public service broadcaster because of political interference, including interference in the selection of board members, and the undermining of its editorial and programming independence. There is also much concern expressed by academics, media activists and within the SABC itself regarding its commercial funding model, issues of poor governance, weak management as well as a perceived lack of accountability to the public.

The major allegation with regard to the SABC's editorial and programming independence is that it is a propaganda machine for the government and an extension of the ruling party. There are continuous controversies over its editorial practices and output. Its news and current affairs division is accused by Rhodes University academic Guy Berger, of being fearful of offending anyone in authority and that there is a culture of nervousness leading to news coverage being bland, dull and inadequate. The *Freedom of Expression Institute* commented for the largest circulation newspaper the *Sunday Times* in July 2007, that the main problem at the SABC is a pro status quo bias in reporting on the most contentious political issues of the day, in particular shielding the Thabo Mbeki Presidency from criticism. The SABC's questionable "editorial independence" seems apparent in its the decision not to broadcast an *Asikhulume* interview with Jacob Zuma, the pulling of a song on *Ukhozi FM* supporting Zuma, the handling of the booing of the then Deputy President Phumzile Mlambo-Ngcuka, the decision not to screen the controversial documentary on Thabo Mbeki as well as the "blacklisting" saga of political commentators for expressing views critical of government. Critics say these actions lead to a lack of diverse voices, in particular critical and oppositional views in news bulletins and current affairs programmes.

The major print media repeatedly reports on the SABC's numerous controversies, including the Thabo Mbeki documentary withdrawals, the appointment of the new SABC board members by Thabo Mbeki, the new SABC board's "vote of no confidence" from the ANC Members of Parliament, an internal report on alleged corruption, the "blacklisting" saga and the suspensions of two of the SABC's Executive members. ICASA's voice is yet to be heard about any of these SABC controversies.

Finally, this study is relevant as it provides insight into ICASA's contribution to the SABC functioning as a public service broadcaster or lack thereof. Critics of both ICASA and the SABC argue that it is the weakness of ICASA as a regulator which is principally responsible for the state the SABC is in, and the absence of true public service broadcasting. An example of this is the SABC's astronomical advertising hikes, which was reported by ***Business Day*** in August 2007, wherein advertisers and those within the SABC's commercial division claim that these are caused by the regulations set by ICASA.

### 1.5 Research questions

This study addresses the following research questions:

1. What actions has ICASA taken and not taken to ensure that the SABC performs its role as a public service broadcaster in the public interest?
2. What factors enable or undermine ICASA's ability to regulate the SABC effectively?
3. In what ways can ICASA be strengthened to become more effective?

### 1.6 Chapter organisation

This chapter has provided an introduction to the study and outlined the research questions. The chapters that follow include, chapter 2 which is the theoretical framework and focuses on theories that inform the study. Chapter 3 discusses the research methods employed in this research. Chapter 4 presents the findings from a range of documents including, policy and regulatory documents, ICASA compliance reports, press reports from newspapers, magazines, and advocacy groups, the SABC Annual report 2007, the ICASA Annual report 2007 as well as interviews. Chapter 5 is the analysis of the findings. The conclusion of the study is outlined by chapter 6.

# Chapter 2

## Theoretical Framework

### 2. Introduction

This study employs three complementary theories, namely, critical political economy of the media, theories of regulation and lastly public service broadcasting. These theories provide the necessary framework to investigate ICASA's effectiveness in regulating the SABC so that its plays its role as a public service broadcaster. The theories further provide essential insights in identifying and analysing the factors impeding ICASA's effective regulation of the SABC. These theories are complementary as they all recognise the importance of independent regulation and public media, in serving the public interest.

Critical political economy of the media regards independent public media and independent regulation as important aspects, in serving the public interest and in cultivating an informed citizenry. Theories of regulation are based on the premise that regulation is an intrinsic aspect to fostering the public interest. Theories of public service broadcasting establish the public service broadcaster as the entity mandated to offer public service broadcasting. Theories of public service broadcasting also outline the characteristics and practices a public service broadcaster should possess and demonstrate. The literature review is embedded within the theoretical framework.

### 2.1 Research on ICASA and the SABC

There is a lack of comprehensive studies relating to both these organisations, with regard to the regulation of the relevant mandate. Existing studies analyse these two organisations in isolation and lack in the study of the relationship between the two. In the South African and African context, the concepts of public service broadcasting as opposed to state broadcasting, independent regulation as well as an independent regulator's role in promoting and safeguarding public service broadcasting are fairly new. These concepts stem from the advent of democratisation processes in the 1990's.

Some of the existing studies focus on aspects of regulation of public service broadcasting. Banda (2006) discusses the existing regulatory and policy models used for public service broadcasting in Africa, and argues that the SABC is characterized as falling under "state-delegated regulation". The other policy and regulatory models existing in Africa, according to Banda (2006) includes, reporting to media authorities and direct reporting to the state. Banda (2006) concludes that the value of a regulatory-cum-policy model lies in the extent to which it can promote or hinder the attaining of public service broadcasting principles.

Research on ICASA has previously been conducted. Smith (2007) notes that amongst the many challenges hindering ICASA's performance are, interference with its independence due to state involvement and ministerial influence, funding constraints, being a feeding ground for skills development, as well as "poaching" of its employees by the industry. Smith (2007) furthermore argues that ICASA is not adequately fulfilling its mandate with regards to ensuring accountability, transparency and access to information, as well as fully achieving its regulatory objectives. The lack of delivery of these aspects of ICASA's mandate is according to Smith (2007), aggravated by its centralised decision making, apparent lack of clarity about

roles and responsibilities between council and management, as well as a lack of record keeping.

Fokane and Duncan (2002) draw attention to ICASA's problem of under funding, and argue that this problem was set in the days of ICASA's predecessor, the Independent Broadcasting Authority (IBA). ICASA's current problems, according to Fokane and Duncan (2002) have been inherited from the IBA, who continuously suffered budget cuts that lead to a cutting down of employment positions, reduction of departments and the closure of provincial offices. Fokane and Duncan (2002) furthermore add that the downsizing at ICASA ironically took place at a time when there was an increase in the number of broadcasters that needed to be monitored, thus placed further strain on the IBA's resources.

A number of studies have been conducted on the SABC. Masenyama (2006) argues that the SABC plays an important role in promoting a sense of national unity in South Africa, through diversity in its programming. Masenyama (2006) adds that hindering the SABC's role is its hybrid model of broadcasting, which comprises of characteristics of both public and commercial broadcasting. Berger and Jjuuko (2007) present a similar argument, stating that the SABC is in many respects run as a commercial broadcaster, which produces implications for its programming, independence and public accountability. Eastman (2003) contends that the SABC's over reliance on advertising is problematic and results in the goal to enlarge audiences, and thus the pressure to expand advertising sales, reduce programming costs and attract bigger audiences. Eastman (2003) adds that this goal directly counters the SABC's mandate to serve multiple ethnic groups through local programming. This goal, according to, (Eastman 2003; Berger and Jjuuko 2007), also results in English language programming dominating programming and compromising the SABC's broadcasting in all eleven official languages mandate. In an evaluation of SABC news, Roseborough and Bird (2007) argue that the SABC'S over reliance on advertising impacts on the SABC news by limiting the news airtime and news budget.

Bird and Roseborough (2007) note the various challenges that the SABC faces, including perceptions of pro government bias in the SABC news, news items tending not to be critical of government, a lack of range and diversity of both voices and sources, the SABC's alleged credibility of their board as well as the SABC's funding mechanism. Fokane and Duncan (2002) state concern about the SABC's independence, and argue that the SABC's financial independence is compromised by the Minister of Communications' control over the SABC's finances. Fokane and Duncan (2002) add that the SABC's editorial independence is compromised by a blurred line between editorial and management, which is leading to confusion and demoralisation within the SABC news room.

This previous research conducted on ICASA and the SABC provide useful insight and background information for the study. This study seeks to move a step further by critically analysing how ICASA can be strengthened institutionally, so that it can become a more effective regulator and hence regulate the SABC more effectively. This study is centrally concerned with ICASA's regulation of the SABC and determining the barriers to ICASA's effective regulation of the SABC.

It is important to note that in South Africa the independent regulator came into existence after the SABC. Prior to 1993 the SABC was like all media in South Africa, it was regulated, owned and controlled by the state and used as a vital tool in creating and supporting the apartheid structures, as a mouthpiece of the Nationalist Party regime (Teer- Tomaselli 2001;

Berger 2001; Tomaselli 1994; *Media Development and Diversity Agency* 2008). Independent regulation was established in 1993 through the inception of ICASA's predecessor, the IBA.

## 2.2 Critical political economy of the media

The aspects of critical political economy of the media that are particularly useful to the study are its "critical" strand, strong emphasis on independent regulation and public ownership due to its importance to the creation of a participatory democracy, focus on analysing policy and regulatory practices of public service broadcasting, and its focus on analysing the consequences of institutional arrangements.

### 2.2.1 "Critical" strand

The "critical" strand of political economy of the media deals with the identification and analysis of structural constraints. This study adopts the "critical" strand of political economy of the media, which is "centrally concerned with questions of action and structure in an attempt to differentiate the real constraints that shape the lives and opportunities of real actors within the real world" (Golding and Murdock 2000:72). This approach enables the identification and analysis of the constraints that may be hindering ICASA's effective regulation of the SABC. In addition, critical political economy of the media also permits an analysis of the nature and sources these constraints (Golding and Murdock 2000). This approach is also "critical" as it is interested in possibilities for improvement (Boyd-Barrett 2002). The "critical" strand of political economy of the media therefore permits the identification and analysis of constraints that may be hindering ICASA's effective regulation, followed by a consideration of possibilities for improvement.

### 2.2.2 Participatory democracy

Critical political economy of the media emphasises the importance of a participatory democracy and regards a healthy media system as an integral aspect to the creation of it. This approach particularly regards independent regulation and public media as important aspects in cultivating a participatory democracy. Critical political economy of the media is premised on the belief that democracy is predicated upon an informed citizenry, and an informed citizenry can only be produced by a healthy and vibrant media system (McChesney 1998). This theoretical approach considers an ideal communication system as a crucial aspect in contributing to the development of citizenship (Golding and Murdock 2000). Golding and Murdock (1989) notes that citizenship is the condition that allows people to become full members of society at every level, and a good society can be established through the extension of citizen rights (Golding and Murdock 2000). Critical political economy of the media contends that a communication space ideally should be a public cultural space that is open, diverse and accessible (Golding and Murdock 2000). These ideal notions are used as a basic yardstick to measure the performance of existing communication systems (Golding and Murdock 2000).

Critical political economy of the media therefore is interested in engaging with concepts conceptually linked to a participatory democracy, such as moral questions of justice, equity and the public good (Mosco 1996; Boyd-Barrett 2002). This theory strongly defends democracy, equality and the public sphere in the face of powerful private interests (Mosco 1996; Boyd-Barrett 2002). Critical political economy of the media regards public service

broadcasting as an important element in providing a public good within a communication system (Golding and Murdock 2000). Critical political economy of the media therefore views public ownership as imperative to a broadcasting system and is furthermore critical of commercially driven and privately owned media (McChesney 1998; Mosco 1996; Boyd-Barrett 2002). This approach is highly critical of commercially driven media and advertising, because it is premised on the belief that commercially driven media influence the content and the democratic functioning of the media, in ways that undermine the development of an informed citizenry (McChesney 1998). An ideal communications space, according to this theoretical approach, can only be achieved through media policies and regulatory arrangements that make provision for an independent regulator (Golding and Murdock 2000).

Therefore, one aspect of critical political economy of the media actively promotes the idea of public ownership of the media and independent regulation, and the importance of these two concepts to nurturing democracy. This approach's view on the importance of the public good is intrinsic to this study as it provides insight into elements of what the public good is and how it should be functioning to serve democracy. The "public good" resonates with "public service broadcasting", which resonates with the "public interest" and this study centrally focuses on regulating public service broadcasting in the public interest.

### 2.2.3 Policy and regulatory choices

Critical political economy of the media accents the importance of policy and regulation in fostering the public interest and democracy. This approach regards policy and regulation as important aspects in serving the public interest and the creation of a participatory democracy (McChesney 1998). This aspect is useful to this study as it pays particular attention to regulating in the public interest.

Critical political economy of the media also focuses on an analysis of policy and regulatory choices, and their affect on the media's ability to serve the public interest and cultivate democracy. This theoretical approach is concerned with policy and regulatory choices and determining "the appropriate scope of public intervention" (Golding and Murdock 2000: 76). It also evaluates competing policies that are purposed to advance the public interest and enable the development of a media system that advances democracy (Golding and Murdock 2000). This aspect of critical political economy of the media is appropriate to this study, which focuses on policy analysis and regulatory choices, in an attempt to identify the level of effectiveness of the regulator.

This theoretical approach also analyses the regulations, which public service broadcasting operates within, and the consequences of it for the public good and democracy. Critical political economy of the media has a strong emphasis on analysing the regulatory systems that govern public service broadcasting, and the consequences of them for the public good and the health of democracy (Boyd-Barrett 2002). This facet of critical political economy of the media is intrinsic to this study, as it is centrally concerned with the level of effectiveness of ICASA's regulation of the SABC.

### 2.2.4. Institutional arrangements

Critical political economy of the media also focuses on an analysis of institutional arrangements to determine the consequences of them. Critical political economy of the media pays particular attention to media institutions and analyses institutional arrangements (Boyd-Barrett 2002; Golding and Murdock 2000; McChesney 1998; McChesney 2000). This approach therefore, for instance links an analysis of media ownership and its broader social context, with the role of policy and regulation promoting or constraining editorial and programming independence (Boyd- Barrett 2002; Golding and Murdock 2000; McChesney 1998; McChesney 2000). It also analyses institutional arrangements like funding, and how these arrangements affects the capacity of the media to serve its democratic functioning (Golding and Murdock 2000; McChesney 1998; McChesney 2000). This aspect of critical political economy of the media is useful to a study that focuses on two media institutions, ICASA and SABC. This aspect furthermore allows the study to identify which of ICASA's institutional arrangements is hindering it from effectively regulating the SABC.

## 2.3 Theories of regulation

Independent regulation is a crucial concept to this study as it is vital in ensuring that the public interest is served. Theories of regulation are useful tools for analysing the performance of the regulator. Theories of regulation enable a critical assessment of a regulator's effectiveness in regulating in the public interest.

Theories of regulation are derived from specific sources and can be categorised under five ideal types, these categories of regulation offer understandings of regulation. Horwitz (1989) argues that theories of regulation spring from two main sources, welfare economics and political theory. Traditional theories of regulation, according to Horwitz (1989), are centred on a concept of the "public interest" which has its roots in welfare economics. Horwitz (1989) adds that the theories of regulation that have their roots in political theory are generally "private interest" theories. Horwitz (1989) also adds, the way in which the regulator operates once established rests upon its organisational behaviour and institutional constraints (Golding and Murdock 1997). This premise is particularly useful to this study that pays particular attention to assessing the effectiveness of ICASA's regulatory behaviour, and identifying the organisational constraints to this effectiveness.

Horwitz (1989) notes five ideal typical categories of regulation, namely the public interest, regulatory failure or "perverted" public interest, conspiracy, organisational behaviour and capitalist state theory. This study focuses on the theories pertaining to the regulation of broadcasting which are the public interest oriented theories (Golding and Murdock 1997). The theories of regulation most useful to this study are the public interest and "perverted" public interest theory as these two theoretical approaches both focus on assessing a regulator's performance in relation to the public interest. The public interest theory and "perverted" public interest theory's focus on the public interest is particularly useful to this study because the "public interest" resonates with and is conceptually linked to the notion of "public service broadcasting". This study is centrally concerned with effective regulation of public service broadcasting.

### 2.3.1 Conceptualising the "public interest"

It is important to explore this notion of the "public interest" before discussing the public interest and "perverted" public interest theories of regulation. The public interest is a concept that has been used to justify the need for media regulation. This concept of the public interest is pivotal in debates on regulation as media regulation has traditionally been justified by the argument that media regulation serves the public interest (Feintuck 2001: 57; Horwitz 1989; McQuail 2001: 4; Napoli 2001; Croteau and Hoynes 2003).

Thus, it can be deduced that media regulation can serve the public interest. This notion that the media can serve the public interest signifies that the media can cultivate the general welfare of society and has a social responsibility role to play within society (McQuail 1999). The media serving the public interest includes the media possessing a vital role in cultivating an informed and healthy citizenry (Feintuck 2001; Golding 1990).

The media contributes towards a healthy democracy by serving the public interest. The media plays a crucial role in providing the resources for an active citizenry by providing citizens with access to a diversity of information and perspectives in news and culture required to take part in civic life (Hoynes and Croteau 2001). It is important to note that with the emergence of commercialism, the concept of the consumer and citizen is increasingly defined as one in the same, resulting in the neglect of the public interest (Hoynes and Croteau 2001). However the consumer and citizen are not the same and are representative of different aspects of human life, consumers pursue private goals by buying various products (Hoynes and Croteau 2001). Citizens on the other hand are connected to communities and participate in debates that constitute shared civic life; in a democratic society a fundamental assumption is that citizens are equal regardless of their consumer capabilities (Hoynes and Croteau 2001). This premise that media regulation can serve the public interest indicates that the regulator must ensure people are treated like citizens and not consumers, and ensure that the information that citizens require are accessible. A regulator that serves the public interest is also then obliged to ensure that the media does not just treat people like consumers, which would result in the neglect of people with low buying power and focus on the needs of people with high buying power.

The media that are mandated to serve the public interest are not the same as other businesses in society. The media serving the public interest furthermore includes the media being accountable to the public because they are not the same as other businesses and institutions in society (Tleane and Duncan 2003; McQuail 1991). It should be noted that the concept of the public interest can be used for selfish reasons. Self serving governments often attempt to use this notion of the public interest as an ideological device intended to conceal unjustified regulatory ambitions that are in fact not in the interests of the public (McQuail 2001).

The public interest is not only used to justify the need for media regulation, it is also used to guard public service broadcasting. The concept of the public interest also resonates with public service broadcasting because the public interest is often used to defend and maintain the system of public service broadcasting (Siune 1998).

### 2.3.2 Public interest regulatory theory of regulation

The public interest theory of regulation arose historically from the need to protect individuals in the face of private interests. Public interest regulatory theory notes that regulation was established in response to the conflict between private corporations and the general welfare of society (Golding and Murdock 1997). Therefore, regulatory agencies were created to protect the interests of the public and their welfare. This approach contends that the creation of regulatory agencies was viewed as the tangible expression of the spirit of democratic reform (Golding and Murdock 1997). This approach therefore has its roots in regulatory agencies protecting the public interest in the face of private interests, and their creation was regarded as a personification of democracy.

Historically, the public interest theory of regulation underwent two main phases; the early phase is the "Granger" period which refers to the anti-monopoly activism of the agrarian social movement, in which regulation protected the individual producer. The second phase of public interest theory of regulation, and the one that most informs this study is the "Progressive" phase wherein regulation sought to protect the consumer because of the "altered economic conditions created by the large corporations" (Golding and Murdock 1997: 387). The efficiencies of the corporations created the modern mass consumer, thus the "Progressive" phase's notion of the public interest regarded the regulator identifying with the interests of consumers (Golding and Murdock 1997). In the "Progressive" public interest theory the regulator sought to protect powerless consumers and ensure that the economy was fair (Golding and Murdock 1997). The main shift that the public interest theory of regulation underwent between these two main phases is regulation in the first phase protected the individual as producer, and in the second phase protected the individual as consumer (Golding and Murdock 1997). Therefore, public interest theory of regulation regards the creation of regulatory agencies as the "victorious result of the people's struggle with private corporate interests" (Golding and Murdock 1997: 388). The regulatory agency serves general welfare by protecting consumers from corporate abuses.

Public interest theory of regulation is used as the yardstick to measure and assess regulation with regards to the public interest being served (Golding and Murdock 1997). This approach is regarded as the "mammoth literature assessing regulatory failure" and is conceived as either a theoretical standard or as a historical fact of a regulatory agency's birth (Golding and Murdock 1997: 389). This study uses the public interest theory of regulation as a theoretical standard to assess the regulator's level of effectiveness with regards to the public interest. This approach is furthermore useful to this study as it focuses on regulating in the public interest.

### 2.3.3 "Perverted" public interest theory of regulation

Regulatory failure or "perverted" public interest theory analyses the behaviour of regulators that betray or pervert the public interest standard and is condemnatory of regulatory behaviour (Golding and Murdock 1997). The consequence of the perversion of the public interest is that regulation tends to serve the private interests of the industries under regulation at the expense of serving the public interest (Golding and Murdock 1997). This approach is based on the premise that the behaviour of regulators can betray or pervert the public interest standard, and is measured by various criteria such as democratic due process, economic efficiency or bureaucratic rationality (Golding and Murdock 1997). The "perverted" public

interest theory is useful to the study as it allows an assessment of whether or not the regulator is betraying the public interest.

"Perverted" public interest theorists expose the failures of regulation followed by an explanation of why the perversion of the public interest occurred, the different explanations are often related to different political orientations (Golding and Murdock 1997). The main explanations for the prevalence of the prevalence of the public interest are explained through the use of Influence models, they propose that the regulated industry come to influence undue influence on the regulator (Golding and Murdock 1997). The Influence models are regarded as ideal types, hence some arguments do not fit neatly into a single category (Golding and Murdock 1997).

The Influence models are "Instrumental", "Structural" and "Capture' explanations (Golding and Murdock 1997). It should be noted that the most frequently cited reason for the perversion of the public interest is "the over identification of the regulatory agency with the industry it regulates" (Golding and Murdock 1997: 389). A regulator over-identifying with the industry suggests that it could be seeing issues through the eyes of the regulated industry at the expense of the public interest. For example the regulator could pass a regulation as it would benefit the regulated industry meanwhile this could be to the detriment of the public interest.

The "perverted" public interest theory is useful to the study as it enables an assessment of ICASA's performance in its regulation of the SABC, in relation to the public interest. This approach furthermore allows the study to investigate any "public interest" regulatory failures of ICASA followed by an explanation of why the perversion of the public interest prevailed, using the Influence models.

#### 2.3.3.1 "Instrumental" explanation

One of the Influence models used to explain why the perversion of the public interest prevailed is the "Instrumental" explanation which rests on the personal motivation and behaviour of individuals within a regulator. The "Instrumental" explanation attributes the perversion prevailing due to the specific orientation of key agency bureaucrats, like personal motivation and the behaviour of individuals within the regulator (Golding and Murdock 1997). An example of this explanation includes the eventual venality of regulators, which derives from factors like bribes, future orientation of personnel seeking to safe guard their employment opportunities in the regulated industry. An example to illustrate this explanation is that individuals within a regulator could act according to personal motivation rather than in the public interest. Such as accepting a bribe from the regulated industry for their own financial gain or even towing a cautious line with members within the regulated industry due to seeking better job opportunities, thus they would not want to offend the regulated industry in case it would jeopardise an opportunity for better employment.

Another characteristic stated in the "Instrumental" explanation is a regulator's vulnerability to political pressures, like self serving congressman who may force the regulator to become compliant (Golding and Murdock 1997). For instance, a regulator could be uniquely vulnerable to political pressure from politicians that play a direct role at the regulator, thus the politician could pressurise the regulator to make a decision that is politically beneficial to the politicised figure, at the expense of the public interest. The regulator could possibly

succumb to the pressure from the politician out of fear, because of the influence and power that the politician possesses in government and in society.

#### 2.3.3.2 "Structural" analysis explanation

Another Influence model is the "Structural" analysis explanation. The "Structural" analysis explanation attributes the prevalence of perversion of the public interest to the relationship between institutions that restrict and channel the options of the individuals who make decisions within those institutions (Golding and Murdock 1997). An example of the "Structural" analysis explanation is that industries can influence the selection of agency appointments through the political spoils system; the President for example can use the appointments to reward and retain the political support of important regulated industries (Golding and Murdock 1997). The agency appointments therefore are so tied in to the political spoils systems that the regulated industry can indirectly influence the composition of a regulatory agency (Golding and Murdock 1997). An illustration of this explanation is that the president or politicians involved in the appointment process of the regulator could appoint the people that the industry approves of, rather then which appointment would best serve the public interest because they desire the political support of the industry. The president or politicians as a result, would have appointed people that would favour the industry, and the industry would therefore have a strong influence on the decisions of the regulator through the people that have been appointed.

Another example of the "Structural" analysis explanation is that regulated industries possess far greater resources than the regulator in terms of personnel, money and political influence (Golding and Murdock 1997). The regulator for instance, as a result, is at a disadvantage when arguing cases in administrative and judicial arenas, because the cases are so expensive that the party with the most resources can be expected to triumph in most instances (Golding and Murdock 1997). A poorly funded regulator is forced to depend on industry for technical information and expertise and on Congress for their budgets (Golding and Murdock 1997). Therefore, when the regulated industry possesses more money than the regulator it restricts the options of the individuals of the regulator, as it does not possess sufficient budget to produce its own technical information and win court cases, this results in an ineffective regulator. Also, if the regulated industry has more political influence, the individuals within the regulator could possibly operate in fear of offending the regulated industry as it could result in backlash from politicians or politicised figures.

#### 2.3.3.3 "Capture" explanation

Another Influence model includes the "Capture" explanation, which draws from the "Instrumental" and "Structural" analysis explanations. "Capture" theory is based on the premise that regulators are captured or taken over by regulated industries (Golding and Murdock 1997). The "Capture" model contends that the implication of "Capture" taking place is that the regulator systematically favours the private interests of regulated parties and systematically ignores the public interest (Golding and Murdock 1997). The "Capture" model explains the perversion of the public interest existing due to the regulator being taken over or captured by the regulated industries, whilst the "Instrumental" and "Structural" analysis explanations assert that the regulated parties exercise influence by various means on regulatory agencies (Golding and Murdock 1997). Therefore, a "Captured" regulator does not pervert the public interest due to perhaps the venality of individuals within a regulator, appointments that favour the regulated industry or political pressure, but rather perverts the

public interest because the regulated industry has taken over the regulator. For example, the regulated industry directly affects the decisions of the regulator, at the expense of the public interest.

Therefore, the perversion of the public interest can take place through "Instrumental", "Structural" and "Capture" explanations. The "Instrumental" and "Structural" perversions can inevitably lead to "Capture" of the regulator taking place. An illustration of this, for example, is the industry could greatly impact the decisions of the regulator through those that have been appointed based on the President's desire to please the industry and inevitably gain political support. This strong indirect influence of the industry, through these appointments, could lead to the regulator being taken over by the regulated industry, as the decisions are systematically favouring the interests of the industry rather than the public interest, thus the regulator becomes "Captured" due to "Structural" reasons.

### 2.4 Characteristics of an independent regulator

An independent regulator is in a "healthy" position to be effective and serve the public interest. A regulator that perverts the public interest could inevitably be "Captured", and consequently function to serve the "private interests" of the regulated industry, at the expense of the public interest.

