

# OUTA

ORGANISATION UNDOING TAX ABUSE



16 January 2024

## **OUTA comment on the South African Broadcasting Corporation SOC Ltd Bill, 2023**

**Submission by the Organisation Undoing Tax Abuse to the Committee Secretary, Portfolio Committee on Communications and Digital Technologies**

**Submitted by:**

**OUTA**

Contact: 087 170 0639



16 January 2024

TO: THE COMMITTEE SECRETARY  
PORTFOLIO COMMITTEE ON COMMUNICATIONS AND DIGITAL TECHNOLOGIES  
C/O: MS HAJIERA SALIE  
Per Email: [sabcbill@parliament.gov.za](mailto:sabcbill@parliament.gov.za)

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**COMMENTS ON THE PROPOSED SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD BILL, 2023**

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**1. INTRODUCTION:**

- 1.1 The Organisation Undoing Tax Abuse (OUTA) is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA was established to challenge the abuse of authority, particularly the abuse of taxpayers' money.
- 1.2 OUTA is a strong promoter of effective legislation that emphasises the importance of maintaining an independent public broadcaster, while ensuring sufficient funding and avoiding endless bailouts. OUTA believes that the SABC should have strong institutional autonomy that is independent of sectional, political, commercial or personal interference.
- 1.3 As a matter of principle, OUTA does not oppose the introduction of new laws and regulations by government, but rather wishes to ensure that these laws and regulations are capable of effective execution and are aligned with the basic principles envisaged in our Constitution.
- 1.4 It is an undeniable fact that the SABC has been plagued, for years, by financial instability and management issues. As such, OUTA is of the view that this has contributed to the erosion of trust and confidence in the public broadcaster.

- 1.5 OUTA believes that it is of utmost importance to ensure that the SABC has strong legislation and policies that govern it to enable the entity to restore public trust and to guarantee editorial independence.
- 1.6 The South African Broadcasting Corporation SOC Ltd Bill of 2023 (SABC Bill, 2023) introduces (amongst other changes) the establishment of a commercial entity, which will be responsible for the public commercial audio and audiovisual content media services of the SABC. Moreover, the objects of the proposed Bill are to (a) repeal the Broadcasting Act, 1999 as amended, (b) to regulate the continued existence of the South African Broadcasting Corporation SOC Ltd (SABC), (c) to provide for its governance (d) to amend the Independent Communications Authority of South Africa Act, 2005 and (e) to provide for matters connected therewith.
- 1.7 After having perused the proposed Bill, OUTA is of the opinion that this Bill will not meet these objectives. OUTA will hereunder provide comments to some of the crucial issues identified in the proposed SABC Bill of 2023, published by the Minister of Communication and Digital Technologies for public comment on 20 November 2023.
- 1.8 OUTA herewith wishes to provide comments on the crucial issues of particular concern to OUTA.

## **2. OUTA'S COMMENTS:**

### **2.1 PREMATURE INTRODUCTION OF THE SABC BILL, 2023**

- 2.1.1. At the outset, OUTA wishes to comment on the timing of the Bill. OUTA is of the opinion that the introduction of the Bill to parliament is wholly premature. OUTA believes that the Bill's introduction to parliament and the publication for public comment is done so in a policy vacuum.

- 2.1.2. OUTA notes with concern that public comments on the 2<sup>nd</sup> Draft White Paper on Audio and Audiovisual Content Services (originally published in 2020 and updated in July 2023) closed on 09 October 2023 and to date there has been no agreed upon policy. OUTA fails to understand why the SABC Bill, 2023 was introduced to parliament in the absence of proper policy.
- 2.1.3. Further to the above, it is worthy to note that the aforementioned policy includes a whole section on policy proposals on the subject matter of the Bill. OUTA believes that the proposed Bill is at odds with the substantive policy proposals contained in the 2<sup>nd</sup> Draft White Paper.
- 2.1.4. OUTA kindly requests that the committee refuse to accept the SABC Bill, 2023 and to insist that it be withdrawn and resubmitted after the substantial amendments have been affected in line with the finalised White Paper on Audio and Audiovisual Content Services.

