



25 July 2010

The Chief Director: Policy
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Department of Communications
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Written Representations by The Alternative Information Development Centre (AIDC) on the Independent Communications Authority Of South Africa Amendment Bill [2010]

The Department of Communications (DoC) published the “*Independent Communications Authority of South Africa Amendment Bill*” (the proposed ICASA Bill) in Notice No. 650 in the Government Gazette No. 33324 on 25 June 2010. The deadline for written submissions was set for 25 July 2010.

The South African Constitution prescribes a participatory legislative process whereby proposed laws and amendments must be published for public comment and debated in a transparent parliamentary process. Alternative Information Development Centre (AIDC) welcomes the opportunity to make these written representations on the proposed ICASA Bill.

AIDC was formed 12 years ago in response to the democratic transition in South Africa and the new opportunities and challenges it brought to those seeking greater social justice within our democracy. AIDC aims to strengthen the movement for social justice through the production of alternative media and by enhancing the institutional capacity of community media organisations and the communication capacity of progressive civil society organisations. In turn this facilitates a dialogue, giving voice to the poor and marginalised, locally and internationally.

AIDC is a member of the SOS: Supporting Public Broadcasting coalition and the National Community Radio Forum (NCRF). We endorse the submissions made by these bodies. This AIDC submission is not a comprehensive response to the Bill, but rather focuses on three aspects that are of most concern to us.

The Bill Undermines the Regulator’s Independence

Section 192 of the South African *Constitution* prescribes that National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society. The following provisions in the Bill undermine the independence of the Regulator and would empower the Minister of Communication to usurp the functions and responsibilities that are critical to the administrative independence of the Regulator. - AIDC submits that all of these sub-sections be deleted from the Bill:

- Section 2(d) of the Bill says that ICASA “must implement policy and policy directions made by the Minister in terms of the Electronic Communications Act and Postal Services Act”. For ICASA to be required to comply with all Ministerial policy whether or not it considered this to

be in the public interest, would undermine ICASA's constitutionally protected administrative independence.

- Sub-section 2(h) of the Bill requires the chairperson of the ICASA Council to perform any function assigned to him/her by the Minister irrespective of whether or not the Chairperson considers this to be in the public interest. This would undermine ICASA's constitutionally protected administrative independence.
- Sub-section 5(a) of the Bill gives the Minister power to assign primary responsibility for: licensing, monitoring and compliance; markets and competition; technology engineering; economic regulation; postal matters; and any other related field, to the Chairperson and to each appointed Councillor. This provision would also undermine ICASA's constitutionally protected administrative independence.
- Sub-section 6(b) of the Bill proposes that "the Minister or his or her delegate" is to chair the panel to evaluate the performance of the Chairperson and other ICASA Councillors. This has the potential to undermine the independence of the Chairperson and the other Councillors.
- Sub-section 6(d) of the Bill provides that "The Minister must ensure that the decisions of the National Assembly contemplated in sub-section (5) are implemented". If Parliament takes decisions relating to ICASA, we submit that it would be an unconstitutional act of executive interference in the administrative operations of ICASA for the Minister to "implement" these decisions. Furthermore, if a decision taken by Parliament relates to actions that Parliament itself is to take, it would be an unconstitutional executive usurpation of Parliamentary powers for the Minister to be responsible for the implementation of these decisions.
- Subsection 10(a) of the Bill proposes that the members of ICASA's Complaints and Compliance Committee are no longer appointed solely by ICASA but would be nominated "by the Minister in consultation with the National Assembly" and appointed by ICASA. Hearing complaints regarding allegations of non-compliance with applicable legislation is a critical regulatory function. For ICASA to remain independent and retain its legitimacy in these matters, it must be empowered to appoint the individuals it feels are best placed to serve on the Committee.

AIDC submits that the ICASA Bill usurps critical functions of ICASA by transferring these duties to the Minister of Communications. This both undermines the ability to effectively regulate broadcasting and is at odds with the South African Constitution which prescribes that broadcasting should be regulated by a body independent of the Executive that is able to ensure that the views and information needs of all South Africans are met.

2. Capacitating the Regulator

From the licensing process through to the proactive monitoring of licence compliance, community media stakeholders have bemoaned the lack of responsiveness from the Regulator for years. AIDC welcomes amendments in the ICASA Bill that suggest the Department is concerned about ICASA's responsiveness:

- The amendments that ensure that a finding in an inquiry must be made within 90 days and not 180 days as stipulated previously are positive as is the amendment that ensures that the Committee must commence a hearing within 45 days from the date the complaint is lodged and make a finding within 60 days from the date the complaint is lodged and not 90 days as before.
- Sub-section 6(a) of the Bill proposes to increase the frequency of ICASA Council performance reviews from once to twice a year.

It is with some irony that we note ICASA has not managed to implement annual performance reviews. However ICASA requires increased capacity including research skills, monitoring systems and Provincial offices. AIDC submits that, rather than amending policy, the Department needs to promote greater funding and capacity for the Regulator.

Conclusion

AIDC fully endorses the call of the SOS: Supporting Public Broadcasting for a substantive and participatory broadcasting policy review process. The Department should facilitate such a review before the ICASA Bill is formally introduced in Parliament,

Please do not hesitate to contact Mark Weinberg (tel: 021)-447 2525 or email: mark@aidc.org.za should the Committee have any queries or require any further information regarding our submission.

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