A regulator must possess specific characteristics to achieve independence. These characteristics include guarantees of independence for the regulator, a participatory and transparent appointment process, suitably qualified personnel, public accountability, sufficient mandate and power, as well as adequate funding. These ideal characteristics specified for a regulator to be an independent, will be used as a yardstick to measure ICASA's status as an independent regulator and whether any of these characteristics are hindering ICASA's levels of effectiveness in regulating the SABC.

#### 2.4.1 Guarantees of independence

An independent regulator should have guarantees of independence from the powerful interests in society. An independent regulator is required to be independent from the government, the ruling party and other political parties, as well as the media interests that it regulates (ARTICLE 19 2006). An independent regulator therefore is required to be institutionally located outside government ministries and have constitutional guarantees of independence (Kupe 2003). This institutional location ensures that the interest the regulator represents is that of the public (ARTICLE 19 2006). Therefore, an independent regulator must have its independence from powerful interests in society upheld in law to ensure that the regulator stands apart from these interests, this lessens the possibility of it being "Captured".

A regulator's independence should not only be enshrined in law, but should be evident in all spheres of its influence. A regulator's independence must also be upheld in reality because a regulator's legitimacy depends on its ability to enjoy its independence (Hutchison 1999). Given the necessary ability to enjoy independence, a regulator is enabled to fulfil its mandate and be effective.

### 2.4.2 Participatory and transparent appointment process

An independent regulator ideally has an appointment process that is characterised by public participation. An independent regulator appoints its members through a process that ensures maximum public participation, such as hosting public hearings which allows the public to directly participate in the appointment process (ARTICLE 19 2006). Public participation in the appointment process of the regulator can also be achieved through allowing the public to nominate suitable nominees (ARTICLE 19 2006). Therefore, an independent regulator's appointment process typically involves the participation of the public, through for instance hosting public hearing and allowing the public to participate in the nomination of suitable candidates.

The appointment process of an independent regulator should not be representative of political and economic interests. An independent regulator's appointment process of members and systems removes all power what so ever from the ruling party and "excludes representation of political and economic interests" (ARTICLE 19 2006; Kupe 2003:6). Thus, its appointment process should not be controlled completely by the ruling party as this could lead to the appointments being purely political rather than in the public interest.

Along with a participatory and independent appointment process, an independent regulator should also appoint its personnel, systems of governance and management structures in a manner that is open and transparent. The appointment process for members and systems of governance and management structures of an independent regulator is characterised by transparency and openness (Kupe 2003:6). Therefore, an independent regulator's appointment process of its personnel, typically should involve the public as much as possible and not represent political and economic interests. In addition, an independent regulator's appointment of its governance structures and management structures should be conducted in a manner that is open and transparent.

### 2.4.3 Qualified and independent personnel with integrity

An independent regulator ideally should have personnel that are suitably qualified to perform the duties that the regulator is tasked with. The membership of an independent regulator consists of people with proven expertise that are suitably qualified to provide the regulator with the necessary knowledge to effectively regulate the various industries (ARTICLE 19 2006). The membership of an independent regulator are furthermore people with integrity that can be relied on and trusted, therefore those that have been convicted of a crime may not be employed at the regulator (ARTICLE 19 2006). Thus, the personnel at an independent regulator must be trustworthy and be people with moral integrity.

The personnel employed at an independent regulator are also required to be independent from the government, political parties and the regulated industry so that the regulator's independence is not compromised. A member of an independent regulator may not be an employee of government or public service, an official of a political party or an employee of a broadcasting or telecommunications company (ARTICLE 19 2006). The personnel of an independent regulator therefore should be people with the relevant expertise, independence and moral integrity.

### 2.4.4 Public accountability

Public accountability is an essential requirement for an independent regulator. An independent regulator ought to be accountable to the public through putting in place accountability mechanisms, such as reporting to a specific body like the legislature, produce an annual report and consult regularly with the public and stakeholders on policy matters (ARTICLE 19 2006). Public accountability therefore ensures that people are aware of the details of the regulator's objectives, personnel, decisions, performance, and organisational structure. A regulator's accountability to the public also ensures that it is answerable to the public and cannot simply function "haphazardly" with a flagrant disregard for the public interest.

An independent regulator's accountability mechanisms must be characterised by openness transparency and independence. It is imperative that a regulator's lines of accountability are transparent and do not undermine the regulator's independence (Kupe 2003). An independent regulator's accountability mechanisms therefore must not compromise its independence. An example of this is, perhaps the specific body the regulator is accountable to could attempt to assess the regulator according to selfish political and economic interests and not according to the public interest.

### 2.4.5 Sufficient mandate and power

An independent regulator is expected to possess sufficient mandate and power to regulate in the public interest. An independent regulator should be vested with the necessary mandate and powers to perform its job effectively (ARTICLE 19 2006). Sufficient mandate and power are crucial requirements in enabling an independent regulator to perform its duties effectively in the public interest. Regulatory bodies are crucial to democracy because it removes policy implementation away from the political arena, and views the public interest as supreme in decision making (Hutchison 1999). Thus, a regulator needs sufficient mandate and power to ensure that it is able to function independently from the powerful interests in society, and be driven in every aspect by the public interest.

An independent regulator should also have adequate mandate and power so that it does not become dependent on other institutions to perform its duties effectively, like the presidents department, political associations and in particular the regulated industry (ARTICLE 19 2006). Therefore a regulator that possesses sufficient mandate and power is enabled to perform effectively, serve the public interest and function independently from powerful interests. A regulator that does not possess adequate mandate and power will be ineffective and unable to serve the public interest.

### 2.4.6 Sufficient and independent funding

An independent regulator is required to be assigned with adequate financial and human resources that will guarantee "credible, effective and efficient regulation" (Kupe 2003:6). An independent regulator is independently funded so that its independence is not compromised, as inadequate funding could expose the regulator to improper interference (Golding and Murdock 1997; ARTICLE 19 2006). It can be deduced that sufficient funding is the fundamental characteristic that empowers the regulator to perform independently, effectively and in the public interest. Sufficient funding provides the means necessary to obtain some of other vital characteristics required for a regulator to be independent, such as qualified and

independent personnel. If a regulator is sufficiently funded, it is enabled to appoint the best possible people required to perform its duties effectively. Insufficient funding has various negative implications, for instance the regulator could be forced to appoint employees that it is able to "afford" to remunerate rather than the required skilled staff complement. Insufficient funding could furthermore result in the regulator appointing fewer personnel than it actually needs due to financial constraints.

Adequate funding is not only required so that the regulator is enabled to employ the best possible skilled manpower, but also to retain its current skilled employees and pay satisfactory salaries. A regulator that pays unsatisfactory salaries to its employees increases the chances of its members being "poached", which could result in the loss of crucial skills at the regulator.

The regulator is obligated by its mandate to specific regulatory roles, therefore adequate funding is required by the regulator to "flex its muscle". Funding permits the regulator to monitor and enforce its regulations, through regulatory practices such as the conducting of visits to broadcasters, conducting of investigations, compiling of reports and monitoring of broadcasters. In order for a regulator to effectively enforce its regulations and thereby fulfil its mandate, the regulator is required to have efficient regulatory practices. A regulator can only attain efficient regulatory practices if it has adequate funding to do so.

Therefore, an under funded regulator is handicapped to regulate effectively and in the public interest if it cannot afford the skilled people needed to perform its duties effectively, as well as the regulatory practices to monitor and inevitably enforce regulations. This results in a regulator not performing credibly, effectively and efficiently. An insufficiently funded regulator leads to an unsuccessful regulator who is not taken seriously, that would be perceived as "toothless".

### 2.5 Regulating a public service broadcaster

An independent regulator with the characteristics of guarantees of independence, a participatory and transparent appointment process, suitably qualified personnel, public accountability, sufficient mandate and power, as well as adequate funding, would be in a "healthy" position to regulate a public service broadcaster in the public interest. These ideal indicators will be used as a yardstick to measure ICASA's status as an independent regulator, and how it impacts on the levels of effectiveness in regulating the SABC. In order to assess whether ICASA is effective in regulating the SABC so that it functions as a public service broadcaster, it is imperative to conceptualise this notion of a public service broadcaster and the characteristics this type of broadcaster must possess.

#### 2.5.1 Public service broadcasting

It should be noted that public service broadcasting is a form of broadcasting, whereas the public service broadcaster is the entity that performs it. Public service broadcasting was developed in Britain as a result of the first director of the BBC, John Reith's desire for independent broadcasting from government, consequently "state broadcasting" became "public service broadcasting" (Hills 2003; Melody 1990; Keane 1991; Williams 2003; Banda 2006). The original idea of public service broadcasting sought to inform citizens by its goal of democratizing culture and politics (Cardiff and Scannell 1987; McChesney 1999). Public service broadcasting, at its inception, aspired to make all citizens "more actively responsive

to and responsible for the nation's culture and politics" (Cardiff and Scannell 1987: 158). Therefore, public service broadcasting is a form of broadcasting that emerged due to the desire for independent broadcasting and to enable citizens to participate in the processes of culture, policy and democracy.

In contemporary times, public service broadcasting is understood as a form of broadcasting specifically aimed at promoting the public interest, therefore presents information as a social good and not a commodity (Eko 2000; Williams 2003). Subsequently, public service broadcasting stands in contradiction to commercial broadcasting that is carried out for profit (Eko 2000; Hiebert and Gibbens 2000; Dizard 2000). Public service broadcasting however is re-interpreted the world over to accommodate national specifications, for instance in South Africa it is associated with the task of "national unity and reconciliation" (Banda 2006). Public service broadcasting can be deduced as "broadcasting in the public interest", hence a public broadcaster has a specific remit to broadcast material in the public interest (ARTICLE 19 2006; Rumphorst 2003; Banda 2006). Hence, public service broadcasting in contemporary times refers to a type of broadcasting that specifically promotes the public interest and does not function solely for profit making, therefore considers information as a social good. A public service broadcaster is the entity that is mandated to perform public service broadcasting and therefore performs in the public interest.

It is important to note that a public service broadcaster is not the same as a state broadcaster. A state broadcaster is directly under state authority and does not enjoy independence from political and bureaucratic interference (World Television Council 2000). A state broadcaster therefore, does not enjoy institutional independence, editorial and programming independence and is under the authority and ownership of the state.

Unlike a state broadcaster, a public service broadcaster is not directly under state authority but is rather entrusted to an organisation. This entrusted organisation is required to act in the public interest and enjoy enough independence to prevent political and bureaucratic interference (World Television Council 2000). A public service broadcaster holds supreme the interest of the public, even at the expense of making a profit. This type of broadcaster is a national institution that is owned, regulated and run in the public interest even if it is not profitable to do so (Scannell 1997; Barwise and Gordon 2002).

A public service broadcaster is the opposite of a state broadcaster due to the arms length relationship it is required to have with the state. This arms length relationship is the most important distinction between a state broadcaster and a public service broadcaster. An arms length relationship with the state means that is independent from that state and does not perform to serve selfish "political" interests, but rather to enhance the public interest. Therefore, a public service broadcaster is institutionally independent so it is protected against political interference, and is enabled to act in the interest of the public and not in the "political interests". On the contrary, a state broadcaster serves selfish "political" interests.

### 2.6 Characteristics of a public service broadcaster

It is intrinsic to conceptualise this notion of a public service broadcaster and the characteristics this type of broadcaster must possess in order to assess ICASA's level of effectiveness in regulating the SABC so that plays the role of a public service broadcaster. A public service broadcaster entails being an institution situated between a privately owned commercial broadcaster and a state controlled broadcaster (Hills 2003; Melody 1990; Keane

1991). A public service broadcaster subsequently possesses unique characteristics that distinguish it from state, commercial and community broadcasters.

The characteristics of a public service broadcaster are useful to this study because it provides insight into exactly what being a public service broadcaster entails. The insight into the features of a public service broadcaster will assist in analysing ICASA's effectiveness in regulating the SABC so that it functions as a public service broadcaster. The characteristics of this type of broadcaster will assist in revealing the status of the SABC as a public service broadcaster. The characteristics of the SABC that fall within ICASA's regulatory jurisdiction are particularly useful to this study, because these characteristics will expose the regulatory failures of ICASA. A public service broadcaster is characterised by universality, accessibility in terms of footprint and language, diversity of and in programming, a distinct service, institutional independence, editorial and programming independence as well as public sources of funding.

### 2.6.1 Universality and accessibility

A public service broadcaster is obliged to offer a universal service which involves it offering a service that appeals to and addresses the entire nation (Doyle 2002; Gripsrud 2002). Thus, a public service broadcaster's service is required to cater for and address every citizen.

A public service broadcaster must also be accessible to every citizen, in terms of footprint and programming, regardless of a citizen's financial status and geographical location (Berger and Jjuuko 2007; Scannell 1992; Curran and Seaton 199). Therefore, every citizen should be able to receive the public broadcaster's service, and this service must cater for every citizen's programming needs. Accessibility in terms of programming suggests that its programming is required to be accessible in terms of languages, diversity, common information, entertainment and cultural services (Scannell 1992; Curran and Seaton 1997). This obligation therefore insinuates that a public service broadcaster must not be discriminatory in the audiences it caters for, in terms of geographical location and programming.

### 2.6.2 Diversity of and in programming

This type of broadcaster is required to offer a diverse service to citizens. It is obligatory for a public service broadcaster to provide diversity of and in programming (Williams 2003; Doyle 2002). A diversified service means that it should have a diversity of genres, the audiences targeted, as well as the subjects discussed (Berger and Jjuuko 2007; Gripsrud 2002). Therefore, a public service broadcaster is obliged to offer a diversity of genres, ensure that the needs of a diverse audience are catered for, and the topics presented should be diverse. Diversity ensures that all the needs of the public are catered for, including those of the minority and majority (Curran 1991; Doyle 2002: 11; McQuail 1991). Thus, it is fundamental that a public service broadcaster offer a diversified service as this will ensure that all the needs of the public are catered for, even the needs of the minority.

### 2.6.3 Distinctiveness

A public service broadcaster is required to have a service that is characterised by distinctiveness. A public service broadcaster must be distinct from commercially driven and privately owned broadcasters, in terms of quality and character of programming, so that the

public can readily identify their distinctiveness (Bird and Roseborough 2007; World Television Council 2000).

Therefore, a public service broadcaster's service should be considerably different from other types of broadcasters, in terms of the quality and character of its programming so that the public can easily identify what is different about it. A public service broadcaster should broadcast genres, topics and opinions that commercial broadcasters avoid (Bird and Roseborough 2007; World Television Council 2000). Therefore, it should cover genres, topics and opinions that other types of broadcaster do not broadcast.

### 2.6.4 Independence

A public service broadcaster is required to be institutionally independent from powerful interests in society (Eko 2000). Institutional independence protects a public service broadcaster from political and commercial interference and therefore allows editorial independence (ARTICLE 19 2002). Editorial independence enables a public service broadcaster to make editorial decisions free from interference that could prevent the fulfilment of its public service mandate (Curran 1991; McChesney 1999; Siune 2001; Eko 2000). Therefore, institutional independence is an essential requirement as this will protect the broadcaster from undue interference, and enable editorial independence and the fulfilment the public service mandate. In South Africa, ICASA is vested with the role of guaranteeing the SABC's institutional independence and keeping broadcasting services at arms length from government (Berger and Jjuuko 2007).

A public service broadcaster's institutional independence can be secured through having specific mechanisms in place, namely a transparent and participatory appointment process, public accountability mechanisms, as well as a funding model that heavily relies on public funding.

A transparent and participatory appointment process means the appointments of its board of directors should be done so transparently and allow for the participation of the public (ARTICLE 19 2002; Curran 1991). A public service broadcaster must be accountable to the public. Accountability to the public can be ensured through an annual report, audited accounts to Parliament, direct public oversight, as well as an internal and external complaints mechanism (ARTICLE 19 2002). Lastly, the institutional independence of a public service broadcaster can be secured through it being funded predominantly from public sources (ARTICLE 19 2002). Therefore, institutional independence ensures that a public service broadcaster is protected from interference from the powerful interests in society, which allows it to enjoy editorial independence. Institutional independence can be secured through, an appointment process that is characterised by transparency and public participation, accountability to the public and predominant public funding.

### 2.6.5 Public funding

This type of broadcaster should be funded primarily by public funds. A public service broadcaster should be supported primarily by public funds for public purposes (Schudson 2003; Croteau and Hoynes 2003; Scannell 1992). Public sources of funding can include, for example, license fees (Williams 2003). A public service broadcaster is essentially a non-profit organisation and broadcasts even if it is unprofitable to do so, therefore it does not apply commercial principles as the main criteria in determining its programming, (Berger and

Jjuuko 2007; Schudson 2003; Barwise and Gordon 2002). This type of broadcaster must be funded predominantly by public sources to ensure that it operates for public purposes and not the just maximisation of profit. This means that a public service broadcaster must offer programming even in spite of its low commercial value.

A primary reliance on public funds safeguards undue interference. A public service broadcaster is predominantly funded from public sources to safeguard its independence from the immense pressure of profit making (Williams 2003). It should be noted that a public service broadcaster is allowed to make commercial revenue however this must not interfere with its public service obligations (World Television Council 2000). An over reliance on advertising revenue may leave the public service broadcaster too open to the vagaries of the advertising market (Banda 2006). Pre-dominant public funding prevents the over reliance on commercial sources that would inevitably compromise the independence of the public service broadcaster, and leave it particularly vulnerable to commercial pressure from advertisers, and the need to maximise its profit.

Public funding protects the public service broadcaster's institutional and editorial independence, and enables it to satisfy a wide range of audience tastes rather than only those tastes that show the largest profit (Curran and Seaton 1997; World Television Council 2000). Therefore, a public service broadcaster that has a funding model characterised primarily by public funding is in a "healthy" position to deliver its public service mandate because it enjoys editorial independence. A public service broadcaster that does not overly rely on commercial funding is enabled to satisfy all citizens rather than just satisfy the citizens with the largest buying power.

### 2.7 The importance of regulation to the democratic role of a public service broadcaster

A public service broadcaster is vested with a pivotal democratic role, and a regulator plays an important part in ensuring that the broadcaster fulfils this role. A public service broadcaster requires regulation to guarantee its democratic role (Siune 1998). Therefore, a public service broadcaster cannot flourish and fulfil its democratic role without effective regulation, and requires protection from those trying to interfere in its independence.

In many countries public service broadcasters are under the firm control of the authorities and act more as a mouthpiece of government than in the public interest (ARTICLE 19 2002). Garnham (1990) argues that in practice public service broadcasters like the BBC have not always executed their duties effectively by failing to represent a diversity of voices in society and rather servicing the interests of the rich and powerful (Williams 2003).Therefore, effective regulation is crucial for the attainment of a true public service broadcaster because in some countries it is used for selfish "political" purpose, and as a result requires protection. Effective regulation is also vital in ensuring that a public service broadcaster fulfils its democratic role, and ensure that the "elite's interests" are not serviced at the expense of the public interest.

It is important to discuss this notion of the democratic role of a public service broadcaster. A public service broadcaster's democratic role, involves the provision of a cultural space where all citizens are welcome and considered equals (Curran and Seaton 1997; World Television Council 2000). Public service broadcasters address viewers as citizens, whether as a platform for political debate or a means of ensuring democratic accountability (Williams 2003). This type of broadcaster significantly contributes to democracy by building an informed citizenry

and providing a cultural space that treats people equally. A public service broadcasters democratic role also involves, providing a platform for "perspectives, ideas and cultural presentations that are largely unheard of in commercial media" (Hoynes and Croteau 2001: 227). A public service broadcaster is uniquely situated to contribute to democracy by providing an alternative to a commercial broadcaster (Curran and Seaton 1997; Bechan 1999). This type of broadcaster offers quality programming that will inevitably supply information to citizens that will allow them to participate fully in their societies (Banda 2006; Fourie). A public service broadcaster is obligated to enlarge public dialogue so that citizens are appropriately educated and entertained, to exercise their rights and obligations as citizens (Hoynes and Croteau 2001: 227; Curran and Seaton 1997; Bechan 1999). Therefore, this type of broadcaster must provide citizens with information that are important in ensuring their participation in a healthy democracy. Therefore, the fulfilment of the public service broadcaster's democratic role is crucial to citizens receiving the information needed to take part in democracy.

### 2.8 The regulator's role in the survival of public service broadcasters

Regulation of public service broadcasters is especially needed in this age, where their survival is hanging in the balance; therefore the mandate of an independent regulator, in relation to a public service broadcaster continues to exist. Public service broadcasters the world over are declining, with their survival hanging in the balance (Burgelman 1997; McChesney 1999). Their survival is hanging in the balance, because there are constant threats and problems posed in achieving this concept of a public service broadcaster. Public service broadcasters are all facing the same major challenges, they inevitably have to adapt to the changing environment or become irrelevant (Eko 2000). The media landscape is continuously changing, causing the public interest to be under threat, whilst broadcasting monopolies are continuously developing. In the face of these threats and problems posed, the regulator is substantially important in protecting the public service broadcaster. In South Africa the ICASA regulates the whole broadcasting system and among these tasks is regulating the SABC, it is vested with fundamental duties in respect of the SABC. These threats and problems posed include state threats, elite appointments and the expansion of new commercial and technological media.

Amongst the threats that public service broadcasters are faced with, are the exercise of state power, while it attempts to maintain its editorial and cultural independence (McChesney 1999; Tomaselli 1994). In many nations public broadcasters have not been able to escape the control of the state or dominant political forces (McChesney 1999). The exercise of state power that attempts to erode a public service broadcaster's editorial independence threatens its ability to function as a true public service broadcaster.

Another problem facing public service broadcasters is the concentration of power in the hands of elite, because the appointment system draws people from a privileged background (Tomaselli 1994). An appointment process that draws people from an elite background means that the broadcaster could possibly function from the elite's perspective, at the expense and neglect of the public interest. A neglect of the public interest results in the non-fulfilment of its public service obligations.

Public service broadcasters the world over are also facing threats and problems due to the expansion of new commercial and technological media, this expansion is having detrimental effects on its practices. New commercial and technological media forms are challenging the

previous dominance of public service media (Scannell 1997; McChesney 1998). New media technologies have changed viewing habits and encouraged the rise of market values; consequently there is difficulty in sustaining the traditional principles of public service broadcasters (Tomaselli 1994). The erosion of these traditional principles includes eliminating the ideal of balance and producing fewer educational programmes (Tomaselli 1994). Public service broadcasters and their unique practices are under threat because of new commercial and technological media giving rise to market values. As a result audiences are now accustomed to new viewing habits, and no longer find the public broadcaster's traditional programming as appealing.

The rapid expansion of private national and trans-national channels has influenced programme schedules of public service broadcasters. This influence is evident in the style of programming, commercial funding, more emphasis on personalities in programming, sensational news, current affairs becomes infotainment and drama becomes soap opera (Siune and Hulten 1998). This increasing inclination of public service broadcasters towards operating commercially is inevitably resulting in public service broadcasters competing with commercial media (Siune and Hulten 1998). Public service broadcaster's programming schedules have been influenced by private national and trans-national media, resulting in the neglect of the traditional principles of public service broadcasters, to accommodate new programme schedules. The public service broadcaster as a result no longer adequately upholds the traditional principles of public service broadcasters, and even competes with commercial media. The expansion of new commercial and technological media is also resulting in limited diversity of opinion and choice to make way for "commercially driven" programmes.

Regulation is essential wherever there is a threat of market dominance and a threat to diversity of opinion and choice (Steemers 1999). Therefore, with the advent of new technological and commercial media, regulation is vital in ensuring that the traditional principles of public service broadcasters are upheld and not neglected.

## 2.9 Conclusion

This Chapter was centrally concerned with the theoretical frameworks used in the study. In doing so it highlighted which aspects of critical political economy of the media, theories of regulation and public service broadcasting theory are used in the study. Critical political economy's "critical" strand, beliefs in participatory democracy, focus on policy and regulatory choices and institutional arrangements were discussed. Public interest and perverted public interest theory of regulation, as well as the Influence models were also discussed. The characteristics of independent regulator and a public service broadcaster were outlined. Lastly, a discussion of the regulator's importance to a public service broadcaster's democratic role and survival were undertaken.

# Chapter 3

## Methods

### 3. Introduction

This study is fundamentally concerned with the levels of effectiveness in ICASA executing its mandate in regulating the SABC so that it performs its role as a public service broadcaster, and the factors that constrain ICASA from achieving the expected levels of effectiveness. This study adopts document analysis and qualitative interviews as complementary methodological approaches.

### 3.1 Document analysis

Document analysis is a method "for locating, identifying, retrieving and analyzing documents for their relevance, significance and meaning" (Altheide 1996: 2). Some examples of documents used to study institutions are annual reports, official enquiries and court cases relating to the institutions activities, documents written by journalists, researchers, commentators, competitors and critics of the institution (Bertrand and Hughes 2005; Deacon et al 1999). Document analysis enabled this study to retrieve from the documents, the key issues that concerned the study.

The documents used in this study include, policy and regulatory documents, ICASA's monitoring documents, a range of press reports, the *Freedom of Expression Institute's* press reports, ICASA Annual Report 2007 and the SABC Annual Report 2007.

#### 3.1.1 Policy and regulatory documents

In the policy and regulatory documents I focused particular attention to issues involving, the characteristics the SABC should possess to function as a public service broadcaster, ICASA'S regulatory role and mandate with regard to the SABC, as well as ICASA's institutional arrangements.

The policy documents analyzed were Acts of Parliament, namely the *Independent Broadcasting Authority Act 1993,* the *Broadcasting Act 1999* as amended, the *Independent Communications Authority of South Africa Act 2000* as amended and the *Electronic Communications Act 2005*. The regulatory documents analyzed were regulations produced by ICASA, including the SABC's eighteen television and radio licenses, the South African music content regulations, South African television content regulations and local content regulations.

#### 3.1.2 ICASA's monitoring documents on the SABC

The monitoring documents analyzed include, ICASA's Monitoring Report on SABC television services March 2006 to March 2007, as well as compliance and programming reports compiled by ICASA regarding the SABC.

The monitoring documents produced by ICASA were analyzed as they revealed how and which areas ICASA actually monitors the SABC on. I perused for information pertaining to

the areas of the SABC that ICASA is mandated to regulate, and the issues that regarded the characteristics that the SABC should possess as a public service broadcaster.

### 3.1.3 A range of press reports

A range of press reports were analyzed, specifically from the *Mail and Guardian online*, *Empire*, *Maverick* and *Media* magazine. The press reports gathered were specifically during the period 1 January 2006 to 30 August 2008. These publications were chosen because of their high quality and dedicated coverage regarding the SABC and ICASA. The *Mail and Guardian online* is South Africa's oldest quality news source on the web and has offered extensive coverage of the SABC's performance as a public service broadcaster, the SABC's controversies, ICASA's institutional arrangements and critiques of ICASA's performance. The *Media* magazine focuses specifically on, in depth media issues and has provided high level analysis and coverage of the SABC's performance as a public service broadcaster, the SABC's controversies, ICASA's institutional arrangements and critiques of ICASA's performance. The *Empire* is a quality "Media, Arts and Culture" magazine and the *Maverick* is a quality "Business" magazine, both have dedicated coverage on the SABC. The *Empire* magazine conducted an interview with the people that ended up on the SABC's "blacklist". The "SABC's news service" was *Empire* magazine's cover page feature in March 2007.

