

# The disturbing silence of the FXI lambs



By [Ed Herbst](#)

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'MMA has viewed the headline news bulletins from SABC1, SABC2 and SABC3 and can confirm that no mention of the booing incident was made in any of the bulletins.'

That statement was made by William Bird of Media Monitoring Africa on the censorship by the SABC of the [booing of Jacob Zuma on 10 December 2013](#).

Two years ago, on 26 January 2012, journalist Mandy de Waal wrote a [Daily Maverick tribute to the Freedom of Expression Institute](#) and, in particular, to two of its former stalwarts, Jane Duncan and the head of its legal department Melissa Moore.

It was headlined "Warriors for truth win in ruling on SABC, ICASA" and its opening paragraph read: "It's been five long years since the "blacklisting" scandal broke at the SABC, and it became clear that the public broadcaster was being used as a propaganda tool by the Mbeki regime. In a victory for whistle-blowers and for truth and transparency, a court ruling this week confirmed political manipulation of the SABC by former news head Snuki Zikalala."

De Waal's victory claim proved to be prematurely optimistic. In retrospect, we now know, as subsequent events and a perusal of the FXI website prove, that the years of work on the SABC Mbeki/Qunta/Zikalala era by Jane Duncan, Melissa Moore and advocate Wim Trengrove were nullified at a stroke by Duncan and Moore's successors at the FXI. The FXI of the Zuma era simply announced that the SABC had acknowledged that there had been a breach of the Corporation's guidelines on ethical news practices by Zikalala *et al* but that this would never happen again and, therefore, nothing further needed to be done.

- On 12 November, 2012 the SABC issued a statement saying that the FXI had [withdrawn its complaint against the SABC and that the matter had been settled](#)
- [Twelve days later the FXI and the SABC \[http://fxi.org.za/home/2012/11/28/joint-statement-of-the-fxi-and-sabc-on-the-ccc-hearing-2/#more-238 issued a joint statement.](#)

We have never been told how decision had been reached. One wonders why the FXI felt that Hlaudi Motsoeneng, a man who has been publicly condemned [over his educational qualifications](#), could be considered suitable for the position he now holds.

A perusal of the FXI website shows that in December last year, not a single press release was issued about the SABC's censorship of events at the Nelson Mandela memorial service at the FNB stadium on 10 December. This despite the SABC censorship immediately being revealed by City Press and then picked up by all the major news agencies in the world. And there has been no word from the [FXI](#) on this matter since then.

In striking contrast, [Media Monitoring Africa](#), the [SOS: Support Public Broadcasting Coalition](#) and the [Right2Know Campaign](#) all issued media statements condemning this and subsequent examples of SABC news practices.

Let us return to the hearing that, thanks to the post Jane Duncan, post Melissa Moore FXI, never happened.

Broadcast journalist Thinus Ferreira [wrote a preview article](#) in anticipation of the hearing that was supposed to last a week.

The hearing was predicated and premised on [the order of Judge Neels Claassen in the South Gauteng High Court](#) and here is what Ferreira wrote:

*It took all of 5 minutes this morning for the Freedom of Expression Institute (FXI) to meet with the Complaints and Compliance Committee (CCC) of the Independent Communications Authority of South Africa (Icasa) to withdraw from public scrutiny its intended case and hard-fought right to have a hearing before the country's broadcasting regulator, into alleged Blacklisting practices of the SABC.*

*Shock is reverberating through the broadcasting and media industry today at the FXI's unexpected withdrawal of an issue and a case dating back to 2006 - something the FXI went to court for after Icasa refused to hear the case, and which the South Gauteng High Court in January 2011 forced Icasa to hear.*

*That hearing into alleged Blacklisting of commentators and journalists by the SABC which was finally to be heard from today in a new hearing set to last this whole week, ended up lasting only five minutes with the FXI and the SABC withdrawing the case.*

*"No details of the agreement between the FXI and the SABC have yet been released. I've asked the SABC earlier today about the case, and have as of yet received no response.*

*"Parties were engaged in a settlement agreement and the FXI hereby withdraws its complaints," advocate Nasreen Rajab-Budlender, acting for the FXI said during this morning's hearing.*

*Hamilton Maenetje, SC for the SABC, said the dispute had been resolved. "There is no complaint remaining. We ask for a termination of proceedings."*

*The terms of the settlement between the FXI and the SABC were not disclosed.*

*It turns out that the FXI and the SABC have been meeting the past few weeks and last week hammered out a settlement between the Institute and the public broadcaster.*

*The hearing, diarised to continue this entire week, would have cast a renewed spotlight on the SABC's news practises and reports since 2006 alleging that the SABC has been manipulated its news coverage through censorship by pre-deciding who the public broadcaster won't give editorial airtime.*

[Click here for the rest of the piece.](#)

## **Questionable deal**

After this deal, a joint statement was released by the FXI and the SABC:

*"Both parties are pleased that the matter has finally been resolved. We remain committed to having a public broadcaster which will actively ensure the availability of social and political views on its airways."*

The Citizen, presciently as subsequent events proved, was justifiably cynical about the agreement in an editorial published on 14 November 2102 saying that even though the FXI had reached a deal with the SABC to drop the ICASA investigation there could be no doubt that the SABC remained as much a craven lackey of the ANC as it had ever been:

*More troubling is the false impression created that through this settlement the SABC is somehow redeemed; that because there is no longer a blacklist, credibility is restored.*

*In fact, under current head of news Jimi Matthews, the SABC has seen the banning of words such as "Zumaville" and "Nkandlagate", along with the outlawing of "compound" as a description of Jacob Zuma's publicly funded private homestead, all point to a one-sided political agenda. So, too, the instruction not to call the Marikana shootings a massacre.*

*This week's deal with the FXI must not be allowed to obscure the central issue of the SABC's bias.*

Just how committed the SABC was to ensuring "the availability of social and political views on its airways"(as defined in its agreement with the FXI) became obvious with the subsequent censorship of the two stories which emanated from the FNB Stadium on 10 December last year and the silence of the FXI about this blatant and brazen transgression of their agreement says everything one needs to know about its current commitment to media freedom and if Jane Duncan, Melissa Moore and Wim Trengrove are disappointed at the fact that the FXI, ICASA and the SABC ignored Judge Neels Claassen's ruling that the SABC 'blacklisting scandal be revisited, would that disappointment not be justified?