## 2.2 THE PROPOSED FUNDING MODEL:

- 2.2.1 OUTA is extremely disappointed regarding the proposed funding model as set in the Bill. We are of the view that the Bill singularly fails to address the funding crisis and does not provide any solutions. It continues to provide for the same old television licence fee model which has been such a failure that not even government departments comply with it.
- 2.2.2 Furthermore, the SABC's finances are dire, with the public broadcaster failing to turn a profit for the last decade. The Minister of Communications and Digital Technologies (DCDT) recently informed Parliament that the SABC has lost about R44 Billion in unpaid licence fees over the years – undermining its viability.
- 2.2.3 OUTA believes that the funding issue at the SABC is systemic of nature as only 3% of the SABC's funding comes directly from the fiscus, about 16% comes from TV licences and the rest, some 80%, is entirely dependent on advertising. The funding model has proven to be problematic for many years, yet no concrete solutions have been tabled in the Bill.

- 2.2.4 The SABC’s funding is one of the most critical areas of the SABC’s model that has failed – and something the new SABC Bill unsuccessfully tries to address. OUTA is of the view that the Bill has effectively kicked the funding can down the road by not laying out any specific changes or proposals.
- 2.2.5 The Bill, which will replace the Broadcasting Act when it is eventually enacted, states that the Minister must within three years of the Bill becoming law develop a “funding model framework” to ensure “the majority of the corporation’s funding is sourced from state-based funding mechanisms.”
- 2.2.6 OUTA is of the opinion that the promise to develop a funding model framework (not even a funding model itself) within three years is obscene when the SABC is expected to continue with its existing unworkable funding model for another three years in the face of its financial collapse.
- 2.2.7 OUTA strongly believes that a long-term solution to its funding model is of utmost importance, and while it is pleasing to see government consider an alternative funding model OUTA is concerned over how long it will take to identify and implement such an alternative. While hasty changes to funding should be avoided, the SABC needs financial certainty for the interim period, a certainty which the Bill does not provide.
- 2.2.8 We are of the view that the three-year delay in developing a funding model, as proposed in the Bill, could put the SABC in a more difficult financial position. Its finances are already on unstable ground with the SABC recording a R1.1-billion net loss for the 2023 fiscal year.
- 2.2.9 OUTA is of the opinion that instead of the proposed Bill dealing with the SABC’s monetary crisis, TV licenses remain, and deliberations on a new funding model are kicked down the road for three years. More so, the Minister of Communications and Digital Technologies, in consultation with the Minister of Finance, alone is tasked with a new funding model.

2.2.10 OUTA therefore submits that the proposed funding in the Bill is grossly inadequate and urge the committee to refer this Bill back to the Department.

### 2.3 DETERMINATION AND COLLECTION OF TV LICENSE FEES

2.3.1 Notwithstanding the aforementioned comments on the funding, OUTA herewith wishes to provide comments on the TV license issue.

2.3.2 OUTA notes that in order to fulfil its Constitutional mandate, the SABC's current funding model relies on public funding – from the fiscus and from TV Licence fees. The SABC needs more than R2 billion annually to operate and continually falls short of this target.

2.3.3 OUTA is of the opinion that the funding model is outdated and that collection of TV Licence fees have long proven to not be a viable option. The evasion rate has continued to increase, climbing to 87% in 2023. The SABC is owed R44 billion in TV license fees, a massive financial hole that successive Ministers have failed to address. This year, the SABC reported a monetary loss of R1.13 billion.

2.3.4 OUTA maintains its belief that the TV License model is failing and our position is that any tax and or levy that fails to achieve the required compliance, due to poor administration and unenforceable mechanisms should close down. OUTA is firmly of the view that there is a need for a public broadcaster and some of its funding needs to come from levies and or general tax allocations. The best practice would be that SABC becomes financially viable as a broadcaster of choice and not a necessity.