In these magazines and newspaper I read thoroughly for issues concerning critiques of the SABC functioning as a public service broadcaster, controversies that involved the SABC, controversies regarding ICASA, critiques and praises of ICASA's regulation of the SABC, ICASA's performance, ICASA's institutional arrangements like independence, appointment process, personnel, public accountability, mandate and power, as well as funding.

### 3.1.4 The *Freedom of Expression Institute's* online website

The *Freedom of Expression Institute's* online website was chosen for the study because this media advocacy group plays a pro-active role in advocating for the SABC to function as a public service broadcaster. The *Freedom of Expression Institute* has been involved in holding pickets and marches to the SABC's headquarters to demand that it plays its role as a public service broadcaster. This organisation has also submitted a complaint to ICASA calling on the regulator to enforce the SABC's license conditions and take the necessary steps so that the SABC functions as a public service broadcaster. I perused for issues on their website that involved the SABC's controversies, the SABC's failure to function as a public service broadcaster as well as critiques and praises of ICASA's regulation of the SABC and ICASA's institutional weaknesses.

### 3.1.5 The ICASA Annual Report 2007 and the SABC Annual Report 2007

The ICASA Annual Report 2007 contains information about ICASA's vision, strategic objectives, performance, complaints handled, court cases, regulatory activities and projects, interactions with the SABC, regulation of the SABC, monitoring reports produced, monitoring visits conducted, financial statements, details pertaining to human resources as well as its challenges and constraints. I read thoroughly for the information that involved ICASA's regulation of the SABC, the challenges it faces, any issues involving the SABC, its general performance and its institutional arrangements like independence, appointment process, personnel, public accountability, mandate and power, as well as funding.

The SABC annual Report 2007 includes information regarding its vision, mission, functions and duties, performance assessments, initiatives, the challenges it faces in functioning as a public service broadcaster, programming, performance of each of its radio and television services, delivery on its license conditions and quota's set by ICASA as well as annual financial statements. I perused for issues involving the areas that ICASA is mandated to regulate, ICASA's regulation of the SABC including license conditions and quotas, its performance of the characteristics it should possess to function as a public service broadcaster like universality, accessibility, diversity, distinctiveness, institutional independence, editorial independence, public accountability, appointment process and funding.

### 3.2 Qualitative interviews

This study employed qualitative interviews. The primary strength of interviewing is its ability to obtain multiple perspectives on a given topic (Newcomb 1991). Interviews allow the researcher to pursue their questions and to probe at length (Kitzinger 2004). The strength of interviews is that it allows the interviewer and interviewee to "explore and negotiate the particular topic" (O'Sullivan 2003: 80). Interviews are used in the study of organisations and institutional procedures (Jankowsi and Wester 1991; Tuchman 1991). Interviews enabled this study to probe the informants and explore their views regarding the level of effectiveness of ICASA's regulation of the SABC and the hindrances to ICASA's effectiveness. The interviews conducted for this study took the form of an open ended discussion and used an interview guide.

Qualitative interviews are referred to as, in depth or unstructured interviews (Jankowsi and Wester 1991). Unstructured interviews are likened to an informal conversation (Bertrand and Hughes 2005). An in depth interview is considered as an extended conversation and a kind of probe that has the advantage of collecting an immense amount of information that other forms of research may not reveal (Berger 1991). Qualitative interviews were useful for this study and enabled the collection of, in depth perspectives from the informants, which took the form of a conversation. The use of this methodological approach resulted in the retrieval of an immense amount of information from the informants. The Qualitative interviews conducted also facilitated an in depth understanding of the key issues, based on the informants' knowledge and perspectives.

Qualitative interviewing is a form of interpersonal communication where the interviewer and respondent negotiate an understanding of the topic at hand (Jensen 1991). Qualitative interviews possess the strength of generating highly individual responses and building information naturally (Bertrand and Hughes 2005). Qualitative interviews enabled the study to retrieve spontaneous information from the informants that were not restricted to the answering of specific questions.

The research tool used for the qualitative interviews conducted in this study was an interview guide. An interview guide outlines areas for discussion, so that the interview becomes an open ended conversation (Silverman 2004; Terre Blanche et al 2006). The interview guide is not a questionnaire, which asks questions in a predetermined order, that are straightforward to answer and offers a choice of predetermined responses (Gunter 2000; Davies and Mosdell 2006; O'Sullivan 2003 et al). Appendices A, B, C and D were the interview guides used in the study and were employed as the instruments to interview the relevant informants. These interview guides outlined broad areas for discussion.

There were four different interview guides used for the study, depending on who the informant was. Appendix A was used for past IBA councilors, past ICASA councilors, media organisation representatives, media analysts and journalists. These informants were Nadia Bulbulia, Kevin Bloom, Johann Koster, Libby Lloyd, Kate Skinner and Anton Harber. The questions posed in Appendix A, include their respective views on, the nature of ICASA and the SABC's relationship, ICASA's effectiveness in regulating the SABC, ICASA's role in the SABC's controversies, suggestions on how ICASA can improve its regulation of the SABC, possible factors hindering ICASA's effective regulation, as well as in what ways ICASA can be strengthened.

Appendix B was used for the informant from the SABC, namely Phumelele Ntombela-Nzimande. The questions asked in Appendix B include the nature of ICASA and the SABC's relationship and the level of interaction of them, ICASA's effectiveness in regulating the SABC, ICASA's role in the SABC's controversies, suggestions on how ICASA can improve its regulation of the SABC, possible factors hindering ICASA's effective regulation, as well as in what ways ICASA can be strengthened.

Appendix C was used for the informant from ICASA's Monitoring and Compliance Unit, namely Sean Rankin. The questions posed to him include, the nature of ICASA and the SABC's relationship and the level of interaction of them, the regulatory practices ICASA employs in regulating the SABC, the roles of ICASA's Monitoring and Compliance Unit, the challenges ICASA faces in regulating the SABC, ICASA's role and view on the SABC's controversies, suggestions on how ICASA can improve its regulation of the SABC, ICASA's view on the SABC's delivery of its license conditions and its status as a public service broadcaster, possible factors hindering ICASA's effective regulation, the Minister of Communication's role in the regulation of the SABC, as well as in what ways ICASA can be strengthened.

Appendix D was employed for ICASA councilor and chairperson of the Broadcasting Complaints Committee of South Africa (BCCSA), Kobus Van Rooyen. This interview guide regarded his views on, the regulatory practices ICASA employs in regulating the SABC and who steers this process, the Ministers of Communication's role in the regulation of the SABC, ICASA and the BCCSA's view on the SABC's status as a public service broadcaster, the nature of ICASA and the SABC's relationship and their level of interaction, the challenges ICASA faces in regulating the SABC, ICASA's role and view on the SABC's controversies, suggestions on how ICASA can improve its regulation of the SABC, ICASA's view on the SABC's delivery of its license conditions, the *Freedom of Expression Institute's* complaint to ICASA, possible factors hindering ICASA's effective regulation as well as, in what ways ICASA can be strengthened.

Multiple informants were interviewed for the study. The use of multiple informants can increase information and broaden a point of view (Newcomb 1991). The informants used in the study and their credentials are:

- Sean Rankin - One of the longest standing members at IBA/ICASA who has been employed at the regulator for thirteen years and has been assigned different duties during his long employment. These duties include working as a former council advisor for the IBA, a former co-chairperson's advisor, ten years at council level as an advisor, and involved in the licensing processes in 1996 during which the six SABC stations were sold off. He is currently an ICASA Compliance Officer, and is therefore

directly involved in monitoring and enforcing compliance of the SABC's license conditions.

- Kobus Van Rooyen - A current ICASA councillor, member of ICASA's Complaints and Compliance Committee (CCC) and chairperson of the Broadcasting Complaints Commission of South Africa (BCCSA). As a member of ICASA's (CCC) he played a prominent role at the hearing of the *Freedom of Expression Institute's* complaint to ICASA regarding the SABC's "blacklisting" saga. The (BCCSA) is an independent organisation which deals with complaints against television and radio broadcasters whom signed a Broadcasting Code of Conduct. The SABC is a member of the BCCSA.

- Phumelele Ntombela-Nzimande - The SABC's Chief People Officer (CPO) and former head of the SABC's Policy and Regulatory Affairs Unit. Phumelele was previously employed as a Deputy Director General at the Department of Communications where she was involved in Strategic Policy Co-ordination and Inter-Governmental relations. The SABC's Policy and Regulatory Affairs Unit liaises with ICASA on behalf of the SABC, and submits reports, recordings and the relevant information to ICASA, and ensures that the SABC fulfils its license conditions and other regulations prescribed by ICASA.

- Nadia Bulbulia - A former IBA/ICASA councillor and current SABC board member. She was one of the ICASA's councillors that played a prominent role in developing the SABC's new license conditions that took effect in 2004.

- Libby Lloyd- A former IBA/ICASA councillor and former Chief Executive Officer of the Media Development and Diversity Agency (MDDA), and is currently conducting research on the SABC.

- Johann Koster - Executive Director of the National Association of Broadcasters (NAB) and former head of ICASA's Monitoring and Complaints Unit between 1998-2002. The (NAB) is the leading representative of broadcasters in South Africa, the SABC is a member of the (NAB), thus represents the interests of the public service broadcaster. As head of ICASA's Monitoring and Complaints Unit he was involved in developing most of the broadcasting policy that ICASA implemented in South Africa.

- Kate Skinner- Co-ordinator of the *Save Our SABC* (SOS) coalition. The *SOS* coalition was formed in June 2008 as a response to the "crisis" facing the SABC; it represents key trade unions, non-governmental organisations, independent producer organisations and prominent academics. At its inception the (SOS) resolved to draft a position paper outlining the crisis and some immediate solutions, draft recommendations on an SABC Act, call on the Parliamentary Portfolio Committee on Communications to exercise its constitutionally mandated oversight role effectively, follow-up on the *Freedom of Expression Institutes* "blacklisting" complaint to ICASA and initiate the formation of a civil society coalition to campaign for the strengthening of public broadcasting (*Save Our SABC* 2008).

- Kevin Bloom- A journalist, who is a former joint editor of *Empire* magazine, former editor-at-large of its sister magazine *Maverick*, and founding editor of the *Media* magazine. The *Media* magazine focuses specifically on, in depth media issues and has dedicated much coverage to ICASA and the SABC. The *Empire* magazine has provided coverage on the SABC, Kevin Bloom interviewed the people on the SABC's "blacklist" on behalf of the magazine. The "SABC news services" made the *Empire* magazine's cover page feature in March 2007. The *Maverick* magazine has provided coverage on the SABC.

- Anton Harber- Caxton Professor of Journalism and Media Studies at Wits University, former head of Kagiso Broadcasting and a *Business Day* columnist. Anton has devoted a number of his columns in the *Business Day* to the topic of the SABC.

In conducting interviews a researcher may audio record and then transcribe (O'Sullivan 2003). All interviews conducted for the study were face to face and voice recorded, and then transcribed. All interviews conducted for this study were an absolute joy to conduct as every interviewee was tremendously accommodating and co-operative, and none of the interviewees' placed a time constraint on the interview. As such a tremendous amount of information and perspectives on the topic of the study were gathered. It is important to note that all interviewees' voiced had a great deal on the key issues of the study, which is suggestive that people have a tremendous interest in the topic of the study.

### 3.3 Limitations to the study

There were numerous opportunities presented to interview additional people, however it was felt that these people would not add any new perspectives to the topic of the study as their expertise, knowledge and background were similar to the informants already interviewed.

The SABC and ICASA's Annual Reports 2008 could not be used in the study because when these documents were eventually issued, it was too late to analyze and include them in the study, which was already at a mature stage of completion. So instead the SABC Annual Report 2007 and ICASA Annual Report 2007 were used.

The Chief Executive Officer of the SABC Dali Mpofu was not interviewed; he was however telephonically requested for an interview. However, in light of the topic of the study he telephonically recommended that Phumelele Ntombela-Nzimande be interviewed instead as she could provide the best answers and perspective on the topic of the study, on behalf of the SABC.

The Chief Executive Officer of ICASA was not interviewed because it was felt that Sean Rankin, one of IBA/ICASA's longest standing members provided knowledgeable perspectives on the issues of the study due to his long period of employment at the regulator. Sean Rankin has sound institutional memory due to his employment at the regulator for thirteen years, and undertaking different duties at IBA/ICASA. He provided highly informative perspectives on the issues of the study, thus it was felt that it was not necessary to interview the Chief Executive Officer of ICASA.

### 3.4 Conclusion

This chapter has discussed the methodological approaches employed in the study, namely document analysis and qualitative interviews. It also outlined which documents were analysed, why they were chosen for the study and how the documents were analysed. The chapter also focused on the informants used in the study, their credentials and the nature of the questions posed to them, and lastly explored limitations to the study.

# Chapter 4

## Findings

### 4. Introduction

This study is centrally concerned with the level of effectiveness of ICASA's regulation of the SABC, as well as determining the factors that are hindering ICASA from regulating the SABC more effectively.

The aim of the research questions is three pronged in that it firstly seeks to determine the actions and lack thereof by ICASA in ensuring that the SABC performs its role as public service broadcaster in the public interest. Secondly, the factors that enables and hinders ICASA's level of effectiveness in regulating the SABC. Thirdly, determining the ways in which ICASA can be strengthened so that it can be more effective.

### 4.1 Findings structure

The findings presented results from information that is gathered from two different types of sources, namely documents and interviews. The documents include policy documents, the SABC's television and radio licenses, ICASA monitoring reports, press reports, reports from advocacy groups, the SABC Annual Report 2007 and the ICASA Annual Report 2007. Interviews are conducted with significant informants.

The findings from the policies and SABC's television and radio license are firstly presented and outline ICASA's ideal organisational structure as well as ICASA's ideal regulatory role with regards to the SABC. The policy documents and SABC television and radio license include:

- The *Constitution of the Republic of South Africa 1996*
- The *Independent Broadcasting Authority Act 1993*
- The *Broadcasting Act 1999* as amended
- The *Independent Communications Authority of South Africa Act 2000* as amended
- The *Electronic Communications Act 2005*
- The SABC's eighteen television and radio licenses

The remaining findings are then presented according to themes determined from the emanating nature of ICASA and the SABC's relationship. The themes are as follows:

- Co-operative relationship
- Tense relationship
- Troubled relationship
- Confrontational relationship
- Silent relationship
- ICASA's organisational weaknesses

The last theme entitled "ICASA's organisational weaknesses" deals solely with ICASA as an organisation, in an attempt to uncover the possible factors hindering ICASA's effective regulation of the SABC.

### 4.2 ICASA's regulation of the SABC

A number of policies and Acts which include the *Independent Broadcasting Authority Act 1993, Broadcasting Act 1999* as amended, *the Independent Communications Authority of South Africa Act 2000* as amended and the *Electronic Communications Act 2005* outline and give mandate to ICASA with regards to the regulation of the SABC.

The *IBA Act 1993* obligated ICASA's predecessor, the Independent Broadcasting Authority (IBA), at its inception to protect the integrity and viability of public broadcasting services. The *ICASA Act 2000* as amended later dissolved the Independent Broadcasting Authority (IBA) and South African Telecommunications Authority (SATRA), and established ICASA. The function of the Independent Broadcasting Authority (IBA) and the South African Telecommunications Authority's (SATRA) were transferred to ICASA. The *ICASA Act 2000* as amended established ICASA as an independent authority to (amongst others) "regulate broadcasting in the public interest".

The *Broadcasting Act 1999* as amended stipulates that ICASA is mandated with the crucial role of monitoring and enforcing compliance to the SABC Charter, by the SABC. The *Electronic Communications Act 2005* says that ICASA is also obligated to protect the integrity and viability of the SABC and ensure that it services specific needs. The *Electronic Communications Act 2005* furthermore states that in its regulation of the SABC, ICASA must not unduly interfere in the commercial activities of the SABC.

ICASA performs these tasks by monitoring of the SABC television and radio licenses. From time to time ICASA also issues regulatory documents that the SABC is required to adhere to. These regulatory documents include the South African music content regulations, the South African television content regulations and local content quotas. ICASA has also issued a Broadcasting code of conduct for broadcasters.

The SABC operates within a specific regulatory environment, in which it is answerable to ICASA. The SABC is also answerable to the Broadcasting Complaints Commission of South Africa (BCCSA) with regards to complaints on content as outlined in the Broadcasting Code of Conduct. ICASA however does have jurisdiction to investigate those complaints of alleged non-compliance with the terms and conditions of the SABC licenses (ICASA Monitoring Report on SABC Television services March 2006- March 2007). The SABC is furthermore accountable to the Advertising Standards Authority (ASA) regarding complaints on advertisements aired (SABC 2008). The SABC is also a member of the National Association of Broadcasters (NAB).

The SABC has organisational legislations in place to ensure that the public service broadcaster complies with its mandate. This organisational legislation includes, an editorial code of practice, editorial polices, code of ethics and a governance framework (SABC 2008). The SABC has a Policy and Regulatory Department as part of its Public and Regulatory Affairs division. The SABC Policy and Regulatory Department communicates with the industry and regulators on behalf of the SABC (SABC 2008).

### 4.3 An effective regulator

In order for ICASA to effectively regulate the SABC, it must be independent. ICASA's independence can be achieved by possessing specific institutional requirements. This section outlines ICASA's ideal institutional obligations.

The *ICASA Act 2000* as amended outlines the ideal characteristics that ICASA is required to possess. These are:

- Guarantees of independence
- Participatory and transparent appointment process
- Appointment on merit
- Public accountability mechanisms
- Mandate and power
- Funding

#### 4.3.1 Guarantees of independence

ICASA's institutional independence is secured by the *Constitution of the Republic of South Africa 1996, Broadcasting Act 1999* as amended and *ICASA Act* 2000 as amended. These documents all specify that ICASA is to function without political, government, state and commercial interference. The *ICASA Act 2000* as amended additionally requires ICASA to be impartial and perform its functions without fear, favour or prejudice.

#### 4.3.2 Participatory and transparent appointment process

The *ICASA Act 2000* as amended establishes the required nature of ICASA's appointment process. Appointments to ICASA's council ideally should be through a participatory and transparent process. The Minister of Communications plays a prominent role in ICASA's appointment process. The Minister of Communications is required to make recommendations from a list of suitable candidates agreed upon by the National Assembly. If the National Assembly is not satisfied by the recommendations made by the Minister of Communications, the National Assembly may ask the Minister to review the recommendations. It is upon the National Assembly's approval of the Minister's recommendations, that the ICASA's council is officially appointed.

#### 4.3.3 Appointment on merit

ICASA's personnel are required to be appointed on merit, the council and personnel are obliged to uphold certain values and requirements. The *ICASA Act 2000 as amended* outlines the criteria, qualification and disqualification for appointments of ICASA's personnel. ICASA councilors are required to be committed to the values of freedom of expression, openness and accountability. It is also mandatory that, when viewed collectively ICASA's personnel must be representative of a broad cross section of South Africa, possessing the relevant expertise and experience in the relevant fields.

Specific people are disqualified from appointment on the ICASA council, such as, if one is the holder of any other remunerated position under the State, been convicted of a crime, has a

family member with financial interests in the relevant industries. An ICASA councilor may be removed from office for reasons including, misconduct and inability to perform the duties of office efficiently.

### 4.3.4 Public accountability mechanisms

The *ICASA Act 2000* as amended and the *Electronic Communications Act 2005* establishes that ICASA is required to possess certain accountability mechanisms. The Minister of Communications plays a prominent role in the accountability of ICASA. ICASA is required to compile an Annual report that must be submitted to the Minister of Communications. The ICASA council is also obligated to supply the Minister of Communications with information as may be required, regarding the activities of the regulator.

The *ICASA Act 2000 as amended* and the *Electronic Communications Act 2005* establishes the areas that ICASA is accountable to the Minister of Communications on. The Minister of Communications sets the ICASA councilor's performance targets, evaluates their performances and also determines their performance bonuses. The Minister of Communications additionally has the power to suspend a councilor, upon adoption and based on the National Assembly.

### 4.3.5 Mandate and power

The *ICASA Act 2000* as amended and the *Electronic Communications Act 2005* outlines ICASA's mandate and power with regard to the SABC. ICASA has the power to grant, develop, renew, amend, transfer, revoke, suspend, cancel and enforce the license conditions. ICASA, according to the *Electronic Communications Act 2005*, is also required to develop necessary regulations. The *ICASA Act 2000* as amended stipulates that ICASA has the power to obtain from any licensee any information pertaining to licenses, to conduct research, undertake inquiries within its jurisdiction, investigate and adjudicate complaints received. The *Electronic Communications Act 2005* states that ICASA has the power to demand from a licensee a recording of any programme broadcast.

The *ICASA Act 2000* as amended assigns ICASA's Complaints and Compliance Committee (CCC) with a specific mandate and power. The (CCC) is obligated to adjudicate complaints pertaining to alleged non-compliance of licenses. It is also required to hear (if appropriate), investigate, and make a finding on all matters and complaints referred to it on allegations of non-compliance. The (CCC), upon making a finding, is required to recommend to the ICASA council the necessary action to be taken against a licensee. The ICASA council then makes a decision regarding the action to be taken by the regulator. These actions can include warning a licensee to desist from any further contravention, pay a fine or take specific steps. If a licensee has repeatedly been found guilty of material violations, ICASA may amend or revoke the license, or prohibit the licensee from providing the licensed service for a period not exceeding thirty days.

The *ICASA Act 2000* as amended stipulates that ICASA is required to have suitably qualified inspectors to monitor compliance of license conditions, investigate and evaluate any alleged non-compliance. The inspector is necessitated to refer all non-compliance matters to ICASA's Complaints and Compliance Committee (CCC). The inspector also has the power to enter, search and seize the licensee's premises on the authority of a warrant and may

inspect any document. ICASA has the power to pass a maximum fine of up to two hundred and fifty thousand rand for broadcasters, in the event of an offense, such as non compliance with license conditions or non co-operation with an inspector.

### 4.3.6 Funding

ICASA is financed from money allocated by Parliament, according to the *ICASA Act 2000* as amended the regulator may also receive money in any other manner, agreed upon between the Minister of Communications and Minister of Finance and on the approval by cabinet.

The Minister of Communications and Minister of Finance additionally are mandated to make the necessary decisions with regard to the remuneration and benefits of the councilors. All revenue that ICASA collects is required, as per the Act, to be paid into the National Revenue Fund.

## 4.4 The scope of ICASA's mandate with regard to the SABC

ICASA regulates the SABC on various focus areas. This section explores the areas in which ICASA is obligated to regulate the SABC on. ICASA plays a crucial role in ensuring that the SABC functions as a public service broadcaster. The regulator is required to monitor and enforce compliance with the SABC Charter and the SABC's eighteen television and radio licenses. In addition to this, ICASA also monitors the regulations that it issues from time to time. These regulations include the South African music content regulations, South African television content regulations and local content regulations.

### 4.4.1 The SABC Charter

ICASA is required to monitor and enforce compliance with the SABC Charter (*Broadcasting Act 1999* as amended). The SABC Charter upholds specific principles, including universality, accessibility, diversity and editorial independence.

The conditions contained in the SABC Charter include, providing in South Africa's official languages a wide range of programming that reflects a diversity of South African attitudes, opinions, ideas and values. The SABC is further obligated to offer a variety of news, information and analysis from a South African point of view as well as display South African talent in educational and entertainment programmes. It is also stipulated, in terms of the SABC Charter, that the SABC whilst pursuing its objectives and exercising its powers, must enjoy freedom of expression, creative and programming independence.

### 4.4.2 The SABC's television and radio licenses

ICASA is required to monitor and enforce compliance with the SABC's eighteen television and radio licenses. ICASA issued the licenses with prescribed conditions. The licenses contain similar conditions for all the SABC licenses, whilst there are other conditions that are differentiated according to the specific service. The differentiated conditions include the types of predominant language and music format and the amount of official languages.

The similar conditions for all eighteen of the SABC's television and radio licenses include specifications on which areas ICASA must regulate and have jurisdiction over. The areas that

ICASA must regulate and have jurisdiction over include ensuring that the SABC offers a public service that fulfils specific requirements, and adheres to certain programming and news requirements. ICASA's areas of regulation of the SABC also include advertisements and subsidising of revenue. The SABC is further obligated to furnish the regulator with specific information. Greater detail of these specifications follows below.

ICASA's public service conditions regard it ensuring that the SABC provides a public service that upholds the principles of universality, accessibility in terms of language, local content as well as news and public affairs' programming that maintains editorial and programming independence (SABC television and radio licenses).

The programming and news specifications stipulate that ICASA is required to ensure that the SABC's programming upholds the principles of universal service, local content and diversity in terms of religion, children, the disabled, gender and age (SABC television and radio licenses). The regulator is further obliged to make certain that the SABC's news, information and current affairs programming has balanced coverage and is independent from governmental, commercial or other interferences (SABC television and radio licenses).

With regards to advertising, ICASA must ensure that the SABC does not broadcast more than an average of ten minutes and an excess of twelve minutes of advertisements per hour. It is also stipulated that the SABC may draw revenues from advertising, sponsorships, grants, donations and license fees (SABC television and radio licenses).

The SABC is required to furnish ICASA with specific information pertaining to company documents, programming, advertisements and complaints. The company documents include the details of any member of the SABC board who is removed from office, the SABC's memorandum and articles of association, and judgments awarded in a court of law against the SABC. The SABC must confer ICASA with its annual financial statements and any other related financial information required. Programming documents that the SABC is required to submit to ICASA must show the extent of the different genres, South African television content or music content, and the use of official languages. Advertising documents that the SABC is obligated to submit to the regulator include, the extent of advertisements broadcast in every hour. The SABC must additionally submit to ICASA a written report on complaints received and the manner in which the SABC addressed each complaint.

## 4.5 ICASA and the SABC's relationship

This section presents the findings gathered from ICASA's regulation reports, the SABC Annual Report 2007, the ICASA Annual Report 2007 and the interviews conducted. This section further presents finding gathered from magazines, newspapers and media advocacy groups that have significant coverage of broadcasting and regulatory issues in particular the *Media*, the *Maverick*, the *Empire*, the *Mail and Guardian online* and the *Freedom of Expression Institute's* website. The press reports gathered from these magazines, newspapers and media advocacy groups cover the period January 2006 to August 2008.

These particular findings are presented according to themes derived from the emanating nature of ICASA and the SABC's relationship. The themes are co-operative, tense, troubled, confrontational and silent relationship.

## 4.6 Co-operative relationship

According to interviews conducted with ICASA Compliance Officer: Sean Rankin and SABC Chief People Officer/former head of the SABC Policy and Regulatory Affairs Unit, Phumelele Ntombela- Nzimande, it can be established that one dimension of ICASA and the SABC's relationship is a working and amicable one. It is a working and amicable relationship because each organisation perform certain duties, so that ICASA can fulfill its regulatory role. Therefore, it can be derived that one dimension of the regulator and the SABC's relationship is a co-operative one. This particular theme focuses on ICASA and the SABC's co-operative relationship, and the respective roles that ICASA and the SABC plays so that ICASA fulfils its regulatory mandate.

