

# SABC: Muthambi, Motsoeneng accused of hostile takeove

The DA claims Communications Minister Faith Muthambi has signed a secretive SABC Memorandum of Incorporation (MoI) that strips the SABC Board of its statutory powers...



(Image: GCIS)

The DA says the Memorandum gives Minister Muthambi and Chief Operations Officer Hlaudi Motsoeneng overall control of the SABC. As such, the DA claims, it stands in clear violation of section 13 (11) of the Broadcasting Act that gives the SA Board the authority to "control the affairs of the Corporation."

The party says that if the Memorandum is allowed to stand it will turn the SABC from a public broadcaster into a state broadcaster. In its statement the DA says "It is not an exaggeration to say that this 'hostile takeover' poses the gravest threat to SABC independence since 1994."

The DA statement goes on to say:

"The Memorandum of Incorporation (MOI) signed by Minister Muthambi in September last year replaces the SABC Article of Association signed in 2011. The new MOI gives Motsoeneng and Muthambi control over the SABC, with the Board reduced to a rubber stamp.

"Section 5 of the MOI requires the Board to seek the approval of the Minister on any rule changes relating to the governance of the SABC - this is a significant reduction in the Board's autonomy. There was no such requirement for ministerial approval of rule changes in the 2011 Articles of Association.

Section 13.5.2 of the MOI empowers the Minister to waive the requirement for the Board to advertise and shortlist candidates who apply for the positions of Chief Executive Officer, Chief Operations Officer and Chief Financial Officer."

The DA statement says this appears to be an "ex post facto attempt to legitimise Motsoeneng's appointment as COO, which was made without shortlisting and advertising as required by the Articles in force at the time. This amendment could allow a similarly flawed appointment process to be carried out for the vacant post of CEO, paving the way for Motsoeneng to be appointed."

"Section 13.5.7 gives the Minister absolute authority to decide whether the CEO, COO and CFO should be re-appointed and on the terms and conditions of his or her re-appointment.

This is a departure from section 19.1.1 of the previous articles that gives the Board control over the re-appointment process. This means that the Minister now has the power to unilaterally re-appoint Motsoeneng when his contract expires.



(Image: SABC)

"Section 13.6.3 states that the Board can only discipline and/or suspend the CEO, COO and CFO with approval from the Minister. This gives Muthambi the power to block any move by the Board to discipline Motsoeneng, as directed by the Public Protector in February 2014.

"Previously, in section 19.2 of the Articles, the Board was empowered to appoint an acting CEO, COO and CFO. This power is now removed. Section 13.7.1 of the MOI says that, "in the event of the CEO position being vacant for whatever reason, the COO shall act in that position upon approval of the Minister." This means that Muthambi now has the power to make Motsoeneng the acting CEO.

"Furthermore, section 13.7.4 gives the Minister the sole authority to extend an acting CEO, COO and CFO's contract beyond an initial three-month contract. In other words, Muthambi now has the power to unilaterally keep Motsoeneng on as acting CEO for the foreseeable future.

"Section 14.3.1.3 gives the Minister the power to recommend the removal of a Board Member, whereas section 13.1.5 of the previous Articles of Association held that this power was the preserve of the Board. It was on the basis of the new MOI that Muthambi sent letters to Board Members in December last year threatening them with removal from office.

The DA maintains that this is in breach of section 15 and 15A of the Broadcasting Act that stipulates only Parliament and the Board have the power to recommend the removal of a Board Member.

"Section 20.2.4 introduces a new clause that makes the SABC liable to pay the legal fees of Directors "to defend litigation and any proceedings arising out of the Director's services to the Corporation." This is clearly to ensure that Motsoeneng is afforded an endless supply of public money to fund the court case over his appointment as COO.

### **In summary:**

- The MOI gives Muthambi the power to veto any rule change proposed by the Board relating to the governance of the SABC.
- It gives Muthambi the power to recommend the removal of Board Members, in clear contravention of the Broadcasting Act.
- Muthambi now has the power to make Motsoeneng the Acting CEO and keep him there for as long as she wishes.
- If Muthambi wants Motsoeneng to be appointed as the permanent CEO, she can waive the requirement that the position needs to be advertised and other candidates shortlisted.
- If Muthambi wants to re-appoint Motsoeneng when his contract comes to an end, she can do so unilaterally.
- If the Board decides it wants to discipline and/or suspend Motsoeneng, as the Public Protector directed it to do last year Muthambi can block the Board from doing so.
- The SABC is liable for Motsoeneng's legal fees in the DA's court case to have his appointment reviewed and set aside.

In short, the Memorandum of Incorporation removes the power of the Board to run the SABC, and puts in place a set of rules to ensure the protection and promotion of Hlaudi Motsoeneng.



(Image: Democratic Alliance)

The implications of this Mol are profound for the independence of our public broadcaster and, by extension, our constitutional democracy. Perhaps this is why, unlike previous amendments, the Minister never officially announced the Mol when it was signed on 26 September 2014.

It also appears that the amended Mol was never approved at a General Meeting involving the SABC Board, as required in section 9.7.2(a) of the 2011 Articles of Association. This much is clear from the first page of the Mol that indicates it was adopted by a special resolution of the shareholders, with no mention of the Board or a General Meeting. If true, this would open the Mol up to a legal challenge on procedural, as well as substantive, grounds.

Gavin Davis, DA Shadow Communications Minister says in the statement that he wrote to the Acting SABC Board Chairperson Prof Mbulaheni Obert Maguvhe on Friday, 6 February to inquire:

- Whether or not a resolution was approved at a General Meeting to amend the 2011 Articles of Association;
- Whether or not the Board has ever discussed and/or debated the Memorandum of Incorporation; and
- Whether or not the Board intends to challenge the legality of the Memorandum of Incorporation.

The Board cannot sit back and allow the Minister and Motsoeneng to usurp their powers. But the responsibility to protect the SABC's independence rests with every South African.

Civil society organisations and parties from across the spectrum need to work together to fight this hostile takeover that will destroy independent public broadcasting in our country.

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*At the time of posting this report, no response has been seen from the minister but if and when she does, it will be added to the article.*

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