2.3.5 Further to the above, OUTA is of the opinion that TV licence fees amount to a tax or revenue in terms of section 77 of the Constitution. The mere fact that a person must pay a fee for being in possession of a television set whether it is used or not amounts to a tax or levy. One might still argue that where the set is used there is a benefit which accrues to the possessor but to pay for mere possession is akin to paying duty tax.

- 2.3.6 As such, OUTA is of the view that the determination and collection of TV licence fees should be served before Parliament in terms of section 77 read with section 75 of the Constitution and not, as per the proposed Bill, be determined by the Minister per regulation.
- 2.3.7 Section 77 of the Constitution provides for “Money Bills”. A Bill is a Money Bill if it (a) appropriates money; (b) imposes national taxes, levies, duties or surcharges; (c) abolishes or reduces, or grants exemptions from, any national taxes, levies, duties or surcharges; or (d) authorises direct charges against the National Revenue Fund, except a Bill envisaged in section 214 authorising direct charges. All money Bills must be considered in accordance with the procedure established by section 75 (Section 75 requires that a Bill be passed by both Houses and not by a Minister of the State per regulation).
- 2.3.8 The fact that the proposed Bill provides that TV licence fees must be used exclusively for the public service of the SABC and that the state may contribute to the funding of the public service of the SABC, also point towards the category within which payments in respect of TV licence fees fall.
- 2.3.9 If there were no TV licence fees raised, the funds (not covered by advertising) for the running of the SABC public service, would have to come from Parliament. This source, it is contended, adds to the argument that the source (which includes licence fees) of the public service of the SABC amounts to a tax or revenue and does not fall within the powers of a Minister to determine by way of regulation.
- 2.3.10 The raising and collection of TV licence fees in terms of the proposed Bill and that act mandating the Minister to determine the fees (per regulation), conflicts with section 77 of the Constitution. TV licence fees amounts to the raising of a tax or levy and the fee must therefore be mandated by Parliament in terms of section 77 read with section 75 of the Constitution.
- 2.3.11 Furthermore, OUTA is of the opinion that TV licence fees are not the answer to the SABC’s financial woes and what is instead needed is a clear subsidy for the public broadcasting service. This may possibly involve re-positioning the existing licence fee as such. It would also



mean significantly improving collection of these fees, otherwise it is pointless to retain them.

2.3.12 OUTA shockingly notes that only 16% of South Africans currently pay their TV licence fees, with cash collection revenue decreasing by 13% or R115 million in the 2023 financial year. According to the SABC annual report for 2023, more than R4 billion was billed for TV licence fees, but only R775 million was collected. This is a significant failure which needs addressing.

2.3.13 OUTA is of the opinion that a public service subsidy could perhaps be at least partly covered by a regular annual grant from the fiscus to the SABC. This would avoid the irregular and disastrous last-minute bailouts but provide a more stable revenue stream particularly for the public broadcasting sector.

2.3.14 This could be seen as a grant in the furtherance of democracy. OUTA suggests cutting funding to wasteful programmes and diverting some of this to the SABC. For example, the National and Provincial Legislatures could provide some funding in the furtherance of democracy. These institutions manage to provide hundreds of millions of rands to political parties to support democracy.

2.3.15 OUTA reiterates that serious thought should be given to the payment of an annual grant from the fiscus to the SABC, as the reliance on collecting TV license fees has been totally inadequate.

## 2.4 ESTABLISHMENT OF A NEW COMMERCIAL COMPANY AND BOARD OF DIRECTORS

2.4.1. Further to the above comments, OUTA herewith wish to provide comments on the proposed establishment of a Commercial Company, as set out in Chapter 6 of the Bill.

2.4.2. OUTA notes with concern that the proposed Bill introduces a subsidiary company to run the commercial operations of the SABC. OUTA is perplexed about this proposal as the DCDT has clearly stated, in both drafts of the White Paper on Audio and Audio-Visual Media Services, that the public commercial division of the SABC has failed (from its inception in 1999) to cross subsidise the public division.