Rankin states that at the compliance and ordinary license level ICASA interacts with the SABC's Regulatory Affairs Department. He contends that ICASA requests the recorded programs from the SABC so that the necessary information is obtained for monitoring and compliance. Rankin posits that when ICASA finds a breach to the SABC's licenses, the SABC is informed of it in writing. If the SABC rectifies the breach timeously then ICASA makes a record of it and does not escalate it further. In the event of the SABC not responding and rectifying the breach, the ICASA Compliance Officer refers the SABC to the Complaints and Compliance Committee (CCC) for sanction. In the event of a breach ICASA may also suggest to the SABC to apply to amend their license, if for instance the SABC indicates that they lack sufficient local drama to air on television. ICASA, according to Rankin, ensures that on every occasion of non compliance to the SABC license, a follow up is conducted. The SABC, says Rankin, have been co-operative in rectifying every breach ICASA has brought to their attention. ICASA therefore has never had to escalate the SABC to the Complaints and Compliance Committee (CCC) for non compliance of the SABC licenses. Rankin contends that the SABC and ICASA have on occasion met and discussed the possible transgressions and non-compliance which resulted in the SABC having rectified the breach. Hence it can be deduced that the existing protocol, lines of communication and collaboration between ICASA and the SABC result in a working, co-operative relationship to a certain degree.

Ntombela-Nzimande sheds light on ICASA and the SABC's working relationship from the SABC's perspective. Ntombela-Nzimande contends that "the SABC is co-operative because they believe it is in their interest to co-operate". The SABC's Policy and Regulatory Affairs Department interacts with ICASA administratively and submits regular quarterly reports to ICASA with regards to its compliance with language, content and other requirements. The

person at the operational level of broadcasting at ICASA has a working relationship with the general manager of the SABC Regulatory Department. There is also a strategic interaction between ICASA and the SABC that occurs at the Group Executive level, on engagements such as regulations for elections, television political promotions and issues of funding.

Ntombela-Nzimande furthermore contends that the SABC from time to time does identify issues to engage ICASA on. The SABC then uses their stakeholder framework to brief ICASA, on issues of new developments and strategy. Ntombela-Nzimande furthermore states that ICASA pro-actively invites comments from operators and interested parties on issues such as election regulation. When the SABC indicates to ICASA that they were unable meet a language quota for instance, ICASA does not take it kindly, and requires the SABC to demonstrate progressive movement towards rectification. Ntombela-Nzimande contends that ICASA is effective at an administrative level.

In an attempt to provide information on the process that ICASA's undertakes in regulating the SABC and thus fulfilling its regulatory role, Rankin contends that ICASA monitors and ensures compliance of the SABC licenses through its focus on quantitative measurement of the different genres, music, talk, news, local content, programming, languages and other relevant areas. Rankin furthermore states that ICASA also monitors areas such as the number of news bulletins per day, news sources, its universality and diversity. The regulator additionally monitors the SABC's Black Economic Empowerment and gender of its personnel to determine if it is reflective of the demographics of the country. According to Rankin, ICASA also makes a note of the advertising by the SABC. Previously the regulator did focus on the SABC's funding and its impact on their capacity to produce programming. Currently, the regulator briefly takes into consideration funding when compiling a report on the SABC.

Rankin furthermore outlines the other aspects of regulatory practices that ICASA undertakes in monitoring the SABC. The ICASA Monitoring and Compliance Unit steers the entire process of monitoring the SABC. The actual monitoring is conducted by the ICASA Compliance Officers. The monitoring with regards to SABC's radio, commercial and community broadcasters is divided among eight permanent Compliance Officers. There are also eight part time Compliance Officers employed on a six month contract, which are dedicated to monitoring SABC television. All permanent Compliance Officers possess a computer and a TV card installed to monitor television and radio compliance. ICASA's monitoring units are equipped with sound and stereo. The part time Monitoring Officers use DVD's and PVR's for monitoring SABC television.

It is also important to note that ICASA's regulations prescribed in the SABC's license conditions seem to have a positive effect on the SABC's public service mandate. Table 1 below highlights the impacts of ICASA's regulations on the SABC's local content, language, news and public service value, and is based on figures obtained from the SABC's Annual Report 2007.

Table 1-The impact of the SABC's license conditions ascribed by ICASA

| **Local content** | **Language** | **News** | **Public interest value** |
|---|---|---|---|
| Spend on foreign content declined to 17% of total spend as a result of revised local content mandate | The SABC's public broadcasting services TV channels language delivery is between 70% and 80%.<br><br>Between 40 and 50 hours of programming a week is broadcast in languages other than English. | As a result of the new ICASA regulations, news began broadcasting 36 additional radio current affairs programmes from the beginning of the 2006. | The new license conditions led to substantially more public interest value being delivered to the audiences of the SABC's platforms |
| Since the year 2004 SABC 1 increased its local content delivery by 15.94%, SABC2 by 7.07% and SABC3 by 2.29% | In prime time between 60% and 70% of programming is in languages other than English.<br><br>Up to 80% of local programmes now utilise languages other than English. | | |
| The SABC public broadcasting Services TV channels deliver between 70% and 80% local content in prime time and across the performance period | More languages are being incorporated into the daily *Kids News* programmes on SABC1 and the launch of *Yilungelo Lakho.* | | |
| Between the years 2006 and 2007 the SABC content enterprise division has seen a significant increase in output. Driven mainly by increased local content quotas and new license conditions. | | | .<br><br>.. |

| | | | |
|---|---|---|---|
| The SABC formalised and increased its engagement with the independent production sector, resulting in more local content, as per the ICASA guidelines, and greater economic benefits for the independent producers. | | | |

### 4.7 Unsatisfactory regulation of the SABC

In as much as it is derived from the above mentioned sources that the relationship between ICASA and SABC is co-operative and a working one to a certain extent, several interviewees' however expressed that ICASA's regulation of the SABC is unsatisfactory and ineffective, and attributed this gap to specific factors. These factors are discussed under the following heading:

- Enforcement
- Independence
- Legislation
- Resources

#### 4.7.1 Enforcement

Several interviewees' express that ICASA's regulation of the SABC is unsatisfactory due to the inadequate enforcement of regulations. Johann Koster, Executive Director of the National Association of Broadcasters/former head of ICASA's Monitoring and Complaints Unit, contends that ICASA have reasonable regulations in place however the problem lies in the lack of enforcement. Former IBA/ICASA councilor Libby Lloyd, states that ICASA's major issue regarding its regulation is consistently monitoring the SABC and holding them to account for breaches. Wits University Professor of journalism Anton Harber argues that "it seems that ICASA has shown itself to be 'toothless' in enforcing its license conditions and regulations".

Koster furthermore states that communication plays a major role in enforcement and ICASA has never been strong on communication. Koster highlights an example of a lack of communication from ICASA, as a regulator, in not having a ten year plan or blueprint of broadcasting in ten years. Koster further adds that type of information would be beneficial and desired by the SABC.

### 4.7.2 Independence

A number of interviewees' attribute ICASA's lack of independence as among the reasons for its unsatisfactory regulation of the SABC. Harber contends that the three way relationship/process between the Minister of Communications, ICASA and the SABC results in the problematic regulation of the SABC. Koster contends that ICASA's independence is questionable because the regulator reports to "politically motivated people whom are running the country". Lloyd also states that ICASA's level of independence is questionable and "one gets the sense that ICASA is scared of taking a positions that is seen as opposing government". Lloyd posits that ICASA's fear of the government is evident in its lack of a submission on the latest amendment Broadcasting Bill concerning the SABC removal clauses.

Harber furthermore argues that ICASA's passivity and failure to take an independent stance has allowed the Minister of Communications to play a greater role at the SABC than she should. Harber cites an example of ICASA's passivity, as located in the SABC's shareholders compact. He adds that ICASA is expected to have assessed the compact to determine any conflict with the Act. The SABC Annual Report 2007 alludes to the details of this shareholder compact that Harber notes. The SABC's shareholder compact establishes that the SABC board is accountable to the Minister of Communications in terms of the SABC's Corporate Plan which sets out the SABC's key performance areas.

### 4.7.3 Legislation

Libby Lloyd, former IBA/ICASA, attributes legislation as the reason for ICASA's ineffective regulation of the SABC. Lloyd contends that ICASA's regulation of the SABC is unsatisfactory due to the vagueness of the SABC's Charter and license conditions, some of which ICASA cannot actually monitor the SABC on. Such as broad statements on universality, diversity, children's programming and so on.

### 4.7.4 Resources

A significant number of interviewees' cite a lack of sufficient resources as one of the contributing factors for the ineffective regulating of the SABC by ICASA. Rankin, states that the lack of sufficient funding and human resources is a huge impediment to the regulator effectively regulating the SABC. Consequently this constraint results in ICASA having to contract part time SABC Monitors only on a six months basis. The availability of sufficient funds would enable ICASA to employ the Monitors permanently, which is likely to increase its effectiveness in its regulatory function. Rankin further adds that budgetary constraints have forestalled the acquiring of new monitoring units, which would result in better monitoring equipment, hence a more effective delivery of the regulatory function. Executive Director of the National Association of Broadcasters/former head of ICASA's Monitoring and Complaints Unit Johann Koster, and Journalist Kevin Bloom, also agree that ICASA lacks sufficient resources and capacity required in its monitoring and enforcement arm.

Former IBA/ICASA councilor and current SABC board member Nadia Bulbulia states that the monitoring of the new SABC licenses should be a "stand alone department". Unfortunately, the regulator does not possess the necessary resources for the establishment of this ideal department. Former IBA/ICASA councilor Libby Lloyd contends that ICASA has

inadequate monitoring capacity (staff members and skill) for the monitoring of all the broadcasters countrywide and around the clock. Lloyd further adds that ICASA needs to deviate from "rigid annual monitoring of the SABC" to issues such as diversity of news across all broadcasters. Lloyd also posits that ICASA's "Monitoring Report on SABC TV services 2006" that was challenged by the SABC on the basis of methodology, shows that ICASA's capacity to be able to monitor the SABC needs to be addressed.

ICASA's Annual Report 2007 fails to mention the number of public visits conducted by ICASA, but does mention that it conducted sixty four visits in total to commercial and community stations. The ICASA Annual Report 2007 also shows that ICASA produced the least amount of reports on the SABC, as compared to the community and private broadcasters. It also documents that ICASA produced forty reports on community broadcasters, eleven reports on private broadcasters and nine reports on the SABC. ICASA Compliance Officer Sean Rankin ascribes this neglect to a human resource problem.

### 4.8 Tense relationship

Interviews with ICASA Compliance Officer Sean Rankin and Chief People Officer/former head of the SABC Policy and Regulatory Affairs Unit, Phumelele Ntombela- Nzimande, present another dimension of ICASA and the SABC's relationship, one that is stressed and tense.

Rankin is of the opinion that ICASA and the SABC's relationship is not an ideal one of which he attributes to the SABC's Policy and Regulatory Department being populated with ex IBA/ICASA employees. Rankin adds that these ex IBA/ICASA employees are familiar with how the regulator functions, and are at an advantage of frustrating or manipulating the process required by the regulator.

Ntombela-Nzimande would like the regulator to take a more aggressive stand in the regulating of the broadcasting industry, especially with regard to private operators when needed or else "this is going to eat away the role of the public service broadcaster". ICASA and the SABC's relationship can also be described as stressed and not the ideal at times in that not everyone at the SABC completely agree on the type of method ICASA uses to regulate the public service broadcaster. This at times produces a very antagonistic climate that yields much tension. Ntombela-Nzimande would like ICASA not to be so prescriptive in terms of quantitative measurement of quotas, because it restricts the SABC's creativity. She adds that ICASA should rather find a way of quantifying through other means perhaps allowing a trade off, provided the SABC demonstrates the fulfillment of other developmental imperatives.

### 4.9 Troubled relationship

Another dimension of ICASA and the SABC's relationship that emanates from the interviews can be described as problematic and troubled. Interviews held for the study with past IBA/ICASA and current ICASA councilors reveal that the SABC has an antagonistic relationship with the regulator.

Sean Rankin who is an ICASA Compliance Officer contends that the SABC has an "arms length" relationship with ICASA, in the sense that the SABC does not respect ICASA as the regulator. Rankin furthermore states that on the contrary ICASA has a respectful relationship

with E-TV and MNET. Rankin posits that one of the major areas of challenge to the regulator in its regulation of the SABC is sustaining a co-operative and respectful working relationship.

ICASA and the SABC's relationship are also identified as problematic to a certain degree in that the SABC is not consistently co-operative with ICASA. Rankin states that in order for ICASA to obtain information with regard to a compliance report or visits to a SABC station, the regulator is required to first liaise with the SABC Policy and Regulatory Department. This line of communication and protocol sometimes results in much delay and frustration. Rankin recalls an instance when he could not visit the SABC's *Good Hope FM* because he did not obtain a response from the SABC with regards to a request to visit the station. Rankin states that ICASA does not have such problems with other broadcasters in terms of visits and inspections and further emphasises that they are co-operative.

A number of interviews also reveal that ICASA and the SABC's troubled relationship can be traced back to the days of the Independent Broadcasting Authority (IBA). Nadia Bulbulia, former IBA/ICASA councilor and current SABC board member, states that at the time of the Triple Enquiry there was a very "untenable relationship" between the IBA and SABC. Bulbulia argues that at that time the SABC did not honour the IBA as the regulator who had the power to oversee the SABC's delivery of its mandate. Bulbulia contends that "there was no clear recognition by the SABC that they were in fact regulated by the IBA". Former IBA/ICASA councilor Libby Lloyd, argues that there was a "conflicting relationship" between the IBA and the SABC. Lloyd states that the IBA did not give rise to this conflicting relationship but it was the SABC that argued very strongly that "they did not have to deal with the IBA because they accounted to Parliament not the regulator". Rankin argues that ICASA and the SABC's present antagonistic relationship stems from historical roots. Rankin states that when the IBA was formed it attempted to implement certain policies in terms of the IBA Act of which the SABC was not in favour of.

### 4.10 Confrontational relationship

Interviews held for the study bring forth another significant relationship that exists between ICASA and the SABC, namely, a confrontational relationship. Conflicting views by ICASA and SABC often results in direct confrontational arguments. Rankin states that the initial argument between the regulator and SABC can be tracked back to 1996/1997 when ICASA questioned the SABC about their advertising spend. Rankin contends that this confrontation involved the then ICASA co-chairperson De Klerk and SABC Chief Executive Officer Sisulu. Their fallout made the front cover of the *Financial Mail.*

Interviewee Ntombela-Nzimande discloses occurrences that allude to the confrontational relationship. Ntombela-Nzimande states that although ICASA welcomes consultation from the SABC, the regulator does not consistently agree with all the issues tabled. The emerging deliberations often result in serious confrontational dialogues. The communication of feedback by the SABC on regulations put out by ICASA is often confrontational in nature. Some of the issues that have resulted in a confrontation include, for instance, the stance of ICASA putting the SABC in difficulty by not promulgating sports of national importance and the SABC as a result cannot compete with private operators for sports rights in an open market. She argues that the SABC has confronted ICASA on prescribing hours and minutes on language quotas, as it hinders the SABC's creativity. Ntombela-Nzimande adds that another area of contention that lends itself to confrontation by the two organisations is the unreasonable targets that ICASA set. She further adds that ICASA is unreasonable in

expecting more public service mandate on television, which is the source of most of its revenue. The SABC is forced to make a great effort to sell every minute so that it is able to deliver on its mandate.

ICASA and the SABC also engage in many a confrontation with regard to regulatory practices, in particular methodology employed by the regulator. Rankin states that the SABC has previously questioned the methodology used for monitoring and compliance reports. The SABC objected to ICASA's "Monitoring Report on SABC TV services 2006" (ICASA Monitoring Report 2006). Rankin contends that the SABC questioned the methodology, accuracy, and content of this report, as well as ICASA's ability to fully monitor the SABC whilst monitoring other broadcasters. Rankin argues that due to the SABC objection to this report, ICASA has, since two years ago, employed eight part time Monitoring Officers on a six month basis. These part time Monitoring Officers only monitor SABC television so that there can be no questions of methodology. Rankin claims that the SABC also questions ICASA's methodology used for the programming reports because the public service broadcaster is not fulfilling its mandate regarding women, children's and religious programmes. Rankin argues that the SABC often challenges and questions the methodology used by ICASA, especially regarding the SABC television reports. Rankin also claims that the SABC challenges ICASA when certain issues are highlighted with regard to delivery of their mandate as a public service broadcaster.

### 4.11 Silent relationship

It can be derived from the interviews held that another dimension of the nature of relationship between ICASA and the SABC is one of "silence". Interviewees' state ICASA is not vocal with regard to the SABC's controversies nor does it take the necessary action. Interviewees' also expressed their dissatisfaction with ICASA for this "silence". This section focuses on the developments of the SABC's numerous controversies and the actions the interviewees' state ICASA should be executing amidst the SABC's controversies.

The SABC controversies that are discussed include:

- The SABC's commercial funding model
- Political independence
- Editorial timidity
- Internal report into alleged corruption
- The "blacklisting" saga
- The *Freedom of Expression Institute's* complaint
- The suspensions
- Calls for the SABC board to step down

#### 4.11.1 The SABC's commercial funding model

Sources such as the SABC Annual report 2007, interviews held and a substantial number of press reports suggest that the SABC's commercial funding is a contentious and topical issue yet ICASA shows no substantial involvement with this issue. Interviewees express that ICASA should be playing a more participatory role in this controversial issue of the SABC's commercial funding model.

Press reports, the SABC Annual Report 2007 and interviewees' held for this study outline the problematic nature of the SABC's commercial funding model. In June 2005 the *Mail and Guardian online* stated that private and community broadcasters say that they face unfair competition from the SABC regarding advertising revenue. In November 2006 the *Media* magazine argued that the SABC has an "iron grip" in television advertising spend. In March 2007 the *Media* magazine re-iterated that the SABC owns a great amount of the television advertising pie. In October 2007 the *Media* magazine stated that the SABC relies heavily on advertising and as a result the SABC is also vulnerable to its threats. In February 2008 Steyn Speed who is a communications coordinator for the ANC commented for the *Media* magazine that the SABC will struggle to meet its public mandate responsibilities because of over reliance on advertising revenue. The *Media* magazine reported in February 2008 that private and community broadcaster harbor resentment for the SABC because the SABC has the biggest slice of the advertising revenue pie. The SABC's Chief Executive Officer Dali Mpofu says in the SABC's Annual report 2007 "The over-reliance of the SABC on commercial funding in relation to other sources is in my view the single most important issue facing the corporation and all those who care for a true public service broadcaster which is accountable to the public and neither inherently susceptible to commercial nor state power". Former IBA/ICASA councilor and current SABC board member Nadia Bulbulia, contends that the SABC's major challenge continues to be its commercial funding model. Koster argues that functioning within the commercial model results in a compromise of political and commercial independence.

A significant number of interviewees' called on ICASA to play a more pro-active role in the SABC's funding model. Ntombela-Nzimande argues that ICASA has a responsibility to represent the interests of the SABC and lobby government to increase the contribution from the fiscus. Ntombela-Nzimande states that the SABC's invites ICASA to meetings pertaining to the SABC's funding model. Lloyd asserts that ICASA should be playing a more pro-active role in the SABC's funding model. Wits University Professor of Journalism Anton Harber contends that "ICASA stays out of the SABC's funding model, when in fact it should be setting the ground rules". Harber adds that ICASA should take an independent view on SABC's funding model, such as hold public hearings and invite government to attend.

### 4.11.2 Political independence

The SABC political independence is continually questioned and attacked in the public domain. Amidst these allegations, ICASA does not take any action. The SABC's political independence has been questioned through accusations of censorship, comparisons to the apartheid government and alleged pro-Thabo Mbeki coverage.

The major print media, including the *Maverick* magazine of November 2006; the *Media* magazine of October 2007 and February 2008; the *Mail and Guardian online* in December 2007 and August 2008, have reported on the SABC's alleged pro-Mbeki coverage. Alleged pro-Mbeki coverage during the succession battle came under fire from the independent media, opposition parties and pro-Jacob Zuma supporters. Many voiced their disapproval for the alleged pro-Mbeki coverage, including the Youth Communist league who said the coverage was "the abuse of public resources to campaign for re-election". The Democratic Alliance was among those that objected to the coverage, stating that Mbeki's use of the SABC to reach delegates "confirmed that the public service broadcaster is a party organ".

The South African Communist party and COSATU said that the pro-Mbeki coverage "is a blatant abuse of resources of public broadcaster to support a faction in the ANC".

In February 2008 the *Empire* magazine reported that people had lost faith in the SABC and perceived it as an "Mbeki mouthpiece". Jane Duncan, Executive Director of the *Freedom of Expression Institute* argues in February 2008 in the *Media* magazine, that an independent SABC is needed which can report without fear or favour and rises above the leadership battles in the ruling party.

The *Mail and Guardian online* reported in July 2008 that the SABC's political independence has been incrementally undermined to the point where "the disputes of the ruling ANC party form the backdrop to the weekly soap opera pitting the SABC board against its management". The *Media* magazine in July 2008 states that the SABC is captive to political elites for editorial and programming guidance and the dominant frame in its reportage on politics is pro-Mbeki. Anton Harber, Wits University professor of Journalism, argues in the *Media* magazine of July 2008 that the SABC's news and current affairs has deteriorated.

On the contrary, in July 2008 the *Mail and Guardian online* reported on research undertaken by the *Media Monitoring Project* entitled "Meeting Their Mandates?" which found that "there is no clear and systematic political bias by the SABC news"? The *Media Monitoring Project's* research found that SABC news contained only a single source cited per story, resulting in limited diversity, balance and counter-opinion.

### 4.11.3 Editorial timidity

ICASA is also "silent" amidst the escalating accusations regarding the SABC's editorial timidity. The major print media constantly level various allegations against the SABC's editorial credibility due to the occurrence of certain incidents, including the booing of the then Deputy President Mlambo-Ngcuka, halting of the circumcision series *Unthunzi Wentaba* and the many withdrawals of the Thabo Mbeki documentary. These incidents sparked vast media outcry.

In June 2006 the *Mail and Guardian online* reported that the alleged lack of the SABC's coverage of the booing of the then deputy president Mlambo Ngcuka was biased. The *Media* magazine in May 2007 reported on the halting of the circumcision series *Unthunzi Wentaba,* following opposition to stop its screening. The *Media* magazine in May 2007 stated that the halting of the circumcision series *Unthunzi Wentaba* meant that peoples "rights to information had been trampled upon by an unprincipled broadcaster who crumbled under pressure".

The many withdrawals of the Thabo Mbeki documentary lead to much media outcry. The documentary's eventual screening in October 2007, lead to *the Media* magazine nominating the SABC November 2007 "Not the Medium of the Month", stating that the SABC should not "have bothered to screen the documentary". In June 2007 the *Freedom of Expression Institute* reported that the cancellations of the Thabo Mbeki documentary raised fears that the withdrawal was a result of fear of damaging the SABC's relations with the Presidency. The *Mail and Guardian online* and *Business Day* in June 2006 reported accusations against the SABC of "self censorship" and that its editorial credibility was in free fall due to the withdrawal of the documentary. The *Mail and Guardian online* in July 2007 reported that the

SABC said cancellations of the documentary were due to "internal approval processes not correctly being followed". The *Freedom of Expression Institute* in June 2007 reported that the SABC stated that the documentary was “incurably defamatory” of the President and could insinuate Mbeki's involvement in the Chris Hani assassination.

The many withdrawals of the Thabo Mbeki documentary sparked uproar from the *Freedom of Expression Institute* in June 2007, which called the withdrawal a “farcical situation” and “yet another indication of the chaos inside the broadcaster”. The *Freedom of Expression Institute* also states in June 2007 that the SABC are “too easily withdrawing controversial programmes at the eleventh hour without public accountability”. The *Freedom of Expression Institute* was pro-active in advocating for the screening of this documentary, through marches, pickets and demonstrations held outside various SABC offices.

The *Freedom of Expression Institute* in June 2007 also damned the SABC for editorial timidity, saying that the SABC need to desist from withdrawing programmes at the last minute, because it “opens broadcasters up to editorial pressure and compromises their editorial independence”. The *Freedom of Expression Institute* in June 2007 reported that the withdrawals of the Thabo Mbeki documentary, the circumcision drama *Emthunzini WeNtaba* and rescheduling of an *After 9* programme show that the SABC “lacks the courage of its convictions when it is faced with controversy over its more adventurous commissioned products”. Jane Duncan, Executive Director of the *Freedom of Expression Institute* in June 2007 says that the SABC is increasingly editorially timid with respect to the most controversial political issues of the day, “which points an extreme editorial timidity at best and self-censorship at worst”.

### 4.11.4 Internal report into alleged corruption

ICASA failed at taking any action in the SABC controversy pertaining to an internal report into alleged corruption. The details of an explosive report that contained damming allegations against the SABC, and the public service broadcaster’s attempt to stop the details of it reaching the public domain, captured media attention.

The *Mail and Guardian online*; *Sunday Time* and *Business Day* in July 2007 reported on the Pretoria High Court interdicting the *Mail and Guardian* from publishing details of an SABC internal report. The internal report contained allegations of financial irregularity and violation of the Public Finance Management Act. The interdict order against the *Mail and Guardian* was dismissed with costs in the Pretoria High Court. Among the factors for dismissal was the fact that the report relates to how taxpayers’ money was invested and “the newspapers have a duty to disseminate news relating to allegations of corruption in public entities.”

The *Media* magazine in December 2007 reported that the SABC did not suspend legal head Mafika Sihlali who had been accused in the internal report, of defrauding the SABC of at least 1.8 million rand. Legal opinion in the report did recommend that the SABC suspend and lays criminal charges against Sihlali.

### 4.11.5 The “blacklisting” saga

Amidst the controversy around the SABC’s alleged “blacklist” ICASA remained silent. The “blacklisting” saga received such a great amount of attention that a quote from the

"blacklisting" saga ranked first on the *Media* magazine's "quotable quotes to illustrate the highlights and lowlights of the media in 2007".

All the major print media including the *Mail and Guardian online*, *Business Day*, *Sowetan*, *Empire*, *Maverick* and the *Media* as well as media advocacy group the *Freedom of Expression Institute* in 2006, 2007 and 2008 all reported that the SABC was accused of operating a politically motivated "blacklist" to exclude controversial commentators. The commentators were considered to be outspoken and generally critical of President Thabo Mbeki. This alleged "blacklist" sparked a barrage of criticism from the media. The SABC at the time denied the existence of the blacklist and claimed they issued guidelines to use commentators and spoke of issues of "quality" and certain voices being "ill informed". The SABC's stance was contradicted by *SAFM* presenter John Perlman, who confronted the SABC spokesperson on air, confirming the existence of a "blacklist"; other journalists also confirmed the existence of the "blacklist". Many publicly queried the SABC on the "blacklisting" issue, including COSATU and the Democratic Alliance.