On 7 December 2012, a little more than three weeks after the settlement between the SABC and the FXI had been announced to the obvious relief of ICASA, the SABC, unlike eNCA, did not follow up on a Mail & Guardian [front page lead implicating President Jacob Zuma in corruption](#).

A fortnight later on 19 December 2012, I sent an email at noon to Mbalenhle Cele, Melissa Moore's successor as head of the law clinic, referring her to the fact that this was in transgression of the FXI/SABC agreement and providing the [following URL](#) to back up my contention.

At 3:23 that afternoon she sent a one-word response: "Thanks". I was not afforded the courtesy of a sign-off.

Since I provided the FXI with this prima facie proof of the state broadcaster's continuing censorship by omission news policy in contravention of its agreement with the FXI, the silence of the Institute and its board has been deafening despite further repeated examples of the contempt with which the state broadcaster regards its agreement with the FXI.

There is also no evidence on the FXI website that it has used social media to express concern or raise awareness of the SABC's censorship of the Zuma booing/Thamsanqa Jantjie stories - despite the fact that it allegedly has an ["anti-censorship"](#) program.

This raises the question of [who funds the FXI](#) and whether that funding should not be diverted to effective NGOs such as Media Monitoring Africa, the SOS Coalition and the Right2Know campaign which do monitor the SABC - upon which some 30 million people rely for news coverage - and have issued statements of concern about the SABC's censorship on its evening TV news bulletin on 10 December last year.

## Response

Bizcommunity.com invited the FXI to respond to this article:

### ***Freedom Of Expression comment on article by Ed Herbst***

*In response to this article by Ed Herbst published online by Biz Community, the FXI address[es] the following issues:*

*As Ed Herbst correctly points out, the Freedom of Expression Institute has been at the forefront of defending the facilitative and fundamental human right of free expression since its inception and the case that he mentions is one of the many interventions that the institute has undertaken with considerable success. One of such success stories that show the institute's leadership on Freedom of Expression is its role in the formation of coalitions such the SOS and R2K, to ensure a strong broad based civil society response to challenges facing the right to free expression. FXI is a founding member of these coalitions and the institute continues to play an active role in the responses of the coalitions to challenges such as the ones facing the public broadcaster. To try and divorce the work of the FXI from that of these coalitions fails to acknowledge the need for a coordinated response to the ever-increasing threats facing freedom of expression as a right and it is also an attempt to ignore the obvious positive outcomes that have been achieved through a united civil society effort on these issues.*



## FXI vs SABC

*Our well-documented contribution to media freedom and freedom of expression cannot and should not be judged on the basis of one particular intervention, no matter how critical. In this particular case the FXI placed considerable and sustained pressure on the SABC where frankly no other organisation had taken action. FXI took leadership on the matter and coordinated the civil society response to it and the combined efforts of all players yielded the settlement. The decision to enter into a settlement was informed by the advice of counsel that the settlement yielded the same remedies that a favourable CCC ruling would have done. Our objectives had therefore been obtained. In the settlement, the SABC among other things admitted to wrongdoing and committed to future monitoring and enforcement of compliance. It is wrong to attribute all of the failings of the SABC as well its challenges to the settlement agreement between FXI and the SABC, as the writer of the article seems to suggest. The problems within the SABC are far more complex and the FXI and its partners continue to explore targeted responses.*

*The FXI believes the problems facing the SABC are structural and at the core of this structural problem is the lack of independence of the public broadcaster from political and commercial interference. In pursuit of this, the FXI is working with its partners and through the SOS to address these issues. The lack of coverage of the booing incident by the SABC (which Ed Herbst correctly points out) was condemned by the SOS on behalf of all its members, including ourselves. We were active participants in this as we often choose to work in conjunction with other organisations to maximise the impact of our activities. These statements (that of the SOS in particular) addressed the issue and articulated the concerns that we all share. Over and above the statement issued by these coalitions the FXI also often takes principled stances against censorship and related matters at the public broadcaster. When the SABC decided to stop the broadcast of the BIG Debate show, [the FXI condemned the move in a statement](#) . To suggest a complete silence on matters of the public broadcaster would not be fair appraisal of the situation. We however welcome the call for more effort to save the embattled broadcaster.*

*The FXI believes that our strength as civil society does not lie in seeking individual praise, in terms of who issued a statement over and above the collective statement, but in ensuring a united and strong voice that speaks against any assault on Freedom of Expression. With this in mind the Freedom of Expression Institute remains committed to realising a public broadcaster that embodies all the principles of the Broadcasting Charter and is independent of both political and economic undue outside influence.*

Phenyo Butale, FXI Executive Director

## ABOUT ED HERBST

Ed Herbst is an author and a prize-winning reporter. He worked for SABC television news for 28 years but left in 2005 without other employment in prospect because of the pervasive news and other corruption at all levels of the corporation. He is also a fly fishing enthusiast.

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