- 2.4.3. OUTA has noted that the 1<sup>st</sup> Draft White Paper stated that “the idea of the commercial division cross-subsidising the public division has been a policy failure since inception... It has become both impractical and expensive for the SABC to have separate books for the two divisions as it requires duplication of services to implement this legislative obligation.”
- 2.4.4. Moreover, the 2<sup>nd</sup> Draft White Paper maintains that the cross-subsidisation model has been a failure: “This assumption [of the commercial services generating sufficient revenue to cross-subsidise public stations and channels] has proven to be incorrect as it has been the public services which have been more commercially successful.”
- 2.4.5. It is OUTA’s understanding that what is envisaged in the proposed Bill, is that the SABC’s public commercial services, will be grouped into a subsidiary company with its own board of directors. This entity will then be expected to generate money to cross-subsidise the SABC’s public operations.
- 2.4.6. OUTA is mystified (to say the least) as to how the department can rationally think that by creating a completely new company, it will fix a model that has by the departments own admission never worked.
- 2.4.7. Further to the above, the Bill also proposes the creation of a Commercial Board (which reports to the main Board of Directors) responsible for the SABC’s “public commercial audio and audiovisual content media services.”
- 2.4.8. OUTA strongly opposes legislation that adds nine more executive members to the structure of the SABC (who will likely earn millionaire salaries) without tasking them with resolving the SABC’s funding issue.

2.4.9. OUTA is therefore of the opinion that the creation of a new Commercial Company and Board will not adequately address the institutional issues at the SABC but will exacerbate the broadcaster's ongoing crises.

## 2.5 MINISTERIAL POWERS

2.5.1 Perhaps the most concerning aspect of the Bill are the powers the proposed Bill confers upon the Minister which, in OUTA's view, are contrary to prominent court judgments that specifically require protection of the independence of the public broadcaster from Ministerial interference.

2.5.2 It is OUTA's understanding that the Bill's provisions allow the Minister to have a veto over the appointment of an interim Board of the SABC and any extension of a Board's term after the end of the second term, by six months or until a new Board is appointed.

2.5.3 These powers are further entrenched in the appointment of a Commercial Board (as discussed above). The Minister has a veto over the appointment of the members of the Commercial Board and the appointment of the Chairperson.

2.5.4 OUTA believes that by making the SABC subject to Ministerial veto, it invites executive and political interference. The Bill exacerbates the concerns of political interference in editorial decisions particularly in the run-up to the 2024 elections, including by the regressive requirement making the CEO and not the Head of News, the Editor in Chief. OUTA is of the view that it creates room for potential cadre deployment and government agendas to flourish.

2.5.5 Furthermore, the Bill also makes provision for a CEO and a Board, but then gives the Minister huge powers of veto as well as the right to launch investigations if there are 'mismanagement.' OUTA passionately believes that these provisions will undoubtedly create scope for plenty of interference in the SABC in terms of these conditions.

2.5.6 OUTA strongly believes that the proposed legislation permits ministerial interventions in board appointments, funding determinations, and other operational aspects. Instead of protecting the SABC from political interference, the Bill seeks to empower the Minister to interfere in ways that directly undermines its independence and could compromise the editorial independence of the public broadcaster. OUTA strongly urges the committee to refer this Bill back to the department for further consideration.

**3. CONCLUSION:**

3.1 In conclusion, although OUTA supports the continued existence of a National Broadcaster, we believe that the proposed SABC Bill of 2023 fails to address critical issues of financial sustainability and raises red flags of government interference in the commercial and operational aspects of the SABC.

3.2 Although OUTA opposes bailouts of state institutions which squander taxpayer money, we do recognise that the SABC is a public broadcaster and should get a certain amount of guaranteed funding from the state. Sufficient guaranteed funding, plus improvement of other sources of revenue, should help avoid the unpredictable bailouts.

3.3 We reiterate that OUTA does not oppose the introduction of new laws and regulations by government, but rather wishes to ensure that these laws and regulations are capable of effective execution and are aligned with the basic principles envisaged in our Constitution.

3.4 We thank the department in advance for their consideration of our above comments.