John Perlman was then accused of "bringing the SABC into disrepute" by contradicting its official spokesperson. Later the Sisulu Commissions of Enquiry commissioned by the SABC said that Perlman's position "was in conformity with the factual situation" and had correctly chosen to confront it. The Sisulu Commission of Enquiry was prompted by Perlman's on air admission. In an interview with the *Media* magazine John Perlman voiced his concern at the "abuse of the public broadcaster for narrow and ultimately self serving goals".

The Sisulu Commission of Enquiry found that there was a practice of "blacklisting" at the SABC and "an atmosphere of fear and distrust". The Sisulu Commission of Enquiry found SABC Group Executive of news and current affairs Snuki Zikalala guilty of banning certain commentators and that "these actions had resulted in a form of exclusion that is not sustainable". The Sisulu Commission also expressed concern at a "phenomenon of self-censorship" at the SABC. The Sisulu Commission advised the SABC board to "take close cognisance of the concerns about the management style of Zikalala" as outlined in the report. Despite the Sisulu Commissions findings the SABC Chief Executive Officer and SABC board expressed full confidence in Zikalala and trashed the findings of the Sisulu Commission.

The SABC then failed to release the Commission's full report despite the Commission's view that the report should be released to the public. The *Mail and Guardian online* published the full report where after the SABC went to court to obtain an interdict against the website, however failed to do so. Among the SABC's explanations cited was that it could lead to legal action from those named in the report, this caused much media uproar. Wits University Professor of Journalism Anton Harber argued in the public domain that "the SABC's excuse was feeble and their actions amounted to a cover up". Executive Director of the *Freedom of Expression Institute* Jane Duncan also argued in the public domain that "the SABC was violating its commitment to transparency".

Many others expressed outrage at the SABC's failure to release the report, including the *Freedom of Expression Institute* who said the SABC must release the report in full because the SABC summaries "are confusing, garbled, and even downright contradictory". The *Freedom of Expression Institute* filed an information request with the SABC, on the basis of the Promotion of Access to Information Act.

### 4.11.6 The *Freedom of Expression Institute's* complaint

The *Freedom of Expression Institute* submitted a complaint to ICASA, which was the closest the regulator came to playing a role in any of the SABC's recent controversies. The details referred to, are taken from the *Freedom of Expression Institute's* website.

The *Freedom of Expression Institute* submitted a complaint to ICASA, following the occurrence of specific incidents. The *Freedom of Expression Institute's* "communication rights campaign and social movements" staged numerous pickets along with the involvement of other organisations; at the SABC's headquarter in 2006 and 2007. A memorandum of grievances was handed to SABC management during these pickets, and highlighted areas where the SABC was not fulfilling its mandate as a public service broadcaster. These grievances include the SABC being a fully-fledged mouthpiece of government, the Thabo Mbeki documentary, allegations of censorship, a lack of service delivery to poor communities and the SABC not publishing the findings of the Sisulu Commission. One of the *Freedom of Expression Institute*'s pickets drew attention to the fact that the current SABC Board is not fit to run the public service broadcaster. The SABC's lack of response to the memorandum to the initial picket in November 2006 and the inability of the SABC to address the Sisulu Commission's report's findings prompted the *Freedom of Expression Institute* to lay a complaint to ICASA.

The *Freedom of Expression Institute* also instigated a petition calling on ICASA to enforce the SABC's license conditions and to take appropriate action against the SABC. The details of the *Freedom of Expression Institute* complaint to ICASA are:

- The SABC violated its founding statute, the Broadcasting Act eleven times, its license conditions five times and the South African Constitution three times in the recent past.
- The *FXI* waited for the SABC to implement the Commission's findings however it appeared to be the SABC's lack of appropriate response, especially its failure to act decisively against the person responsible for the "blacklisting" of political commentators, the Managing Director of News and Current Affairs, Dr. Snuki Zikalala.
- By excluding certain commentators, Zikalala's actions have violated the Broadcasting Act's requirement for its public services to "provide significant news and current affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance, and independence from government, commercial and other interests".
- Further, by limiting the diversity of opinion that the public is accessible to, the SABC has violated the provision of its licence conditions that requires it to "provide a reasonable opportunity for the public to receive a variety of points of view on matters of public concern".
- Zikalala's conduct in giving express or inferred instructions to exclude certain political commentators is also not aligned to the highest standards of journalistic professionalism, as required in terms of the Broadcasting Act and its license conditions.

ICASA's Complaints and Compliance Committee (CCC) dismissed an application by the *Freedom of Expression Institute* to subpoena the transcript of the record of proceedings of the Sisulu Commission. ICASA's Complaints and Compliance Committee (CCC) ordered that the Sisulu Commission's report and recordings be inadmissible in future proceedings at ICASA.

This meant that the *Freedom of Expression Institute* was required to provide new evidence to ICASA. During the hearing the SABC stated that they had rejected some of the Sisulu report on the grounds of flawed methodology. The SABC in a statement afterwards said "This was an internal inquiry for internal consumption only and its leakage was mischievous, illegal and intended only for commercial gain". The *Freedom of Expression Institute* was disappointed at ICASA's ruling. The *Freedom of Expression Institute's* attorney Simon Delaney said "I feel disappointed and disempowered, not simply as a member of the *FXI*, but as a viewer, listener and as a citizen to whom ICASA is accountable".

### 4.11.7 The suspensions

The suspension of the SABC's Group Executive of news and current affairs Snuki Zikalala followed by the SABC's Group Chief Executive Officer Dali Mpofu captured the attention of the major print media. Amidst this controversy ICASA failed to take any action. The major print media, including the *Mail and Guardian online*; *Business Day; Empire* magazine and media advocacy group the *Freedom of Expression Institute* in May 2008 all reported on this SABC controversy. Dali Mpofu initially suspended Snuki Zikalala, which was followed by the SABC board then suspending Mpofu. The SABC board resolved to conduct an investigation into serious allegations about Mpofu, including failure to abide and implement decisions of the board and that Mpofu's actions against Zikalala had not been recognized by the board.

Mpofu was then suspended three times by the SABC board. The Johannesburg high court overturned the first two suspensions. Dali Mpofu's first suspension was ruled by the Johannesburg High Court as unlawful, because the meeting did not follow the correct legal procedures. The Judge said that SABC chairperson Khanyi Mkhonza had handled the entire matter poorly and her behaviour fell short of a director who should act "independently, openly, with integrity and honesty". Meanwhile Snuki Zikalala had lodged a case with the Commission for Conciliation, Mediation and Arbitration (CCMA) and his suspension was eventually lifted.

The suspensions were referred to in the public domain as a "shake up at the SABC" and that the "daggers are out". Many expressed concern at the suspensions, including the South African Communist Party who stated that the suspensions might divert the SABC focus on building itself as a credible broadcaster. The *Empire* magazine reported in June 2008 that the media was "grinding out horror stories faster than the public could devour them" in the SABC's suspension controversy.

Various other parties also voiced their concerns at the SABC's suspensions, including the Minister of Communications. The Minister of Communications assured that "All will be done on the Minister's part to ensure the ability of the SABC to deliver its mandate" and ensure that its image does not "suffer further damage". Various entities and political parties commented on the SABC's suspensions, including the Democratic Alliance, South Africa Communist Party, African Christian Democratic party, ANC Youth League and United Democratic Movement. The Freedom Front Plus said that the SABC's suspensions had "seriously affected the credibility of the organisation". Wits University Professor of Journalism Anton Harber argues in July 2008 in the *Media* magazine that the SABC's suspensions was reduced "to cannibalism where the Parliament, the board, the Executive and Head of news are all trying to eat at each other".

### 4.11.8 Calls for the SABC board to step down

There were numerous calls for the SABC board to step down however amidst this debacle, ICASA was "silent". The major print media, including the *Mail and Guardian online*, reported on this SABC controversy that unfolded in June 2008. There was a wrangle between the Parliamentary Committee on Communications which had passed a vote of no confidence in the SABC board, and President Thabo Mbeki refusing to budge in terms of dismissing the board members. Parliament sought to dismiss the existing SABC board. Members of Parliament tabled a Bill in order to give them the authority to dismiss the SABC board. Parliament even held hearings to facilitate a change of law that would see the SABC board fired.

The *Empire* magazine in June 2008 called this controversy the "SABC falling apart at the seams rather publicly" in referring to the "no confidence" vote in the SABC board by the Parliamentary Committee on Communications. The SABC Executive then called on the SABC board to step down immediately because the SABC board "does not have the moral authority to continue to lead the SABC". SABC staff members signed a petition which called for the removal of the SABC board from office. The SABC board responded and condemned seven members of the broadcaster's Executive for signing a petition calling for it to resign.

### 4.12 Interviewees' calls for ICASA to take action

Many interviewees' called on ICASA to take relevant action in the SABC's controversies and expressed despondency at the regulator's lack thereof. Sean Rankin, an ICASA Compliance Officer and one of the longest standing members at the IBA/ICASA, sheds light on the reason for ICASA's "silence" in the SABC's controversies. Rankin posits that the regulator is not overtly concerned with the SABC's controversies because it is "none of ICASA's business". He adds that ICASA can only become directly involved if the matter is related to a license contravention. He argues that ICASA's domain is to follow up on the failure of the SABC to submit information, to the highest level of management if necessary.

Rankin further states that ICASA tends to steer away from the SABC's "internal politics" as the SABC is "in a sense a politically charged body because of the appointments of the SABC board". Rankin also contends that allegations against the SABC in the public domain are noted in ICASA's Compliance function and put in the Annual report. Rankin states that ICASA also notes the newspaper reports and the number of complaints and judgments at the Broadcasting Complaints Commission of South Africa, against the SABC. Kate Skinner states that the *Freedom of Expression Institute* accused ICASA of "deadly silence" and neglecting their duty amidst the SABC's suspensions controversy. ICASA chairperson Paris Mashile responded to the *Freedom of Expression Institute's* accusation by stating that it is an internal matter and the regulator wishes the SABC well in resolving it.

A significant number of interviewees also express discontent at ICASA's "silence" and lack of action in the SABC's controversies. The SABC's Chief People Officer and former Head of the Policy and Regulatory Affairs Unit Phumelela Ntombela-Nzimande, argues that it should be "ICASA's business" when there are "squabbles" in the public domain regarding the SABC. She says that when the SABC controversies occur, the public service broadcaster receives complaints from the interested public and questions from Parliament, but receives no concern from ICASA.

Ntombela-Nzimande asserts that ICASA should be pro-active and not wait for a complaint from citizens (i.e. the *FXI* complaint) to assume involvement. She argues that ICASA is not a dynamic regulator as "it becomes very technocratic about its oversight role at times". Ntombela-Nzimande furthermore states that the present ICASA council has adopted a "hands off approach" in some of the key strategic interactions the regulator should be involved in. She furthermore argues that ICASA should, amidst the SABC controversies, consult with the SABC as to whether the media reports are correct and if needed issue penalties. ICASA should make the public aware that the regulator has engaged the SABC and provide feedback on the outcome. Ntombela-Nzimande states that she "does not like the regulator's silence" and that ICASA is losing credibility as an authority because of its silence.

A significant amount of interviewees also called on ICASA to take action in the SABC's controversies. Anton Harber, Wits University Professor of Journalism, contends that ICASA should be holding the SABC to account on all the controversies, particularly the Thabo Mbeki documentary and Sisulu Commission. He adds that ICASA should be in the forefront of questioning the SABC. Executive Director of the National Association of Broadcasters/former Head of ICASA's Monitoring and Complaints Unit Johann Koster, states that it is problematic for ICASA to not make "its voice heard in the SABC issues".

Other interviewees' also expressed annoyance at ICASA's lack of action in the SABC's controversies. Kate Skinner co-coordinator of the *Save Our SABC* (SABC) coalition concurs with the SABC's Sisulu Commission that ICASA should be ideally investigating the Sisulu report itself. Skinner posits that ICASA should essentially examine the Sisulu Commission report and then undertake ongoing monitoring of it. Skinner states that ICASA should be undertaking pro-active investigation to ascertain whether the SABC are in adherence to their license conditions.

Skinner also provides her perspective on the *Freedom of Expression's Institute's* complaint to ICASA. Skinner contends that ICASA has "literally ducked and dived" and it is "outrageous" that the *Freedom of Expression Institute* is conducting the investigation that should in fact be undertaken by ICASA. Skinner states that at ICASA's hearing of the *Freedom of Expression's Institute's* complaint, the regulator seemed to possess a kind of fear in holding the SABC to account. Skinner argues that if ICASA were pro-active in ensuring that the SABC fulfill it mandate, the *Freedom of Expression Institute* could have used the Sisulu Commission as evidence. Skinner states that the Sisulu Commission was thorough in its investigation and fair in its findings. Skinner states that the *Save Our SABC* (SOS) coalition is of the view that throughout the "blacklisting" crisis ICASA had a "deafening silence". Skinner contends that ICASA should be holding the SABC to account on its Charter and license conditions.

Many interviewees' also expressed dissatisfaction at ICASA's ruling in the *Freedom of Expression Institut*e's complaint. Wits University Professor of Journalism Anton Harber contends that in the *Freedom of Expression Institut*e's complaint, ICASA should have acted against the SABC, however were like "putty and did not assert their authority". Harber argues also that the "SABC looks big and powerful and ICASA looks small" when it should be the other way around. Libby Lloyd who is a former IBA/ICASA councilor, states that the *Freedom of Expression Institut*e's complaint shows that ICASA seems to be narrowly defining its role by proclaiming it can only judge the SABC on issues of what is broadcast.

ICASA councilor and member of ICASA's Complaints and Compliance Committee (CCC) Kobus Van Rooyen, provides another perspective on ICASA's ruling in the *Freedom of Expression Institut*e's complaint. Van Rooyen argues that it is unfair to take one enquiry and accept it as truth. Van Rooyen states that ICASA is willing to investigate but first requires a Prima fascia case from the *Freedom of Expression Institute* to show (if any) the effects on the public. Rooyen furthermore states that the Act stipulates that the Complaints and Compliance Committee (CCC) does "enquire" however there are different meanings to the word "enquire". Rooyen states that the Complaints and Compliance Committee (CCC) has chosen the meaning of "enquire "which is the softest and which moves the furthest away from the perception that the Committee is prosecuting.

Ntombela-Nzimande argues that ideally amidst the SABC's suspension controversy, ICASA should have held a meeting to remind the SABC management and board of their responsibility. She contends ICASA in this meeting ideally should have ensured that the SABC remain focused on its mandate. Ntombela-Nzimande adds "it is absolutely shocking that ICASA had not facilitated/co-coordinated this meeting when they have every right as the regulator to do so". Rankin, an ICASA Compliance Officer contends that ICASA is concerned with the conflict between board and management and does take note of it. Ntombela-Nzimande states that ICASA should have taken action in the SABC's suspension controversy as it regards ICASA's key responsibilities, the sustainability and mandate of the SABC. Ntombela-Nzimande further argues that the sustainability of the SABC relies on the quality of the SABC board's strategic guidance, in order to remain focused on their mandate. Lloyd argues that many expected ICASA to host a meeting with the SABC amidst the SABC's suspensions controversy, to ensure that the suspensions are not adversely affecting the public service broadcaster and its business plan.

Some interviewees' expressed the view that ICASA is narrowly defining its role regarding the SABC when in fact it should be proceeding with specific action. Former IBA/ICASA councilor Libby Lloyd, argues that ICASA should have made submissions on the Broadcasting Amendment Bill as one of the proposed clauses for the dissolution of the entire SABC board, is if the board has not complied with the SABC Charter. Lloyd states that ICASA is the only body that can monitor compliance of the Charter hence the regulator should have expressed its view as to the feasibility of the clause. Koster re-iterates this argument and contends that ICASA ought to have submitted a strong presentation to Parliament with regards to amendment of the Broadcasting Act and its attempts to facilitate changes in the SABC board. Skinner argues that in the issue of the numerous calls for the SABC board to step down, the only institution taking an initiative is Parliament through controversial Bills. Skinner adds that Parliament is taking some sort of action unlike ICASA.

Lloyd further posits that ICASA seems to be narrowly defining its role regarding the SABC. This was evident when ICASA dismissed a complaint submitted about the SABC running an "odd" competition. Lloyd states that ICASA dismissed the complaint on the basis that it was aired outside the performance period and that ICASA have no role on broadcasts outside the performance period. Lloyd states that at the same time the BBC was held by its regulator for a similar issue on competition, and fined a large amount.

Numerous interviewees' pointed out the possible reasons for ICASA's "silence" and unsatisfactory action. This section undertakes a discussion of possible reasons for ICASA's "silence" based on the interviews held for the study. These reasons include ICASA's:

- Resources and capacity
- Appointments
- Legislation
- Fear and lack of will

### 4.12.1 Resources and capacity

Numerous interviewees' attribute ICASA's "silence" in the SABC's controversies to ICASA not being sufficiently capacitated and resourced, such as the co-coordinator of the *Save Our SABC* (SOS) coalition Kate Skinner. Skinner argues that the Minister of Communications has stated that salaries in the industry are very high and it is difficult to retain ICASA councilors. Harber argues that ICASA's "silence" in the SABC debacles is an issue of resources, because ICASA is inundated with work. Harber also states that ICASA is "swamped" with work and "if they can ignore a problem they will", which is a kind of an "enforced passivity".

Ntombela-Nzimande states that ICASA has capacity challenges because the dynamic leadership that was once at ICASA does not exist anymore. She adds that when she was a Deputy Director General at the Department of Communications during former ICASA Chairperson Mandla Langer's period in office, ICASA was rigorous. One had to prepare the Minister to engage with the regulator because ICASA did not "take kindly to anything that erodes their independence and authority", for example, a policy directive.

### 4.12.2 Appointments

Some interviewees attribute ICASA's "silence" to the regulator's appointment of councilors. Harber contends that ICASA is not appointing people who are asserting an active role at the SABC. Skinner argues that many lay claim that a number of ICASA's appointments are political.

### 4.12.2 Legislation

Other interviews held for this study attribute ICASA's "silence" to legislative factors. Lloyd point outs that it is not certain what the ICASA could have done in the SABC debacles because the SABC Charter is so vague. Lloyd states that the law is not clear enough which allows ICASA to "slip and slide and dodge its responsibilities". Journalist Kevin Bloom states that it is very difficult for an independent regulator because legally it does not have the mandate to sort out what is essentiality an internal problem. On the contrary, Ntombela-Nzimande argues that ICASA does not appreciate the legal "teeth" it has to address the SABC's issues.

### 4.12.3 Fear and lack of will

Interviewees' suggest that ICASA's "silence" in the SABC's controversies can be attributed to "fear" by the regulator to assume involvement. Koster states that perhaps ICASA is

"fearful" and hesitant to assume involvement as the regulator does not "want to be seen as interfering in the internal processes of the SABC". Skinner contends that despite ICASA's under funding, the regulator lacks political will because regulators the world over possess much less resources than ICASA and yet are more proactive.

### 4.13 ICASA's institutional weaknesses

Press reports, numerous interviewees' and the ICASA's Annual report 2007 suggest that ICASA has organisational weaknesses. The organisational problems cited are discussed under the following headings:

- Independence
- Appointment process
- Expertise and staff "poaching"
- Public accountability
- Mandate and power
- Resources and capacity

ICASA's organisational weaknesses could be hindering its effective regulation of the SABC and other duties.

#### 4.13.1 Independence

Many interviewees' express that ICASA is not "enjoying" its independence in reality. Koster, Lloyd and Rankin all highlight ICASA's lack of independence, due to the Minister of Communications' prominent role in its performance agreements, finances and decisions. Koster argues that ICASA can be strengthened by attaining a more independently perceived council because it is problematic to allow the Minister of Communications to appoint, evaluate and fire personnel. Koster adds that the Minister of Communications' prominent role at ICASA could result in ICASA not executing its regulatory functions in the "public interest" and rather in the "Ministers interest". He further adds that ICASA should rather report to Parliament and not to a specific Minister. Lloyd also stipulates that the performance agreement with the Minister is problematic as this could possibly lead to councilors operating in fear of lower performance bonuses.

Lloyd however states that currently one senses that ICASA is "taking a cautious line rather than limiting their independence'. Lloyd argues that ICASA is "appeasing both the broadcasters and government and the public is getting neglected in it all". Lloyd argues that when Mandla Langer was chairperson of ICASA, the regulator executed numerous strong positions and had public fights with the Minister over positions; however ICASA is not presently doing this.

Bulbulia argues that the Department of Communications sometimes attempts to take over ICASA's role. Bulbulia asserts that ICASA reports to the Department of Communications, however, "often the Department of Communications wants to do ICASA's job for them". Nadia Bulbulia states that in many instances the Department Of Communications overstepped the parameter of their role by attempting to assume the implementation task of the regulator.

Rankin states that ICASA's independence is questionable due to funding. Rankin states that ICASA is independent from other interests because it has a very strict code of conduct at council and compliance level. Lloyd asserts that ICASA's financial independence needs to be upheld in reality otherwise "ICASA is perpetually positioning itself for their budget to be cut if they do anything unpopular". Lloyd argues that "ICASA should have access to funds in court cases in order to be able to take up and set case law on telecommunications rather than opt out of fighting with big operators".

### 4.13.2 Appointment process

Press reports and numerous interviewees' suggest that ICASA's appointment process is "politicized" and not independent. The *Mail and Guardian* in July 2006 argues that the Minister of Communications role in ICASA's appointment process and her power to "performance manage" the councilors, all amounts to "a reduction in the autonomy of ICASA". Rankin states that ICASA's appointment process could mean that the politically correct candidates are the ones appointed. Koster states that the problem regarding ICASA's appointment process is that Parliament amounts to a multi-party environment and "inevitably there is going be horse-trading". Harber states that ICASA needs a system that appoints the "best people for the job: and this is not achieved through potential for political parties horse-trading". Lloyd argues that the independence of ICASA is limited by the *ICASA Act 2000* as amended and there needs to be some discussion as to whether or not Parliament is the most suitable appointing body because this lends itself to horse trading between political parties. Lloyd further states, there needs to be a change in policy regarding ICASA's appointment procedure because Parliament needs to play a stronger oversight role. Rankin however argues that the senior appointments at ICASA are increasingly based purely on merit.

### 4.13.3 Expertise and staff "poaching"

Press reports, numerous interviewees' and the ICASA Annual Report 2007 all express that ICASA does not possess adequately skilled people and has a problem with staff "poaching".

Van Rooyen confirms that ICASA's best personnel are constantly "poached" and that ICASA requires more funding for retention of personnel. Rankin also makes reference to ICASA's problem of retaining personnel, due to "poaching". Bulbulia states that unfortunately, high-quality employees with sound institutional memory at ICASA tend to rapidly move to other jobs. Lisa Thornton, a communications lawyer argues in April 2006, in the *Mail and Guardian online* that ICASA serves as a training ground for talent that is often "poached by cash-flush industry giants such as MTN and Vodacom". The ICASA Annual Report 2007 also confirms that ICASA's is experiencing challenges with "poaching".

Press reports, the ICASA Annual Report 2007 and interviews also suggest that ICASA does not have the necessary skills it requires. A communication lawyer Lisa Thornton argues in April 2006 in the *Mail and Guardian online* that "ICASA is 100% incapable of regulating pricing because it simply doesn't have the knowledge or the staff". ICASA's under skilled membership is even recognised by the regulator itself, the ICASA Annual Report 2007 affirms that ICASA has "human capital challenges". Bulbulia argues that ICASA require more skills. Lloyd argues that ICASA needs a lot more skills such as economic analysis, so that it is be equipped "to really question SABC on where they are spending their money".

### 4.13.4 Public accountability

ICASA is not adequately accountable to the public due to its inefficient website. The July 2007 issue of *The Media* magazine nominated the ICASA's website as "Not the medium of the month" as the magazine received several complaints. The magazine argues that ICASA's website does not include much information on certain hearings, the broadcasting licensing process and press releases. The magazine states that ICASA's website "should be the local hub of information related to broadcasting regulatory issues but instead it is only a source of frustration", it should be used as damage control whilst many people have lost faith in the authority".

### 4.13.5 Mandate and Power

Interviews held for the study suggest that ICASA's mandate and power is not clear regarding the SABC and in general, whilst other interviewees' express that the regulator does in fact have sufficient mandate and power.

Lloyd states that ICASA has "strong" mandate and power however it is whether or not the regulator chooses "to narrowly or broadly interpret it". Ntombela-Nzimande contends that ICASA does have strong mandate and power however the regulator "does not realise the sharpness of teeth they have, they do not bite even when they have teeth". Rankin argues that ICASA has enough mandate and power. Koster contends that ICASA has "quite a strong arm and can punch a lot of people if they need to". Koster furthermore states that using this strong arm depends on enforcement and communication. Sometimes ICASA "does not communicate well enough and their resources in terms enforcement is problematic". Van Rooyen states that ICASA definitely has sufficient mandate and power however "the relevant Act is inherently tricky to apply".

Lloyd suggests that all of ICASA's legislation needs clarification so that there are no loopholes that "either ICASA, the industry or the Minister can exploit". Bloom states that ICASA in general needs its "teeth" back, and is now a "toothless" regulator, which was not the case some years ago.

Van Rooyen however contends that ICASA has "teething problems" because it has huge tasks with the new law. Van Rooyen argues that ICASA does have the "teeth" and are able to impose a maximum fine of a million rand a day; however this will only be imposed in exceptional circumstances. Van Rooyen states that it is obvious that ICASA need "teeth" but would rather "make proper regulations which are fair in themselves". Van Rooyen further argues that if there is intentional malice then one can show "teeth", but "one must be careful when dealing with ordinary actions and accepting there was malice".

### 4.13.6 Resources and Capacity

Press reports, the ICASA Annual report 2007 and the majority of interviewees' highlights that ICASA is under funded and under capacitated. Rankin states that ICASA is under resourced and is the reason for its lengthy time frame in completing the licenses conversion process. Rankin adds that under resourcing has damaged ICASA's work for instance, "up until two years ago there was not sufficient funding so travelling, visiting and monitoring

were restricted". Koster states that in certain areas ICASA is adequately funded however its enforcement, communication and research areas are not allocated sufficient funds.
Skinner states that ICASA's "funding and capacity has been cut to a point where it cannot fulfill its mandate in any ideal way". Harber argues that ICASA has a huge task and requires "much better resources to hire really skilled people". Ntombela-Nzimande stipulates that ICASA needs to be adequately structured and resourced so that it is able to give justice to every industry that it oversees. Bulbulia asserts that ICASA requires adequate funding and skills. Harber argues "ICASA does not have enough power because they are not given sufficient resources to be able to exercise their power". Harber contends that "the suspicion is that they have deliberately starved ICASA of resources in order to weaken its authority".

