

Independence, ICASA and the Telecommunications Bill

The Telecommunications Amendment Bill is currently being debated before the Portfolio Committee on Communication. The majority of the bill focuses specifically on telecommunications and the issuing of licences. (Many of the issues it raises have been discussed in the media and addressed by industry players.) The Bill also deals with, "further provision for certain functions of the Independent Communications Authority of South Africa, [and] the repeal of a particular law and the amendment of two others" (Telecommunications Amendment Bill). The implications of the latter strike at the heart of the independence of ICASA and serve to highlight some of the contradictions endemic to ICASA.

One of the most worrying amendments is to the Independent Communications Authority of South Africa (ICASA) Act and concerns the appointment of councillors to serve ICASA. As it stands the President on the recommendation of the National Assembly appoints the councillors. This occurs after candidates have been publicly nominated and then interviewed by the Portfolio Committee, which then presents a shortlist to the president. The proposed amendments remove the role of the National Assembly in the selection process and instead people nominated are to appear before a selection panel of five members which is appointed by the Minister of Communications (the Minister). It is the task of the selection panel to draw up a shortlist that is then presented to the President. The President must then consult with the Portfolio Committee and the National Assembly and upon receiving their consent, appoint those recommended.

An additional amendment gives the Minister, with the approval of the President and concurrence of National Assembly and the Portfolio Committee, the power to remove councillors at any time. As it stands in the Act a councillor may only be removed by a National Assembly finding and the subsequent adoption of a resolution calling for that councillor's removal. Why the Minister should be given this added power is not clear. It is also worrying to note that in addition to the circumstances under which a councillor may be removed from office the amendment seeks to add that the Minister may remove a councillor for "any other good reason" (Proposed Amendment to ICASA Act s8(f)).

By granting the power of selection to a panel appointed by the Minister, with the only criteria for their selection being that they have "expert knowledge of broadcasting and telecommunications," the potential for narrowed selection of members supportive of the Minister is glaring. This may allow for councillors to be short-listed who may also be supportive of the Minister or unwilling to challenge the Minister. Such a fear may be made worse by giving the Minister the additional power to remove a councillor from office "for any good reason." Irrespective of the current Minister's good intentions and support of an independent broadcast industry the law needs to be amended in favour of

the public and not potential government interest, for indeed, as has been the case in the past, the two are not necessarily the same.

In considering the amendments one also needs to consider that ICASA was born of the merger of the South African Telecommunications Regulatory Authority (SATRA) and the Independent Broadcasting Authority (IBA). The IBA was afforded constitutionally guaranteed independence, while SATRA was subject to government decisions and policies. At present it appears that on telecommunication matters ICASA must defer to the Minister who has powers to grant licences and impose conditions, while on broadcasting matters the Minister may only make policy directives which ICASA need only consider but not necessarily follow. Indeed it is one of the primary functions of ICASA to award licences to broadcasters, determine conditions and conduct hearings. It is vital that this remain an independent function of ICASA.

With the convergence of technologies this situation will surely lead not only to ethical and operational difficulties in ICASA but also undermines its independence. Such concerns have also been raised by the National Association of Broadcasters (the umbrella body representing broadcasters' interests).

Considering South Africa's abominable broadcasting past where the National Party government controlled all aspects including the selection of those who regulated the then broadcast industry, the importance of an independent communications authority need hardly be emphasised.

In response to the criticisms of the Bill, various media have reported the Director General of the Department of Communication, Andile Ncgaba as saying, "Vested interests will present themselves in the manner that they have presented now. Because the way people are arguing, they are arguing for their own positions, for their own organisations so that they can be able to have maximum benefit out of the way legislation is structured." If one accepts his argument it follows that government is also arguing for its vested interests. The argument then serves as the strongest affirmation of the need to prevent the amendments as they stand being passed.

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