Numerous press reports highlight ICASA's problem of being under funded and under-capacitated. In October 2006 the *Mail and Guardian online* said that "there is a need for increased funding at ICASA. Nadia Bulbulia in December 2006 for *the Media* magazine argues that there is an "ongoing battle about concerning resourcing at ICASA" and this issue is recognised publicly by all players, including government, Parliament, the industry and the regulator itself. Bulbulia also argues in the *Media* magazine in December 2006 that a lack of funding to upgrade ICASA's monitoring equipment had an impact on ICASA's delivery thus the regulator is unable to fully monitor the SABC's license conditions. The *Mail and Guardian online* in April 2006 reported Lisa Thornton a Communications lawyer's argument that "ICASA will battle to face off the legal challenges because of its capacity challenges".

The ICASA Annual Report 2007 confirms that ICASA is under funded and under capacitated, and determines the repercussions of this constraint. It shows that projects like the investigation into allegations of billing malpractices by Telkom and the investigation into the availability of telecom's services at public schools were at risk due to a lack of human capital, the latter project was "canned" for this reason. ICASA's Annual Report 2007 also confirms the lack of budget in 2006 to conclude the "draft Service Charter guidelines for End-user Subscribers". This Annual Report also states that a lack of capacity in the Finance Section at ICASA led to "non- compliance with policies and procedures as well as poor monitoring and supervisory controls [which] resulted in material errors in financial statements".

### 4.14 Conclusion

This Chapter has presented the findings from information that is gathered from policy documents, the SABC's television and radio licenses, ICASA monitoring reports, press reports, reports from advocacy groups, the SABC Annual report 2007 and the ICASA Annual report 2007 as well as interviews. The Chapter presented the findings according to the derived themes of ICASA's ideal organisational structure, ICASA's mandate regarding the SABC, the emanating nature of ICASA and the SABC's relationship as well as ICASA's organisational weaknesses.

# Chapter 5

## Analysis

### 5. Introduction

The various dimensions of ICASA and the SABC's relationship, as well as ICASA's organisational "troubles" can be explained by a combination of complementary theories, critical political economy of the media, theories of regulation as well as public service broadcasting. These theories provide an appropriate framework for explaining the level of effectiveness of ICASA's regulation of the SABC, and the constraints hindering ICASA from regulating the SABC effectively so that it functions as public service broadcaster.

Critical political economy of the media explains that institutional issues like media ownership, the role of policy and regulation, editorial and programming independence and funding can constrain an institution and hinder the media's democratic role. Theories of regulation, specifically the public interest theory, clarify that ideally a regulator is obliged to serve the public interest. The "perverted" public interest theory of regulation asserts that a regulator is capable of perverting the public interest in serving the private interests of the industries under regulation. The "perverted" public interest theory explains that the perversion of the public interest can occur because of "Instrumental", "Structural" and "Capture" reasons.

An independent regulator is in a "healthy" position to effectively regulate in the public interest. The characteristics required for a regulator to be independent are, that its independence be guaranteed by law, have a participatory and transparent appointment process, adequately skilled membership, sufficient mandate and power, accountability, as well as adequate funding. Theories of public service broadcasting outline the typical feature of a public service broadcaster and its unique characteristics, which serve as useful guiding principles in exposing the regulatory failures of ICASA's to ensure the SABC's plays its role as a public service broadcaster.

### 5.1 Public interest enhancing regulations and practices

Among the many dimensions of ICASA's regulation, the following dimension does to a certain degree foster the functioning of the SABC as a public service broadcaster. This is evident in the SABC's license conditions that ICASA issued and the areas that ICASA monitors the SABC daily on. These license conditions and monitoring uphold certain of the characteristics required for a public service broadcaster.

The theoretical framework signifies that it is important that a public service broadcaster offers a universal service, is accessible in footprint and programming, diversity of and in programming which includes catering for the needs of the minority (McChesney 1999; Curran and Seaton 1997; Scannell 1992). Certain of the characteristics are upheld in the SABC's license conditions. The SABC license conditions obligates the SABC's services to be accessible in all the official languages, reflect the diverse culture of South Africa, offer services to woman, children and the disabled, as well as provide a substantial amount of local content. Therefore, the SABC's license conditions dictate the SABC to cater for the minority of the disabled, offer a diversity of programming, as well as be universal and accessible.

The targeted areas that ICASA monitors the SABC daily on, also upholds these characteristics that are required for a public service broadcaster. An ICASA Compliance Officer, Sean Rankin, contends that ICASA regulates the SABC, through quantitative measurement of genres, languages, local content, woman and children's programming, disabled and educational programming, universality and diversity. These areas are in alignment with certain of the theoretical framework's characteristics for a public service broadcaster which include that it should be universal, accessible in terms of language, be assessable in terms of footprint and programming, offer a diversity of genres and cater for the minority (McChesney 1999; Curran and Seaton 1997; Scannell 1992; Curran 199).

ICASA furthermore safeguards the SABC's public service broadcaster characteristics, by enforcing compliance to the SABC license conditions. ICASA Compliance Officer Rankin argues that ICASA's Monitoring and Compliance Unit consistently follows up on any occurrence of non-compliance to the SABC license conditions. This affirms that ICASA does not just enshrine these directives in the license conditions but make the necessary effort to enforce compliance thereto, hence upholding certain of the public service broadcaster characteristics as set out in the theoretical framework. This is further alluded to by Chief People Officer and former Head of the SABC Policy and Regulatory Affairs Unit Phumelele Ntombela-Nzimande. She contends that ICASA does not take kindly to the SABC not meeting its quotas, and even insists on a plan of action from the SABC of its intended process to rectify it. Ntombela-Nzimande further validates Rankin's argument, when she also states that "the regulator even requests a plan of action to rectify a breach of the SABC's license conditions". Hence it can be concluded that ICASA's interventions is safeguarding certain of the important public service broadcaster characteristics and thus upholding the standard of the public broadcasting theory.

The license conditions are increasing the SABC's public service value. The SABC Annual Report 2007 states that the SABC license conditions issued by ICASA have resulted in "more public interest value being delivered to the audiences of the SABC's platforms". The SABC Annual Report 2007 adds that the SABC's license conditions have resulted in a decrease in the SABC's foreign content spend, an increase in local content, greater economic benefits for independent producers due to local content guidelines, increase in languages other than English and an increase in radio current affairs. The SABC license conditions issued by the regulator are, according to the SABC, increasing the "public service" value of the SABC. Therefore ICASA is contributing towards safeguarding the SABC's crucial components required for a public service broadcaster and hence the public service benefits of such a broadcaster.

Subsequently, ICASA is thus contributing to safeguarding the democratic role of the SABC, by contributing towards its "public service" value. The theoretical framework highlights that a public service broadcaster has an important democratic role and as such requires regulation to protect this role (Siune 1998). The public interest theory of regulation best explains the value to of ICASA's regulations, in its expression that a regulator serves the public interest when it serves democracy. ICASA is serving democracy by contributing towards the SABC functioning in the public interest and therefore as a public service broadcaster, through the SABC license conditions, monitoring and enforcement of it. Therefore, ICASA is to some degree effective in these regulatory practices it employs. The above mentioned interviewees' statements, Annual report, as well as ICASA's quantitative measurement, against theoretical

standards, makes its conclusive that, ICASA to a certain level contributes to the SABC functioning as a public service broadcaster.

**5.2 Problematic regulatory practices**

The regulatory practices that ICASA employs to monitor the SABC, however, is in some aspects are problematic. ICASA Compliance Officer Sean Rankin states that the SABC is adequately fulfilling its license conditions. Rankin adds that the SABC has never been referred to ICASA's Complaints and Compliance Committee (CCC) for a breach of license. Rankin's statements shows that the regulatory practices that ICASA employs is problematic in the sense that ICASA reports that the SABC is fulfilling its role, however there still exists contrary views to this. However there is evidence to suggest that the SABC is in some aspects is not functioning as a public service broadcaster; this is suggestive that there is a gap in its regulatory practice.

One of the SABC's license conditions is the requirement for the SABC to provide news that is unbiased, is editorially independent and meets the highest standards of journalism. Many of the SABC controversies that have surfaced in the public domain highly question the editorial credibility and editorial independence of the SABC news. The major print media and media advocacy organisation the *Freedom of Expression Institute*, accused the SABC of editorial timidity and self censorship due to its continual withdrawal of the Thabo Mbeki documentary. In the SABC's "blacklisting" controversy the SABC was accused of operating a politically motivated blacklist to exclude controversial commentators, this saga severely tarnished the editorial credibility and questioned the political independence of the SABC. There have also been numerous accusations leveled against the SABC's political independence, due to its alleged pro-Mbeki coverage in the SABC news. The SABC have also been accused of being editorially timid due to its non coverage of the former Deputy President being booed at an ANC rally, and the halting of the circumcision series *Unthunzi Wentaba*. These SABC controversies all show that the SABC's editorial independence and credibility is highly questionable.

ICASA is mandated to ensure that the SABC offers news that is editorially independent and unbiased; however, this escalating evidence suggests that the SABC's editorial credibility is severely tarnished. Nevertheless, the SABC, according to ICASA, is adequately fulfilling its license conditions and has never been charged with a breach of license. This is in discord with one view of the SABC's image as a public service broadcaster that "people lost faith in the SABC and knew it was not independent and became an Mbeki mouthpiece" (*Empire* magazine in February 2008). It is obvious, that there is a major problem with ICASA's regulatory practices. ICASA still concludes that the SABC has not breached its license condition requirement for editorially independent and unbiased news, yet there is growing evidence that suggests that the SABC is very far from producing editorially independent news and programming.

Many interviewees are of the argument that the regulatory practices that ICASA employs are problematic. Ntombela-Nzimande, former IBA/ICASA councilor Libby Lloyd and co-coordinator of the *Save Our SABC* (SABC) coalition Kate Skinner, suggest that ICASA's regulatory practices are unsatisfactory and ineffective. Ntombela-Nzimande argues that ICASA's precise hour and minute monitoring is restricting the SABC and hindering its ability to be creative. Lloyd and Skinner argue that ICASA is not actually conducting in depth monitoring of the SABC, and should rather be focusing on issues such as diversity.

Interviews held for this study present controversial views on the effectiveness of ICASA's regulatory practices. Some interviews suggest that ICASA's regulatory practices are hindering the creativity of the SABC and are not pro-actively monitoring the SABC. It is not surprising that ICASA's regulatory practices, when assessed against these relevant sources, could be seen as "ineffective". Critical political economy of the media is based on the premise that a regulatory system that governs a public service broadcaster can have consequences on the public good and the health of democracy (Boyd-Barrett 2002). The SABC's controversies and interviews confirm that ICASA's regulatory practices perhaps are not the most efficient way to effectively regulate the SABC, so that it plays the role of a public service broadcaster.

An example of a negative consequence of ICASA's ineffective regulatory practices is the SABC's editorial independence and credibility being in free fall. ICASA's regulatory practices are not promoting the SABC's editorial and programming independence. This can be concluded from critical political economy of the media's argument that the role of policy and regulation can constrain editorial and programming independence (Boyd- Barrett 2002; Golding and Murdock 2000; McChesney 2000).

Editorial and programming independence is an important requirement for the SABC, the theoretical framework indicates that editorial and programming independence is a crucial component required for a public service broadcaster (Curran 1991; McChesney 1999; Siune 2001; Eko 2000). ICASA's failure to effectively regulate this crucial aspect of the SABC results in a gap to democracy and is in discord with the SABC's important democratic role, which regulation should protect (Siune 1998).

### 5.3 Antagonistic relationship

While one dimension of ICASA and the SABC's relationship is co-operative, there is nevertheless another dimension, amongst others, that can be categorized as antagonistic. An ICASA Compliance Officer and one of the longest standing members at the IBA/ICASA Sean Rankin, argues that the biggest challenge for the regulator in its regulation of the SABC is that although there exists a co-operate relationship to a certain level, it still needs to ensure an all round co-operative and respectful relationship. Rankin argues that the SABC has an "arms length" relationship with ICASA. The "Structural" explanation best explains the problematic nature of ICASA and the SABC's relationship. It is not surprising that ICASA and the SABC's relationship is cited by Rankin as the regulator's key challenge in its regulation of the SABC. This rationale by Rankin can be supported by the "Structural" analysis which explains that the relationship between institutions can be an impediment to an institution's effectiveness (Golding and Murdock 1997). The "Structural" explanation is thus a significant benchmark in concluding that this relationship is a barrier and a major challenge to effective regulating by ICASA.

ICASA's ability to effectively monitor and enforce compliance with the SABC's license conditions is hindered by the rigid protocol that exists in the lines of communication. Rankin recalls an occasion when he could not visit a SABC radio station because the SABC did not respond to his request to visit a SABC radio station. ICASA's Compliance Officers are required to liaise with the SABC's Policy and Regulatory Affairs Department for the necessary permission to visit any of the SABC stations. Rankin adds that this process frustrates the task of the Compliance Officers. Rankin's argument thus brings to the fore

another adverse factor that impacts on the level of effectiveness in ICASA's regulating of the SABC, thus affirming the regulator's ineffectiveness.

When one institution is not co-operative with the other, their relationship becomes strained. The "Structural" explanation best explains this aspect of ICASA and the SABC's relationship. This approach is premised on the belief that the relationship between institutions that restrict the options of individuals within those institutions, can lead to the perversion of the public interest (Golding and Murdock 1997). The SABC is restricting the ability of ICASA Compliance Officers to fully monitor it by not fully co-operating with the regulator. When one organisation is not co-operative with the other it breeds antagonism. The "Structural" explanation is evident in ICASA's regulation of the SABC; their strained relationship is cited, by Rankin, as an obstacle to ICASA effectively regulating the SABC. Thus, the SABC's is not fully co-operative with ICASA regarding the regulatory visits it needs to conduct, which is restricting the ability of ICASA Compliance Officers to fully monitor the SABC.

This antagonistic relationship is a serious obstacle to ICASA effectively regulating the SABC, because it is cited by Rankin as the main challenge to the regulator's regarding its mandate of the SABC. The "Structural" reason best explains the consequences of this aspect of their relationship; this theoretical approach contends that relationships can pervert the public interest. In ICASA's case it is directly affecting its ability to fully regulate the SABC, ICASA and the SABC' relationship is highly problematic and not the "norm" between a regulator and regulated industry, because Rankin argues that ICASA gains respect from other broadcasters and do not have trouble conducting monitoring visiting to them. Rankin contends that ICASA gains respect form E-TV and MNET and has an incredibly good relationship with them. Rankin adds that ICASA has no problems with other broadcasters, and are co-operative in terms of visits and inspections. Thus, the SABC's and ICASA's antagonistic relationship, specifically the SABC not always being co-operative with ICASA, is undermining its ability to effectively monitor and ensure compliance with the SABC license conditions. The public interest therefore, is perverted due to the relationship between these two institutions.

### 5.4 The SABC's problematic commercial funding model

The SABC has a commercially driven funding model of which ICASA has not played a pro-active role. The SABC is funded primarily by commercial sources (SABC Annual Report 2007). In fact, press reports, interviews and the SABC Annual Report 2007 all express that the SABC's commercial funding model is a problematic factor that inhibit the functioning of the SABC as a public service broadcaster. Interviewees, among them SABC board member and former IBA/ICASA councilor Nadia Bulbulia, highlight the SABC's problematic funding model, she argues that the SABC's commercial funding model is its biggest problem. The SABC's Chief Executive Officer Dali Mpofu posits that the SABC's over reliance on commercial funding in relation to other sources is "in my view the single most important issue facing the corporation and all those who care for a true public service broadcaster which is accountable to the public and neither inherently susceptible to commercial nor state power" (The SABC Annual Report 2007). The SABC's funding model is such a topical issue that it is identified by its Chief Executive Officer, as a huge impediment to the SABC's playing the role of a public service broadcaster and functioning free from state and commercial interference.

The SABC's commercial funding model is a barrier to it playing its role of a public service broadcaster. Theories of public service broadcasting best explain the problematic nature of the SABC's commercial funding model in which the theoretical framework indicates that a commercial funding model produces commercially driven content, interferes with the public service broadcaster's editorial independence, and will predominantly cater for people with the highest buying power (Schudson 2003; McChesney 1999). A commercial funding model also treats people like consumers rather than citizens which lead to the neglect of the public interest (Hoynes and Croteau 2001). This has adverse implications for the health of democracy, because democracy requires a well informed citizenry, and a public service broadcaster should address all like citizens and provide them with the information that is needed to take part in civic life (Cardiff and Scannell 1987). Therefore, the SABC's commercial funding model is a huge impediment to the intended the role of a public service broadcaster, as it propels it to inevitably produce profit driven programming and be highly vulnerable to commercial interference. It can be concluded that the SABC's commercial funding model leads to the neglect of the development of a healthy citizenry, by producing profit-driven programming at the expense of producing vital information needed for a healthy citizenry. This consequently derails the SABC's arm, hence impeding delivery of its public service mandate. The failure of ICASA effectively playing a pro-active role in this funding model, to certain a degree, contributes to this impediment.

Numerous entities call on the government to increase funding so that the SABC does not have to rely on commercial sources of funding. The SABC Annual Report 2007 indicates that the SABC has been engaging Parliament and the Minister of Communications on its funding model. Amidst these countless debates, ICASA is "invisible". Rankin argues that when ICASA's Compliance Officers compile a report on the SABC's programming they do take into consideration how the SABC's funding affects its ability and lack thereof to produce programming. Ntombela-Nzimande states that the SABC invites ICASA on a panel to express their views on the SABC's funding model. Rankin and Ntombela-Nzimande's statements affirm that ICASA is not pro-actively involved in the SABC's funding model; the regulator just takes into consideration how the SABC's funding affects its programming. The SABC's initiative in inviting ICASA is a reflection of its lack of initiative in the SABC's funding model.

In terms of ICASA's mandate regarding the SABC's funding, it may request the SABC's financial statements and also set quotas for advertising, for example, an existing quota demands that advertising may not exceed twelve minutes in an hour (SABC television and Radio licenses). Although ICASA does not have mandate with regard to the SABC's funding model, the SABC's funding model does indirectly affect the regulator's jurisdiction of the SABC's universality, accessibility, diversity of and in programming and editorial independence (SABC television and radio licenses; SABC Charter). The theoretical framework establishes that the funding of a public service broadcaster affects the ability of the broadcaster to deliver these key characteristics (Curran and Seaton 1997; World Television Council 2000). Hence, the SABC's commercial funding model inhibits the SABC in delivering its public service mandate and therefore necessitates that ICASA undertake a pro-active role in the SABC's funding model.

Interviewees agree with this argument that ICASA should be taking a more pro-active role in the SABC's funding model. Ntombela-Nzimande argues that ICASA has a responsibility to argue with the SABC to the fiscus, to increase government contribution to the SABC. Wits University Professor of Journalism Anton Harber contends that ICASA essentially should be

setting the ground rules for the SABC's funding model and stating what type of public service broadcaster they would like to see, and the impact of the funding model on the industry as a whole. Harber adds that ICASA should take the independent view in the SABC's funding model and host public hearings where government can attend. Former IBA/ICASA councilor Libby Lloyd argues that ICASA should be taking a more pro active role in the SABC's funding model. Thus, interviews held for this study affirm dissatisfaction at ICASA's absence of a pro-active role in the SABC's funding model.

The consequences of the SABC's commercially driven programming, is best explained by critical political economy of the media. Critical political economy of the media states that commercially driven media influence the content and the democratic functioning of the media in ways that undermine the development of an informed citizenry (McChesney 1998). It can therefore be concluded that ICASA's lack of pro-activeness in the SABC's commercial funding model is not serving the public interest and not cultivating a healthy democracy. Furthermore, the regulator is not making any attempts what so ever to protect the South African public from the "commercial nature" of the SABC, and is thus responsible for not upholding the public interest. Thus, one dimension of ICASA's regulation of the SABC can be characterized by a lack of initiative pro-activeness in the SABC's problematic commercial funding model. Consequently ICASA is in effect passively promoting the SABC's commercial impediment.

### 5.5 "Silent" regulation

One of the other dimensions of ICASA's regulation of the SABC can be characterized as silent. The regulator is voiceless and fails to take any action in the SABC's many controversies, some of which include the "blacklisting" saga, the *Freedom of Expression Institute's* complaint, the suspensions of SABC Group Executive of News and Current Affairs Snuki Zikalala and SABC's Chief Executive Officer Dali Mpofu and calls for the SABC board to step down.

Many interviewees voice dissatisfaction at ICASA's silence in the SABC's controversies, and call on ICASA to take specific action. This section highlights the interviewees' perspectives on ICASA's "silence", ICASA's view on the controversies, and also presents an analytical perspective on ICASA's regulatory practice of "silence".

#### 5.5.1 The "blacklisting" saga and the *Freedom of Expression's Institute's* complaint

In 2008 the *Freedom of Expression Institute* submitted a complaint to ICASA, the organisation called on the regulator to enforce the SABC's license conditions because of its "silence" amidst the "blacklisting" saga. In the "blacklisting" saga the SABC's was accused of operating a politically motivated "blacklist" to exclude controversial commentators. The commentators were considered to be outspoken and generally critical of President Thabo Mbeki. The SABC initially denied the existence of the "blacklist" and appointed the Sisulu Commission of Enquiry to investigate the allegations. The Sisulu Commission of Enquiry confirmed the existence of a "blacklist"; however the SABC failed to address the findings of the Commission, and also refused to release the Commission's full report. In the complaint the *Freedom of Expression Institute* accused the SABC of violating its license conditions and the *Broadcasting Act 1999* as amended because of the SABC's exclusionary list.

ICASA's Complaints and Compliance Committee (CCC) held a hearing to address the *Freedom of Expression Institute's* complaint. The CCC turned down the *Freedom of Expression Institute's* request to subpoena the Sisulu Commission's report into investigations of "blacklisting". The *Freedom of Expression Institute* requested the subpoena because the SABC refused to release the Sisulu Commission's final report. The CCC also ruled that the Sisulu Commission may not be referred to in future proceedings at ICASA. The *Freedom of Expression Institute* was asked by the CCC to show proof that an exclusionary list impacted on the content that the public received, because ICASA will only judge the SABC on what is actually broadcast. This is indicative of ICASA not showing enough "teeth" to hold the SABC accountable to the findings of the Sisulu report. It is a form of passivity to not take any action to eliminate irregularities of editorial and programming independence at the SABC.

Many interviewees expressed dissatisfaction at ICASA's ruling in the *Freedom of Expression Institut*e's complaint. Skinner states that at the hearing, it seems that ICASA possessed a kind of fear in holding the SABC to account. Harber contends that ICASA was unable to act against the SABC and "was like putty and did not assert their authority". Harber adds that the "SABC looks big and powerful and ICASA looks small" when in fact it should be other way around. Lloyd states that the *Freedom of Expression Institut*e's complaint shows that ICASA seems to be narrowly defining its role by stating it can only judge the SABC on what is actually broadcast. Ntombela-Nzimande argues that ICASA should be pro-active and not wait for a complaint from citizens to get involved.

Skinner posits that on the issue of the SABC's Sisulu Commission, ICASA should be investigating the Sisulu report itself. Skinner adds that ICASA should be undertaking pro-active investigating to ascertain whether the SABC are fulfilling their license conditions. Skinner furthermore argues that the *Save Our SABC* (SOS) coalition is of the view that throughout the "blacklisting" crisis, there was "deafening silence" from ICASA, when it should be holding the SABC to account on the Charter and license conditions. The interviewees therefore, affirm that ICASA's "silence" in the SABC's "blacklisting" controversy, and its ruling on the *Freedom of Expression Institute's* complaint, results in it ineffectively regulating the SABC.

### 5.5.2 The suspensions

In 2008, the SABC's Group Executive of News and Current affairs Snuki Zikalala and the SABC's Group Chief Executive Officer Dali Mpofu were suspended. A Johannesburg High Court Judge ruled that the SABC's chairperson Khanyi Mkhonza, had handled the meeting in which Dali Mpofu was suspended, in a manner that fell short of a Director who is supposed to act "independently, openly, with integrity and honesty". Amidst this controversy ICASA failed to make its voice heard. Interviewees express unhappiness at ICASA's "silence" and offer suggestions on what the regulator should have done amidst this controversy. ICASA's failure to make its presence known in this controversy, is suggestive that it has a "don't care a damn attitude" even if the SABC strategic component is in strife and could have adverse effects on its overall delivery as a public service broadcaster.

In this controversy members of the SABC board, Executive and management publicly turned on one another. Ntombela-Nzimande argues that when there are "squabbles" in the public domain involving the SABC it should be "ICASA's business". Ntombela-Nzimande adds that amidst the SABC's suspension controversy, ICASA should have stepped in and asked the SABC if the newspaper reports are correct, and if ICASA should have penalized the SABC if

necessary. Ntombela-Nzimande adds that ICASA should have also reminded the SABC management and board of their responsibility to the public and to stay focused on their mandate. She adds that she "does not like the regulator's silence" and that ICASA is losing credibility as an authority because of its "silence". Libby Lloyd, who is a former IBA/ICASA councilor, argues that ICASA should have held a meeting with the SABC, to ensure that the suspensions are not adversely affecting its business plan. Therefore, interviewees support that ICASA's "silence" is contributing to the ineffective regulation of the SABC.

### 5.5.3 Calls for the SABC board to step down

A significant number of calls emerged for the SABC board to step down, this controversy unfolded in June 2008. There was a wrangle between the Parliamentary Committee on Communications which had passed a vote of no confidence in the SABC board, and President Thabo Mbeki who refused to budge in terms of dismissing the board members. Parliament wanted to dissolve the existing SABC board, while the President and Minister backed the body. Members of Parliament tabled a Bill to give them the authority to dissolve the SABC board. Parliament even held hearings into a change of law that would see the SABC board dissolved. The SABC Executive also called on the SABC board to step down immediately because in their view the SABC board "does not have the moral authority to continue to lead the SABC". SABC staff members signed a petition calling for the removal of the SABC board from office. The SABC board responded and condemned the Executive members that signed the petition. In this controversy, Members of Parliament, the former President Thabo Mbeki, the SABC Executive and the SABC board were involved in a huge "public spat". If an organisation's board and Executive have a public disagreement of this nature, it will inevitably distract them from the organisation's mandate and divide the organisation into different factions. The board and the Executive are the most important personnel of an organisation, due to the importance of their decision making. An organisation that has its most important personnel involved in a "public spat" is inevitably going to result in chaos amidst the organisation. Amidst this "public spat" ICASA was "silent" which is indicative of its refusal to take a stand and use their authority to attempt to correct the situation. This is also suggestive of a waste of authority and "teeth", ICASA is thereby allowing the adverse factors to prevail.

Interviewees expressed that ICASA should have been involved in the proposed Broadcasting Amendment Bill that sought to facilitate changes in the SABC board. Lloyd argues that ICASA should have made submissions on the Broadcasting Amendment Bill however "they totally stayed out of it". Koster re-iterates this argument and contends that ICASA should have submitted a strong presentation when Parliament sought to amend the Broadcasting Act. Skinner argues that on the issue of the SABC board, the only institution taking an initiative is Parliament by passing out controversial bills. Skinner adds that Parliament is taking some sort of initiative unlike ICASA who remains "silent". Therefore, interviewees support the view that ICASA should have assumed involvement in this controversy and not remained "silent".

### 5.5.4 ICASA's regulatory practice of silence

ICASA has a regulatory practice of "silence"; its view is that that the SABC controversies do not fall within its mandate. ICASA Compliance Officer Sean Rankin argues that the SABC controversies only concern the regulator if it is a license contravention otherwise it is "none of ICASA's business". Rankin furthermore states that any allegations about the SABC are noted in ICASA's Compliance function. Rankin's statement is problematic because it shows

that ICASA is limiting its regulatory functions role to just measuring compliance with the quotas, as outlined in the SABC's license conditions. Rankin's statement also shows that ICASA is not willing to get pro-actively involved in the SABC's controversies, thus the regulator is narrowly defining its role.

The *Freedom of Expression Institute* accused ICASA of having a "deadly silence" and neglecting their duty, amidst the SABC's suspensions controversy. ICASA's Chairperson Paris Mashile responded to these accusations saying it is an internal matter and they wish the SABC well in resolving it. Paris Mashile's statement confirms that ICASA is not willing to play a pro-active role in the SABC's controversies, even of it could have a detrimental affect on the SABC's performance. The SABC's suspensions controversy was a significant issue that could have affected the "health" of the SABC. The Minister of Communications along with many of the opposition parties publicly expressed great concern at the suspensions. Executive Director of the National Association of Broadcasters and former Head of ICASA's Monitoring and Complaints Unit, Johann Koster argues that the problem with ICASA is that it does not make its voice heard in the SABC's controversies. ICASA refuses to take any action in the SABC controversies and also does not express its views when the controversy emerges. This shows that ICASA has a regulator practice that can be characterized as "silence".

ICASA does not fulfill its regulatory mandate to a certain degree because of its regulatory practice of "silence". ICASA is mandated to protect the integrity and viability of the SABC, and ensure that it is editorially independent. Although Rankin states that the SABC's controversies are none of "the regulator's business" unless it is a violation of license condition, many of the SABC debacles do involve the SABC's license conditions. The "blacklisting" saga does concern the license condition that requires the SABC news to be editorially independent and meet the highest standards of journalism. The "blacklisting" saga birthed accusations against the SABC of self-censorship and a lack of freedom to enjoy journalistic creativity. The Sisulu Commission of Enquiry, appointed by the SABC to investigate the allegations of "blacklisting", found that there was a "phenomenon of self-censorship" and that Snuki Zikalala used a form of exclusion that was not sustainable. The suspensions of the SABC's two Executives could have affected the business performance and financial "health" of the SABC. The SABC's business performance and financial "health" do fall within the ICASA's mandate to "protect the viability of the SABC" *(Electronic Communications Act 2005)*.

The SABC's controversies also concern ICASA's mandate to "protect the integrity of the SABC" (*Electronic Communications Act 2005*). The SABC's numerous debacles have severely damaged the image of the public service broadcaster, one view is that it is an "Mbeki mouthpiece" (*Empire* in Feb 2008). ICASA could have been pro-active and taken its own steps to assess the truthfulness of some of these accusations, such as conduct its own investigation. The *Media Monitoring Project* conducted research on the SABC's news, it found that not there was no political bias, however it identified that the use of a single source per story resulted in limited diversity and balance (*Mail and Guardian online* in Aug 2008). The research conducted by the *Media Monitoring Project* makes findings on issues that ICASA are mandated to regulate, so one questions why ICASA has never made important findings similar to this. It is clear that ICASA is not pro-actively and effectively regulating the SABC.

The public interest theory of regulation is useful is explaining this "silent" dimension of ICASA's regulation of the SABC. This approach states that regulators are created to essentially protect democracy (Golding and Murdock 1997). Some of the SABC's debacles affect one of the SABC's important public service broadcaster characteristics, namely its obligation to be editorially independent (Curran 1991; McChesney 1999). In spite of this, ICASA is not pro-active in protecting the SABC's editorial and programming independence, and remains "silent". ICASA's "silence" therefore is not contributing towards the protection of the SABC's democratic role (Siune 1998). The integrity of the SABC continues to be "in total free fall". Therefore, ICASA's regulatory practice of "silence" in the SABC's controversies is hindering ICASA from effectively regulating the SABC so that it plays the role of a public service broadcaster.

### 5.6 "Troubled" regulator

ICASA's institutional weaknesses have contributed its formation of a "troubled" regulator and hence a weakening in its ability to effectively regulate the SABC. The "perverted" public interest theory of regulation provides essential insight in identifying and explicating the factors that distort the public interest, and thus undermining the regulator's ability to be effective. This approach exposes the failures of regulation and gives reasons why it occurred, through the use of Influence models, namely "Instrumental", "Structural" and "Capture' explanations (Golding and Murdock 1997).

The characteristics located in this theory for an independent regulator are used as the yardstick to measure ICASA's level of institutional strength and expose the hindrances to its effectiveness. The theoretical framework's standards for an effective regulator include the following, it must be independent from powerful interests in society, have a participatory and transparent appointment process, adequately skilled personnel, public accountability mechanisms and adequate funding. In measuring ICASA's institutional standards against that of the "perverted" public interest theory, it falls short in that it lacks independence, has a "politicized" appointment process, inadequately skilled membership, "politicized" and inefficient accountability mechanisms as well as insufficient funding. Hence, a "troubled" and ineffective regulator.

#### 5.6.1 Lack of independence

An independent regulator should be independent from government ministries, so that it is able to enjoy its independence in reality (Kupe 2003). ICASA does not enjoy independence from government ministries because it is accountable to Minister of Communications and Minister of Finance, both of whom are political appointees. The finances must be decided by these Ministers (*ICASA Act 2000* as amended). The consequences of the problematic nature of ICASA's independence can best be affirmed by the "Instrumental" explanation wherein it indicates that a perversion of the public interest may arise due to "Instrumental" reasons of regulators being uniquely vulnerable to political pressures (Golding and Murdock 1997). ICASA is especially vulnerable to political pressure from the Minister of Communications because s/he is vested with crucial roles in the council's appointment, performance agreements, performance bonuses, firing of employees and finances matters. ICASA councillors are also accountable to the Minister of Communications with regards to their performance and determining their performance bonuses.

The Ministers crucial roles at ICASA are not in conformity with the theoretical framework that requires an independent regulator to be independent from government ministries. On the contrary, the Minister of Communications is given an immense amount of power at ICASA. Since, the Minister of Communications, can set performance targets, determine councillor's performance bonuses, evaluate councillors, have the final say in the appointment of councillors, it is unrealistic for ICASA to be able to enjoy its independence. An independent regulator must be able to enjoy its independence in reality (Hutchison 1999). This institutional weakness at ICASA, of not being able to enjoy its independence in reality, could be undermining effective regulation.

The problematic nature of ICASA's independence is a topical issue. The majority of interviewees and many press articles suggest that ICASA's independence is in fact eroded due to the Minister of Communications role at the regulator. The Minister's involvement in these areas are said to compromise ICASA's independence because, she is a political appointee and yet performs key roles at ICASA. The *Mail and Guardian online* argues that the Minister's role in the appointment process and her power to "performance manage" the Councillors, all amounts to "a reduction in the autonomy of ICASA" (July 2006). These sources also point to ICASA's institutional weakness in that it suffers a lack of independence, affirming an inability to regulate effectively.

The theoretical framework establishes that a regulator that does not enjoy its independence in reality is illegitimate and is unable to be effective. Within the context of this framework it can be said that ICASA is illegitimate and unable to be effective. Other interviewees also suggest that ICASA's problematic independence is the reason for ICASA's ineffective regulation of the SABC. Wits University Professor of Journalism Anton Harber argues that ICASA's regulation of the SABC is problematic due to its lack of independence. Harber adds that ICASA has not done anything noticeably independent for a while and are passive, so they are in affect, letting the Minister of Communications play a greater role at the SABC than she should be. Harber argues that an example of this passivity includes the issue of the SABC's Shareholders Compact; ICASA should have assessed this Compact and check its conflict with the *Broadcasting Act 1999* as amended.

Harber's argument that ICASA should have taken some sort of action in the SABC's Shareholder Compact, is in conformity with the theoretical framework. The theoretical framework establishes that a public service broadcaster must be institutionally independent from the state so that it is able to enjoy editorial independence (Eko 2000; ARTICLE 19 2002). ICASA's is mandated to ensure that the SABC is editorially independent (SABC television and radio license). However the SABC's Shareholder Compact affects the ability of the SABC to be editorially independent. The SABC Annual Report 2007 reports the details of the SABC's Shareholder Compact. The Compact stipulates that the SABC board is accountable to the Minister of Communications, in terms of the SABC's Corporate Plan that sets out the SABC's key performance areas. Therefore, the Minster of Communications is vested with the important role of evaluating the SABC's performance. This is an erosion of the SABC's independence because a public service broadcaster must be entrusted to an organisation that enjoys enough independence to prevent political and bureaucratic interference (World Television Council 2000). Unfortunately, the SABC does not enjoy enough independence due to political and bureaucratic interference wherein the SABC board is accountable to the Minister of Communications, who is a political appointee, and therefore the public service broadcaster is particularly vulnerable to pressure from the Minister.

It can be deduced that the SABC institutional independence is compromised by its Shareholder Compact, this results in the SABC's editorial independence being threatened. ICASA is mandated to ensure the editorial independence of the SABC; however, it did not take any action regarding the Compact. Perhaps ICASA did not take any action against the Minister of Communications as a result of fear, due to the important roles the Minister plays at ICASA. It is therefore vitally important for a regulator to be independent from government ministries, so it is able to take independent stands when needed to, and not be fearful of what the Minister of Communications could possibly do to at regulator.

Interviewees also authenticate this argument that the Minister of Communications' role at ICASA could lead to the regulator operating in fear of taking any actions that might displease the Minister. Koster argues that the Minister's involvement at ICASA could result in it not regulating in the "public interest" and rather in the "Ministers interest". Koster adds that ICASA councillors could also operate in fear of their performance bonus being affected. Therefore, the perversion of the public interest could prevail at ICASA because its councillors are vulnerable to political pressure from the Minister of Communications, and could perform out of fear and in favour of the Minister as it could possibly impact on their performance bonus or result in backlash.

ICASA's eroded independence could result in it the non-representation of the public interest and it being vulnerable to "capture by the SABC. A regulator's independent institutional location ensures that it represents the public interest and not the powerful interests (ARTICLE 19 2006). The perversion of the public interest can emerge due to "Capture" occurring, which results in a regulator systematically favouring the private interests of regulated parties and systematically ignores the public interest (Golding and Murdock 1997). The Minister of Communications prominent role at ICASA could result in it representing the Minister's interests at the expense of the public interest, due to fear and vulnerability to political pressure.

Interviewees suggest that the public interest is being perverted because ICASA is trying to please government. Lloyd argues that "ICASA is appeasing both the broadcasters and government and the public is getting neglected in it all". Lloyd adds that the ICASA is scared of taking positions seen as opposing government, evident in it not making any submissions on the latest amendment Broadcasting Bill about the SABC removal clauses. Lloyd's argument has substance in that this proposed SABC removal clauses states that a SABC board member can be removed from office if they are in conflict with the SABC Charter. ICASA is required to monitor and enforce compliance with the SABC Charter. The proposed removal clauses involved the SABC Charter, yet ICASA did not make a submission or make its voice heard.

ICASA could systematically favour the SABC by not taking a "firm stand" when necessary, this could lead to it being "Captured" by the SABC, out of fear of the government. Therefore, a possible factor undermining ICASA's ability to regulate the SABC effectively is a lack of independence in reality which is leading to the public interest being perverted, an illegitimate regulator and possible "Capture" by the SABC.

### 5.6.2 "Politicized" appointment process

Ideally, appointments to the council of an independent regulator, should be conducted through a participatory and transparent process (ARTICLE 19 2006; Kupe 2003). ICASA's

appointment process is required to be characterized by public participation and transparency (*ICASA Act 2000* as amended). The *ICASA Act 2000* details ICASA's appointment process as follows, the Minister of Communications makes recommendations from a list of suitable candidates given by the National Assembly, if the National Assembly is not satisfied by the recommendations they can ask the Minister to review the decision taken. When the National Assembly approves of the Minister's recommendations, the Minister appoints the chairperson (The *ICASA Act 2000)*. This process creates opportunity for ICASA's appointment process to be highly "politicized" and hold possible erosions to its independence in that, the Minister of Communications is a political appointee, whose prominent role can possibly manipulate the process to one's favour. Although the public, National Assembly and technical experts are also required to participate in the appointment process, it is the Minister of Communications who inevitably appoints the councilors and chairperson.

As already mentioned, the Minister of Communications could appoint personnel based on the "Minister's interest" rather than the "public interest". ICASA's "politicized" appointment process can be explained in the light of the "Structural" explanation. The "Structural" analysis contends that political entities can use the appointments to reward and retain the political support of important regulated industries (Golding and Murdock 1997). The Minister of Communications and political parties within Parliament could appoint the people that the regulated industry approves of, in an attempt to retain political support from the industries. This inevitably perverts the public interest for selfish political gains.

The "politicized" nature of ICASA's appointment process is highlighted by press reports and numerous interviewees. Press reports and interviewees suggest that ICASA's appointment process represents political interests and does not remove all the power away from the ruling party. The *Mail and Guardian online* in June 2006 argued that ICASA councilors are appointed and managed in a way that diminishes their independence. Lloyd argues that ICASA's appointment process has limited its independence. Interviewees also argue, among them Koster and Lloyd, that ICASA's appointment process has potential for political parties to horse trade. Harber argues that horse trading between political parties does not appoint the "best people for the job". Thus, the "politicized" nature of ICASA's appointment process is a very topical issue and recognized as problematic and an institutional weakness. ICASA's "politicized" appointment process has potential for political horse trading, which means that the "best" people for the job would not be appointed.

ICASA's "politicized" appointment process affects its ability to effectively regulate the SABC, because the theoretical framework established that a regulator's appointment process can affect the independence of a regulator and thus its effectiveness (ARTICLE 19 2006). Interviewees, among them Harber and Skinner contend that ICASA's problematic appointment process is undermining its ability to regulate the SABC effectively. Harber and Skinner add that ICASA's "silent" voice in the many SABC debacles is due to it appointing more "political" people rather than councilors who can assert an active role. Therefore, ICASA's "politicized" appointment process could be resulting in ICASA not possessing the "best" people and specialized skills that is required to effectively regulate the SABC.

The theoretical framework established that a political appointee would not serve the public interest and would be especially vulnerable to political pressure. In order for ICASA to effectively regulate the SABC so that it functions as public service broadcaster, it is crucial that the "best people for the job" are appointed. The "Instrumental" explanation contends that when personnel within a regulator are vulnerable to political pressures, the public interest is

perverted. Thus, ICASA's "politisized" appointment process could be appointing people that would be highly vulnerable to political pressure because political appointees are particularly vulnerable to pressure from the people that influenced their appointment, and possibly would have to perform "political" favors for them.

### 5.6.3 Inadequately skilled personnel

An independent regulator should be equipped with people that are suitably qualified to provide the regulator with the necessary knowledge to effectively regulate the various industries (ARTICLE 19 2006). The majority of interviewees, press reports and the ICASA Annual Report 2007 confirm that ICASA is inadequately skilled and has difficulty in retaining its skilled people. A communication lawyer Lisa Thornton argues in April 2006 in the *Mail and Guardian online*, that "ICASA is 100% incapable of regulating pricing because it simply doesn't have the knowledge or the staff. Thornton's statement reveals that ICASA does not possess the necessary skills to perform effectively. The ICASA Annual Report 2007 affirms that ICASA has "human capital challenges". It can therefore be said that ICASA's effectiveness is undermined because it is not equipped with enough skilled people. Press reports, interviewees and the ICASA Annual Report 2007 reveal that ICASA's lack of skills leads to damaged work, it not adhering to time frames, canning projects, and an inability to fulfill its mandate. This can be seen as an institutional weakness which is not in accordance to the required standards mentioned, that an independent regulator should have adequately skilled personnel.

ICASA's high vulnerability to staff "poaching" results in the regulator suffering a lack of skills. Interviewees, press reports and ICASA itself, confirms ICASA's problem with staff "poaching". Many interviewees among them former IBA/ICASA councilor and current SABC board member Nadia Bulbulia, ICASA councilor Kobus Van Rooyen and Rankin, argue that ICASA's most competent staff with sound institutional memory are constantly being "poached". Lisa Thornton, a communications lawyer argues in April 2006, in the *Mail and Guardian online*, that ICASA serves as a training ground for talent that is often "poached by cash-flush industry giants such as MTN and Vodacom". The ICASA Annual Report 2007 also confirms that ICASA's experiencing challenges with "poaching". Van Rooyen contends that the regulator fears the "poaching" of its senior and most experienced staff. Thus, ICASA's personnel are highly vulnerable to staff "poaching" and when "poaching" occurs it negatively affects the performance of ICASA. ICASA's inadequately skilled personnel and staff "poaching" are having dire consequences on the organisation and its effectiveness. This is not surprising since the theoretical framework establishes that a regulator requires the necessary skills to be effective (ARTICLE 19 2006).

The "Instrumental" explanation best explains ICASA's problem with staff "poaching". The "Instrumental" explanation argues that the public interest can be distorted through the future orientation of personnel seeking to safe guard their employment opportunities in the regulated industry (Golding and Murdock 1997). ICASA's vulnerability to staff "poaching" could distort the public interest in that staff could make decisions based on their own "future employment interests". ICASA's staff could seek to safeguard future employment opportunities and as a result could neglect the "public interest".

It can be concluded that ICASA is not equipped with the adequate skills it needs to fulfill its mandate, and is therefore perceived as a "troubled organisation". The skilled people that ICASA does posses are speedily "poached" by the industry, resulting in a "severely

weakened organisation". The theoretical framework establishes that a regulator requires adequate skills to effectively regulate (ARTICLE 19 2006). ICASA's lack of skills is affecting the ability of the regulator to effectively regulate the various industries. Former IBA/ICASA councilor Libby Lloyd posits that ICASA requires more skills such as people that are equipped to conduct economic analysis. Lloyd adds that with skills such as economic analysis ICASA would be enabled to "really question the SABC on where they are spending their money". ICASA requires more skills to effectively regulate the SABC so it can really hold the SABC accountable and regulate it in the public interest.

### 5.6.4. "Politicized" and "inefficient" accountability mechanisms

An independent regulator's accountability mechanisms should not undermine its independence (Kupe 2003; ARTICLE 19 2006). ICASA has an accountability mechanism that compromises its independence and thus effectiveness.

ICASA has a "politicized" accountability mechanism. ICASA's councilors are accountable to the Minister of Communications with regards to the fulfillment of performance targets of which the Minister also determines their performance bonuses (The *ICASA Act 2000 as amended*). ICASA's reporting line to the Minister of Communications is problematic because this is a political appointee. The "Instrumental" explanation best explains the problematic nature of this accountability mechanism. The "Instrumental" explanation contends that the perversion of the public interest can transpire due to regulators being uniquely vulnerable to political pressures (Golding and Murdock 1997). There is a high possibility that the Minister of Communications could pressurize ICASA's councilors. The Minister could pressurize ICASA councilors to perform a duty that is not in the public interest, or attempt to assess the regulator according to selfish political and economic interests, and not according to the public interest.

Interviewees also suggest that ICASA's reporting line to the Minister of Communications undermines the regulator's independence. Koster is one of the interviewees that highlight the problematic nature of ICASA reporting to politically motivated people running the country; the councilors could operate in fear of backlash. Koster adds that ICASA should rather report to Parliament and not to a specific Minister. Lloyd states that ICASA's performance agreements with the Minister of Communications are problematic because this could lead to councilors operating "in fear of their performance bonus being affected". Therefore, ICASA's reporting line to the Minister of Communications is not independent and thus problematic. ICASA is highly susceptible to political pressure from the Minister. There is also a high possibility that ICASA's councilors would succumb to the political pressure as their performance bonuses could be affected. Thus, ICASA has an accountability mechanism that lacks independence and hinders it effectiveness.

An independent regulator should have accountability mechanisms in place, that are characterised by openness and transparency (ARTICLE 19 2006). ICASA is not transparent and open to the public regarding important regulatory decisions and matters, and thus ICASA is not sufficiently accountable to the public.

ICASA's inaccessible website confirms that ICASA is not openly and transparently accountable to the public. The July 2007 issue of the *Media* magazine nominated ICASA's website as "Not the medium of the month", as the magazine received several complaints concerning the websites lack of regulatory information. The *Media* magazine reported that

"the ICASA's website should be the local hub of information related to broadcasting regulatory issues but instead it is only a source of frustration". ICASA's website is crucial in showing the public ICASA's regulatory activities, and therefore that ICASA is accountable to the public. If the public are not aware of the latest regulatory activities of ICASA, then it is not openly and transparently accountable. The inaccessible state of ICASA's website gives the public the impression that ICASA is non-transparent and "secretive". The *Media* magazine also reported that "many people have lost faith in the authority". ICASA is not sufficiently accountable to the public which hinders the accessibility to vital regulatory information that the public have a right to.

The theoretical framework establishes that an independent and thus effective regulator should have accountability mechanisms that are open, transparent and independent. ICASA's "politicized" accountability mechanism and "inefficient" website undermine its independence and thus effectiveness, which does not conform to these required standards for an independent regulator.

### 5.6.5. "Controversial" mandate and power

An independent regulator should be vested with enough mandate and power so that it can be effective (ARTICLE 19 2006). Legislation regarding ICASA's regulatory role needs serious clarification. The SABC Charter and license conditions show that many of the SABC controversies do fall within ICASA's mandate, like the "blacklisting" saga and withdrawal of the Thabo Mbeki documentary. However ICASA chooses to remain "silent" amidst these controversies, and limits their regulatory role to, as Rankin states, quantitative measuring of genres, language programming and so on. The fact that legislation requires ICASA to protect the SABC's editorial independence and it failed to take any action in the "blacklisting" saga, shows that legislation is not clear enough regarding ICASA's regulatory role.

ICASA's unclear mandate and power is highlighted by some interviewees. Bloom and Lloyd attribute the vagueness of the SABC Charter and license conditions, as the reason for ICASA's "silence" in the SABC's debacles. Lloyd adds "it is not certain what ICASA could have done in the SABC's debacles because the law is vague and ICASA can argue that it is not their responsibility". On the contrary, other interviewees argue that ICASA does have definite mandate to get involved in the SABC's controversies. Ntombela- Nzimande argues that "ICASA does not appreciate the legal "teeth" it has to address the SABC's issues. Whether or not ICASA has sufficient mandate and power is a controversial issue. Most of the interviewees suggest that ICASA is vested with strong mandate and power to perform its functions effectively. Koster argues that ICASA does not utilize the strong mandate and power that it possesses.

ICASA's mandate and power is a controversial issue and thus needs clarification so that it is able to effectively regulate the SABC so that it functions as a public service broadcaster. ICASA's mandate also needs serious clarification because ICASA's narrow interpretation of its mandate is not helping the SABC function as a public service broadcaster. This lack of clarity in mandate also leaves space for one to evade its responsibility. The SABC's tarnished image as a public service broadcaster suggests that the SABC is a shadow of what a public service broadcaster should be. A public service broadcaster has a crucial democratic role and needs regulation to protect this role (Siune 1998). If the SABC is going to fulfill its democratic role and function as a public service broadcaster ICASA's mandate and power needs serious clarification.

### 5.6.6 Lack of independent and adequate funding

An independent regulator should be independently funded so that its independence is not compromised (Golding and Murdock 1997; ARTICLE 19 2006). ICASA is not independently funded because it is financed from money allocated by Parliament and may receive other money agreed upon between the Minister of Communications and Minister of Finance *(ICASA Act 2000 as* amended). This legislation poses possible erosions for ICASA's independence, hence its effectiveness. Parliament itself is not independent and consists of various political parties and these two Ministers are political appointees.

A regulator that is not independently funded is exposed to improper interference (Golding and Murdock 1997; ARTICLE 19 2006). ICASA does not conform to this required standard and accordingly Parliament and the two Ministers could possibly subject ICASA to inappropriate interference. Interviewees, among them Rankin, also highlight ICASA's lack of financial independence.

The "Structural" explanation best alludes to ICASA's problematic funding model. This approach argues that the relationship between institutions that restrict the options of the individuals who make decisions within those institutions does in fact pervert the public interest (Golding and Murdock 1997). Parliament and the government ministries could restrict the options of ICASA's personnel because they could operate in fear of offending the Ministers, because its funding is at stake. Lloyd re-iterates this argument and states that ICASA's financial independence needs to be upheld in reality otherwise "ICASA is perpetually going to be in a position for their budget to be cut if they do anything unpopular". ICASA's lack of independent funding makes the regulator highly susceptible to political pressure and interference, which results in a perversion of the public interest.

Press reports, all interviewees and the ICASA's Annual Report 2007 confirm that ICASA is not adequately funded. An independent regulator should be adequately funded to perform "credible, effective and efficient regulation" (Kupe 2003:6). ICASA's inadequate funding is having calamitous effects on the organisation, which is not surprising, the rationale in the theoretical framework established that an insufficiently funded regulator cannot perform effectively (Kupe 2003:6). Interviews, press reports and the ICASA Annual Report 2007 indicate that ICASA's insufficient funding and capacity is having dire consequences on the regulator. They altogether suggest that insufficiency results in the regulator opting out of court fights with big operators, staff "poaching", damaged work, not adhering to time frames, having less experts that it requires, canning projects, and an inability to fulfil its mandate. ICASA's inadequate capacity to fight legal battles is suggestive of its institutional weakness and, in particular, perverts the public interest. Insufficient capacity to fight legal battles, according to the "Structural" explanation, perverts the public interest, because the regulator is at a disadvantage when arguing cases and the party with the most resources triumphs in most cases (Golding and Murdock 1997).

ICASA's insufficient funds also affect its ability to "effectively, credibly and efficiently" regulate the SABC. ICASA's insufficient funding, according to interviewees, press reports and the ICASA Annual Report 2007, is negatively affecting the ICASA's regulation of the SABC. The ICASA's Annual Report 2007 shows that ICASA conducted the least amount of visits and compiled the least amount of reports on the SABC, as compared to community and commercial broadcasters. Rankin ascribes this "neglect" of the SABC to a human resources problem. The magnitude of the SABC's services requires a greater amount of human

resources as compared to the magnitude of the other broadcasters. Interviewees, among them Bulbulia, Rankin and Bloom, also suggest that a lack of funding is the reason why ICASA's regulation of the SABC is ineffective. Interviewees, which include, Ntombela-Nzimande and Skinner, attribute ICASA's "silence" in the SABC debacles to the regulator not being sufficiently capacitated and resourced. Harber argues that "ICASA is swamped and if they can ignore a problem they will, it is a kind of an enforced passivity".

Therefore, insufficient funding is undermining ICASA's ability to regulate the SABC and results in the SABC being "neglected" in terms of visits and compliance reports, which results in the public interest profoundly distorted. The "neglect" of the SABC is essentially a "neglect" of the public interest, since a public service broadcaster's primary mandate is to serve the public interest (Siune 1998).

ICASA'S insufficient funding furthermore makes it ineffective in its regulation of the SABC because it is, consequently, not equipped to produce quality programming reports. The SABC often question the methodology that ICASA employs in its programming reports. Rankin contends that the SABC objected to "ICASA's Monitoring Report on SABC Television services 2006". Lloyd states that the SABC questioned the methodology, correctness and content of this report, and ICASA agreed to issue an addendum to it because of factual inaccuracies. This Monitoring report undertaken by the regulator is an illustration of the adverse effect of ICASA's insufficient funding.

This Monitoring report is a fair attempt by ICASA to monitor and enforce the SABC's television license conditions, however the report is plagued by factual inaccuracies and methodology flaws, which can be attributed to a lack of funding. Rankin argues that ICASA is under funded and under capacitated in its ability to effectively regulate the SABC. Lloyd posits that "the Monitoring Report on SABC Television services 2006 that was challenged by the SABC on the basis of methodology and factual inaccuracies shows that ICASA's capacity to be able to monitor the SABC needs to be addressed". These statements reveal that ICASA's insufficient funding is hindering its ability to produce quality programming reports. Rankin posits that the SABC begin to question ICASA when it points out issues on the non-fulfillment of its public service mandate. ICASA's attempts of monitoring the SABC, in this case is to a certain degree fruitless due to insufficient funds. The SABC is thus able to challenge ICASA, even though this report finds breaches of licenses. So ICASA is unable to take action against the SABC for the breaches of licenses that are evident in this report, because of flawed methodology.

Therefore, ICASA's insufficient funding and under capacitation, results in it failure to execute "credible, effective and efficient regulation".

### 5.7 Conclusion

This chapter analyzed ICASA's regulatory practices regarding the SABC, the various dimensions of ICASA and the SABC's relationship and ICASA's organisational weaknesses, through employing a combination of complementary theories, critical political economy of the media, theories of regulation as well as public service broadcasting. The chapter analyzed ICASA's regulatory practices, ICASA's role in the SABC's commercial funding model, ICASA and the SABC's antagonistic relationship, ICASA's regulatory practice of "silence" as well as ICASA's status as an independent and thus effective regulator.

# Chapter 6

## Conclusion

### 6.1 Introduction

This study embarked on a critical analysis of the level of effectiveness of ICASA's regulation of the SABC, so that it plays its role of a public service broadcaster. The research questions sought to determine actions taken and not taken by ICASA to ensure that the SABC performs as a public service broadcaster in the public interest. Secondly the factors that might undermine ICASA's ability to effectively regulate the SABC, and lastly ways in which ICASA can be strengthened to be more effective.

### 6.2 "Toothless" regulator

The various characteristics required for an independent regulator can be regarded as the numerous "teeth" required for an independent and thus effective regulator. These characteristics or "teeth" enmesh to deliver effective regulation, without these characteristics or "teeth" the regulator cannot deliver effective regulation. An ineffective regulator is considered a "toothless" regulator instead of a "watchdog" of a democratic society.

Regulators seek to protect citizens and can be perceived as "watchdogs" for a democratic society, the public interest theory of regulation contends that regulators protect the general welfare of society in the face of private corporations (Golding and Murdock 1997). In order for a regulator to be a "watchdog" for a democratic society it is required to be effective, this effectiveness can be achieved by an "independent" regulator. An "independent" regulator should have specific characteristics namely, guarantees of independence, a transparent and participatory appointment process, qualified and independent personnel, accountability mechanisms, sufficient mandate and power, and lastly adequate and independent funding.

The study finds that ICASA has "weak teeth", can be considered a "toothless regulator" and sometimes fails to show more "teeth". The study finds that ICASA possesses some "weak teeth" therefore various aspects of its "teeth" needs be improved so that it becomes an effective regulator. ICASA can increase its effectiveness and therefore strengthen its "teeth" by enhancing its independence in reality, having a less perceived "politicized" appointment process, more skilled personnel, less "politicized" accountability mechanisms, and by a clarification of its mandate and power.

The study's assessment of ICASA's "teeth" establishes that the single biggest and definitive factor for ICASA's ineffective regulation of the SABC is inadequate funding. Inadequate funding is amongst its weakest "teeth" that is evidently affecting ICASA's ability to effectively regulate the SABC so that functions as a public service broadcaster. Interviews, press reports and the ICASA Annual Report 2007 altogether show that ICASA's regulation of the SABC is "suffering" and being "neglected" due to insufficient funding. An increase in funding would allow ICASA to employ more staff on a full time basis to monitor the SABC, upgrade its monitoring equipment to be able to fully monitor the SABC license conditions, have a stand alone department monitoring the SABC, produce methodologically sound monitoring reports of SABC television, conduct more visits and compile more reports. Therefore, ICASA is unable to effectively regulate the SABC so that it plays the role of a

public service broadcaster, primarily because of a considerable lack of funding. Thus, ICASA's funding can be regarded as one of ICASA's "weak" teeth that are affecting its performance. Insufficient funding is also contributing to ICASA being a "toothless" regulator, because the regulator does not have the financial "muscle" to enable it to effectively monitor and enforce the SABC's license conditions. The biggest factor contributing to ICASA's ineffective regulation of the SABC is inadequate funding and is hindering the regulator from performing "credible, effective and efficient regulation" of the SABC (Kupe 2003:6).

ICASA's lack of funding is resulting in a "domino effect" on some of ICASA's other "teeth". ICASA's inadequate funding is also resulting in ICASA's inability to acquire suitably qualified members, retain the skill it already possesses and maximize its mandate and power. Interviewee, Wits University Professor of Journalism Anton Harber, argues that ICASA "does not have enough power because it is not given enough resources to be able to exercise its power, the suspicion is that they have deliberately starved ICASA of resources on order to weaken its authority". Thus, ICASA's funding seriously needs to be strengthened so that it can effectively regulate the SABC.

There are occasions when ICASA fails to show more "teeth". Numerous interviewees declare that ICASA's problem in effectively regulating the SABC lies with its failure to enforce the SABC's regulations. Harber posits "it seems that ICASA has shown itself to be 'toothless' in enforcing the SABC's license conditions and regulations". Former Head of ICASA's Monitoring and Complaints Unit Johann Koster, argues that communication is a major part of enforcement, and ICASA has never been strong on communication due to under funding. Koster's argument suggests that ICASA is unable to enforce the SABC's license condition because it is weak in communication, which is due to under funding. Therefore, ICASA needs to show more teeth in enforcing the SABC's license conditions; however its "weak tooth", namely funding, is affecting its ability to do so, this results in it being perceived as a "toothless regulator".

ICASA's status as a "toothless regulator" is primarily linked to the regulator's insufficient funding. Insufficient funding is the main reason for the ICASA's "toothless" regulator status. Press reports suggest that ICASA's insufficient funding is recognized publicly by government, Parliament, the industry and the regulator itself (The *Mail and Guardian online*: Oct 2006; *The Media*: Dec 2006). However there could be another explanation as to why ICASA is a "toothless" regulator of the SABC, perhaps a fear or a lack of will. Coordinator of the *Save Our SABC* (SOS) coalition Kate Skinner contends that "despite ICASA being under funded and under capacitated they lack political will, because other countries have far less resources than ICASA and are more proactive than them". Fear and a lack of will are cited by many interviewees, including Koster, Lloyd and Skinner, as the possible reason for the regulator's "silence" in the numerous SABC controversies.

Therefore, it is clear that ICASA is a "toothless" regulator, which has "weak" teeth and often fails to show more "teeth" when required.

### 6.3 ICASA's effective regulation of the SABC

One dimension of ICASA's regulation of the SABC is effective to a certain level and contributes to the SABC performing as a public service broadcaster within this level. This is evident in ICASA's regulatory practice of issuing license conditions and targeting areas for

monitoring that uphold the key public service broadcaster characteristics. However this performance area is quantitative in nature and not the ideal, hence it promotes only a certain level of effectiveness.

### 6.4 ICASA's ineffective regulation of the SABC

ICASA has a regulatory practice that can be characterized as "silent". The numerous SABC controversies show that the SABC is a shadow of what a public service broadcaster should be. This shows that ICASA's regulation of the SABC as a public service is ineffective. ICASA is "silent" amidst the SABC's controversies, even though certain controversies do in fact fall within ICASA's mandate for its regulation of the SABC, such as editorial and programming independence. ICASA has not taken any actions regarding the SABC's problematic commercial funding models, despite this funding model being recognised by many as the major problem hindering the SABC from playing the role of a public service broadcaster. ICASA has not taken any adequate actions whilst the SABC's relates to its audiences as consumers rather than citizens.

The regulator's regulatory practice is ineffective and inadequate because it concludes that the SABC has not breached any of its license conditions, however evidence shows that the SABC does not conform to the requirements needed for a public service broadcaster. ICASA is not fulfilling its mandate of protecting the integrity of the SABC, by remaining "silent" and not making any effective contributions to assist in the SABC's many controversies. The SABC's integrity and image as a public service broadcaster, as a result, remains seriously tarnished. An unhealthy public service broadcaster results in the hindrance of democracy, thus ICASA is not serving democracy and the public interest.

### 6.5 Factors hindering ICASA's effective regulation of the SABC

ICASA's institutional weaknesses are barriers to its levels of effective regulation of the SABC. The regulator's lack of independence in reality is undermining its ability to effectively regulate the SABC. The Minister of Communication's significant role at ICASA is eroding the regulators independence, by its councillors being vulnerable to political pressure from the Minister of Communications. ICASA seems to be fearful of taking an independent stand against government, evident in its lack of action regarding the SABC's Shareholder Compact and not making any submissions on the SABC removal clauses in the latest amendment Broadcasting Bill in 2008.

ICASA's "politicized" appointment process is also hindering its ability to effectively regulate the SABC. ICASA's politicised appointment process is potentially appointing the most "politically correct" rather than the "most suitable" for the job. ICASA's appointment process does not ensure that the public interest is served but rather that there is a high possibility that the "political interests" are served. ICASA's "politicized" appointment process is highlighted by many interviewees as problematic, including Harber, Skinner, Koster and Rankin.

Another barrier to ICASA's effective regulation of the SABC is its "politicized" accountability mechanism, of reporting to the Minster of Communications. This makes ICASA particularly vulnerable to political pressure from the Minister of Communications. The Minister of Communications could pressurise ICASA councillors to perform a duty that is not in the public interest, or attempt to assess the regulator according to selfish political interests.

The lack of clarity of ICASA's mandate and power is undermining its ability to effectively regulate the SABC. Lloyd cites this as the reason for ICASA's "silence" in the SABC debacles, stating that the SABC Charter and license conditions are too vague and generic to enable ICASA to effectively regulate the SABC so that it functions as a public service broadcaster. Thus, current legislation regarding ICASA's exact role regarding its regulation of the SABC is unclear, and as such does not establish the exact and clear role of ICASA in relation to the public service broadcaster.

ICASA's inadequate funding is directly undermining and impacting on the ability of it to effectively regulate the SABC. The inadequate funding has resulted in ICASA conducting the least amount of visits to and reports on the SABC, as compared to community and commercial broadcasters. The regulator's inadequate funding is not fully equipping the regulator to effectively regulate the SABC, such as being equipped to produce factually correct SABC television reports. Inadequate funding is also negatively impacting on ICASA's overall performance, such as it opting out of court fights with huge operators, staff "poaching", damaged work, not adhering to time frames, having less personnel and experts that it requires, canning projects, and an inability to fulfill its mandate. Therefore, these hindrances to ICASA's effective regulation of the SABC need to be addressed.

### 6.6 Ways to strengthen ICASA

ICASA needs specific transformations on various levels, so that it can effectively regulate the SABC and becomes a "watchdog" of democratic South Africa, rather than be perceived as a "toothless" regulator. This section presents suggestions to strengthen ICASA.

ICASA's independence needs to be bolstered in reality, through diluting the Minister of Communication's "power" at the regulator, by lessening the roles the Minister plays at the regulator. The regulator should rather report to a less "political" entity such as Parliament. The Ministers of Communication's power at ICASA can be diluted by involving other "less-political" entities in the roles that s/he is vested with. The regulator can further bolster its independence through becoming financially independent; otherwise it will always operate in fear of its budget being cut. Financial independence could also be achieved by retaining a portion of the surplus funds its gathers and submits to the National Revenue Fund.

ICASA requires a suitable process to appoint the "most suitable people" and not the most "politically correct". This perhaps can be done by assigning industry experts a more substantial role in ICASA's appointment process, which would dilute a quantity of the "political" influence on the appointments.

ICASA needs to be much more open and transparent to the public. An excellent starting point to improve its openness and transparency would be to and revamp its website. The public would then be aware of ICASA's activities, and would regain faith and credibility in ICASA. The regulator's mandate and power regarding the SABC needs serious clarification, specifically the SABC Charter and SABC license conditions so that when an SABC issue, like funding or a SABC controversy emerges, there is no need for "guessing games" with regards to what ICASA's role should be. It is either ICASA "gets involved" or "stays clear" of the issue. In clarifying ICASA's mandate and power regarding the SABC, ICASA should be bestowed with crucial duties, because regulation is fundamental to the attainment of a "successful" public service broadcaster. Public service broadcasters all over the world are declining and furthermore require regulation to guarantee its democratic role (Siune 1998).

ICASA and the SABC's relationship needs to be one that is respectful, as this is cited by an ICASA Compliance Officer Sean Rankin as the main issue concerning the regulator in its regulation of the SABC. A significant starting point to achieving a respectful and cordial relationship is through, clarifying ICASA's mandate and power. The SABC would therefore cease to be disrespectful and antagonistic towards the regulator. The SABC would be able to clearly apprehend ICASA's role regarding the SABC, and would have no option but to respect the regulator.

Lastly, ICASA seriously requires sufficient funding from perhaps the industry and possibly retaining a portion of the surplus funds it gathers and submits to the National Revenue Fund. An increase of funds would allow the regulator to give more seriously needed attention to the regulation of the SABC. In essence, ICASA is mandated to "regulate broadcasting in the public interest" and the SABC serves the majority of the South African public, yet is "neglected" in being regulated (*ICASA Act 2000* as amended). The increased funding should be used to establish a stand alone department to monitor the SABC, increase its staff capacity, acquire better monitoring equipment and conduct more visits and inspections as well as reports. Sufficient funding furthermore would enable ICASA to focus on pertinent issues, and no longer be agonized by a deficient budget. ICASA would be equipped to be a "dynamic" regulator and focus on the fundamental issues. Such as re-thinking the whole process of its regulation of the SABC and the regulatory practices it employs, because the SABC's tarnished image as a public service broadcaster shows that the SABC is not being effectively regulated so that it functions as a public service broadcaster.

The study concludes that ICASA is to a large degree ineffective in regulating the SABC so that it plays the role of a public service broadcaster.

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# Appendices

## Appendix A

## Interview guide for past IBA councilors, past ICASA councilors, media organisations and media analysts-

Nadia Bulbulia, Kevin Bloom, Johann Koster, Libby Lloyd, Kate Skinner and Anton Harber.

**Nature of the relationship of ICASA and SABC**

- Level interaction SABC and ICASA e.g. meetings.
- ICASA's role relationship e.g. silent, low profile, dominant, driver, dormant.
- SABC's role relationship e.g. co- operate, driver.
- Is this relationship satisfactory to ensure that ICASA adequately regulates the SABC so that it functions as a public service broadcaster?

**ICASA done and not done, to regulate the SABC so that it functions as a public service broadcaster**

- ICASA adequately monitor and enforce compliance SABC policy and licenses e.g. mechanisms, visits etc.
- ICASA adequately deal with conditions in licenses violated i.e. authority, penalties, sanctions, revoke licenses.
- ICASA done and not done safeguard public service broadcaster characteristics of universality and accessibility, diversity, distinctiveness, independence and funding.

**Improvement in ICASA's regulation of the SABC**

- The SABC crises- ICASA's role, done and not done?
- Why have not done this?
- What could ICASA have done in the SABC crises?
- Preventative measures in place by ICASA to prevent SABC crises?
- Suggestions ICASA can improve in its regulation of the SABC.

**Factors undermine/enable ICASA's ability regulate the SABC effectively:**

- Independence
    - Independent from the ruling party.
    - Independent from other political parties like the opposition.
    - Independent from the broadcasting industry.
- Appointment and membership.
- Mandate and powers.
- Funding.

**ICASA effective regulator**

- In what ways can ICASA be strengthened be effective regulator? (in general)

# Appendix B

## Interview guide for the SABC –

Phumelele Ntombela-Nzimande

**Nature Relationship ICASA and the SABC**

- Level interaction SABC and ICASA e.g. meetings (different levels, CEO to CEO, board to board, management to management).
- ICASA Annual Report 2007 "ICASA's Research Initiative licensees are meeting programming needs children, youth, women and people with disabilities", how often do ICASA and SABC collaborate on issues such as these?
- SABC Annual Report 2007 "Key Performance Objective: Annual information sharing session with ICASA –Not achieved", why was this not achieved?
- How does the SABC view ICASA in terms of the role of the regulator?
- What role does ICASA play with regards to the SABC?
- ICASA's role relationship e.g. silent, low profile, dominant, driver, dormant.
- SABC's role relationship e.g. co- operate, driver (ICASA alleges SABC does not respect them as regulator and not co-operative at times).
- Is this relationship satisfactory to ensure that ICASA adequately regulates the SABC so that it functions as a public service broadcaster?

**ICASA done and not done, to regulate the SABC so that it functions as a public service broadcaster**

- ICASA adequately monitor and enforce compliance SABC policy and licenses e.g. mechanisms, visits etc.
- How does ICASA deal with license conditions violated/ adequate i.e. authority, penalties, sanctions, revoke licenses.
- ICASA Annual Report 2007: SABC had least amount of visits and reports compared to other broadcasters, why?
- With reference to ICASA's radio monitoring reports conducted every 3 months and annually, when there is non compliance what does ICASA do?
- Tell me about the "pulled" Monitoring Report on SABC Television services period March 2006- March 2007, by the Monitoring and Complaints Unit?

**ICASA done and not done, to regulate the SABC so that it functions as a public service broadcaster**

- ICASA's role in safeguarding the SABC's universality and accessibility, diversity, distinctiveness, independence and funding.
- SABC Annual Report 2007: What role does ICASA play in the SABC's PBS Colloquium/funding model?

**Improvement ICASA's regulation of the SABC**

- The role of ICASA in the SABC crises e.g. Thabo Mbeki Documentary, *Freedom of Expression* pickets and complaint to ICASA, board saga, "blacklisting", not releasing full "blacklisting report, suspensions.
- What ICASA done and not done in the SABC crises?
- Why have ICASA not done this?
- What does the SABC think ICASA's role in the SABC crises should be?
- What ICASA could have done in the SABC crises?
- Preventative measures in place crisis by ICASA to prevent the SABC crises?
- Suggestions so ICASA can improve its regulation of the SABC

**Factors undermine/enable ICASA's ability regulate SABC effectively, with particular reference to:**

- ICASA's independence.
- ICASA's appointment and membership.
- ICASA's mandate and powers.
- ICASA's funding.

**ICASA effective regulator**

- In what ways can ICASA be strengthened to be an effective regulator? (in general)

# Appendix C

## Interview guide for the ICASA Monitoring and Compliance Unit-

Sean Rankin

**Regulatory environment of the SABC**

- Explain the regulatory environment of the SABC, policy, and licenses, Broadcasting Complaints Committee of South Africa (BCCSA), National Association of Broadcasters (NAB), Complaints and Compliance Committee (CCC)?
- ICASA's role regarding the SABC as the public service broadcaster?
- Exactly how does ICASA go about this, how does ICASA monitor compliance of the SABC licenses and regulate the SABC?
- Objectives/strategic e.g. plan of action, work according to plan e.g. monitoring reports and structure report, visits, meeting, time frame i.e. annually?
- Who goes about steering the regulation of the SABC? Is there a structure in place or protocol? What is the Ministers role in this?
- How often during the bi-laterals that ICASA has with the Minister of Communications, does the discussion of the SABC and its compliance as the public service broadcaster?
- Are there proper processes in place, to ensure that ICASA's chairman meets with the Minister of communications, to discuss how ICASA is dealing with the public service, after all that is the key service?
- What is the Minister of Communications' relationship and independence to the SABC's regulation?
- Does ICASA monitor the SABC Annual report for discrepancies and allegations in evident in the public domain and how seriously does ICASA take allegations about the SABC in the public domain?
- What do you think about the type of monitoring ICASA employs for the SABC?
- In term of "top watch monitoring i.e. quantitative" do you think that ICASA's regulatory practices are ineffective in that it does not focus on issues of actual content, the value of the content, analysis of the content i.e. qualitative? Why is this not being done?
- After an ICASA monitoring report is completed and violations are detected, how do you ensure compliance? How far is ICASA willing to go to ensure compliance?
- What is the SABC's required to do so that ICASA can fulfil its mandate e.g. log sheets, keep programmes? (Monitoring requirements 2005)
- Is the SABC co-operative with the regulator e.g. visits, monitoring reports?
- Does the SABC respect the regulator and the role it is vested with?
- Explain the monitoring devices [reports (structure) and visits (structure)] used to monitor SABC television and radio? Which areas does ICASA monitor and how does it go about doing this? Such monitoring the SABC areas of universality and accessibility, diversity, distinctiveness, independence and funding.
- In terms of the SABC Annual Report 2007, what role does ICASA play in the PBS Colloquium/funding model?

**ICASA Monitoring and Compliance Unit**

- Is ICASA's monitoring and compliance of the SABC a stand alone department? What expertise lay within ICASA's Monitoring and Compliance Unit?
- How many people work within ICASA's Monitoring and Compliance Unit?
- How many people are involved in the monitoring of the SABC?
- What is each person's function in this monitoring of the SABC?
- What other projects do these people also work on besides the SABC e.g. E-TV, MNET etc.
- The broadcasting environment has changed (i.e. the *Electronic communications Act 2005)* so how has ICASA been monitoring the SABC from the time of the SABC new licenses to presently?
- Has ICASA acquired any new equipment technically and otherwise to monitor the SABC?
- Is there a consorted and proper effort by ICASA in raising the issue around monitoring the compliance of the SABC?

**State of the SABC as the public service broadcaster**

- How does ICASA view the SABC in terms of meeting its obligations i.e. met, exceeded or not?
- Has ICASA issued any fines, penalties, sanctions to the SABC or referred the public service broadcaster to the CCC?
- What are the areas that are a challenge to ICASA with regards to its regulation of the SABC?
- What are ICASA's concerning points in its regulation of the SABC?
- How does ICASA view the performance of the SABC as a public service broadcaster and ICASA's role in this?

**Nature Relationship ICASA and the SABC**

- Level interaction SABC and ICASA e.g. meetings (different levels, CEO to CEO, board to council, management to management).
- ICASA's role relationship e.g. silent, low profile, dominant, driver, dormant.
- SABC's role relationship e.g. co- operate, driver.
- Is this relationship satisfactory to ensure that ICASA adequately regulates the SABC so that it functions as a public service broadcaster?

**Issues of concern**

- The ICASA Annual Report 2007 shows that the SABC had the east amount of visits and reports compared other to broadcasters, why?
- Explain the controversial "Monitoring Report on SABC Television services by the Monitoring and Complaints Unit period March 2006- March 2007".
- After a monitoring report is finalised, what steps are taken, does ICASA hold the SABC accountable and therefore enforce compliance?

**SABC crises**

- Explain ICASA's "silence" in the SABC crises e.g. Thabo Mbeki Documentary, *Freedom of Expression Institute* pickets and complaint to ICASA, board saga, "blacklisting", not releasing full "blacklisting" report, suspensions?
- What has ICASA done and not done, are there any "behind the scenes work" by ICASA regarding the SABC crises?
- Why have ICASA not done this?
- What could ICASA have done?
- Does ICASA have preventative measures in place at the SABC to prevent crisis?

**ICASA's improvement of its regulation of the SABC**

- Any suggestions on how ICASA can improve regulation in its regulation of the SABC?
- What is needed to do this?

**Factors undermine/enable ICASA's ability to regulate the SABC effectively, with particular reference to:**

- ICASA's independence.
- ICASA's appointment and membership.
- ICASA's mandate and powers.
- ICASA's funding.

**ICASA effective regulator**

- What are the main challenges facing the regulator?
- In what ways can ICASA be strengthened to be an effective regulator? (in general)

# Appendix D

## Interview guide for an ICASA councilor –

Kobus Van Rooyen

**Regulatory environment of the SABC**

- Explain the regulatory environment of the SABC, policy, and licenses, Broadcasting Complaints Committee of South Africa (BCCSA), National Association of Broadcasters (NAB), Complaints and Compliance Committee (CCC)?
- What is ICASA's role regarding to SABC as the public service broadcaster?
- Exactly how does ICASA go about this, how does ICASA monitor compliance with the SABC licenses and regulate the SABC?
- What are ICASA's objectives and strategic plan regarding its regulation of the SABC i.e. plan of action, work according to plan e.g. monitoring reports and structure of reports, visits, meetings, time frame annually?
- Who goes about steering ICASA's regulation of the SABC? What structures are in place and protocols to do this? What is the Minister of Communications' role in this process?
- How often during the bi-laterals that ICASA has with the Minister of Communications, is the issue of the SABC and its compliance as the public broadcaster discussed?
- Are there proper processes in place, to ensure that ICASA's chairman meets with the Minister of communications, to discuss how ICASA dealing with the regulation of the public service, after all this is the key service?
- What is the Minister of Communications' relationship and independence to ICASA's regulation of the SABC?
- What is the relationship between the Broadcasting Complaints Committee of South Africa (BCCSA) and ICASA's Complaints and Compliance Committee (CCC) regarding the regulation of the SABC?
- What are the jurisdictional issues between the BCCSA and CCC and how are complaints involving the SABC resolved? In light of the claim that all complaints goes directly to the BCCSA, therefore complaints are rarely referred to ICASA.
- How many/what percentages of the SABC complaints are sent from the BCCSA to the CCC?
- What does ICASA do upon receiving a BCCSA ruling on a SABC matter?
- Is your position as both chairperson of the BCCSA and member of the CCC an infringement of ICASA's independence?

**SABC crises**

- In the CCC hearing on the *Freedom of Expression Institute's* complaint, the *Freedom of Expression Institute* was asked to conduct an investigation, is it not ICASA's mandate to investigate? Please provide your view on this case?
- Explain ICASA's "silence" in the SABC crises as well as its ruling on the *Freedom of Expression Institute's* complaint?

**Regulation of SABC**

- Is there a consorted and proper effort in raising the issue around monitoring and compliance of the SABC?

**Improvement of ICASA's regulation of the SABC**

- Any suggestions on how ICASA can improve in its regulation of the SABC?
- What is needed to do this?

**Factors undermine/enable ICASA's ability regulate the SABC effectively, with particular reference to:**

- ICASA's independence.
- ICASA's appointment and membership.
- ICASA's mandate and powers.
- ICASA's funding.

**ICASA effective regulator**

- What are the main challenges facing the regulator?
- In what ways can ICASA be strengthened to be an effective regulator? (in general)