SUBMISSIONS BY THE SOS COALITION AND MEDIA MONITORING AFRICA ON THE ECA AMENDMENT BILL
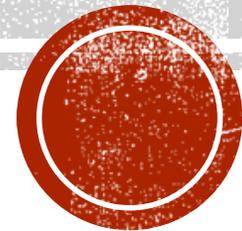
Duduetsang Makuse and William Bird 7 March 2018

![MEDIAMONITORING AFRICA logo]

![SOS SUPPORT PUBLIC BROADCASTING logo]

- MMA is an NGO- monitoring the media since 1993.

- Promote the development of a free, fair, ethical and critical media culture in South Africa and the rest of the continent.

  - media ethics, media quality and media freedom.

- In 25 years: Over 200 media monitoring projects –relating to key human rights issues, and media quality.

- MMA challenges the media with the overt objective of promoting human rights and democracy through the media.

- SOS: A civil society coalition advocating for robust public broadcasting in the public interest to deepen our constitutional democracy since 2008.

- The coalition: trade unions, non-governmental organisations (NGOs), community-based organisations (CBOs), community media, independent film and TV production sector organisations; academics, freedom of expression activists and concerned individuals.

- Campaigns to promote citizen-friendly policy, legislative and regulatory changes to broadcasting.

WHY SUBMISSION

We believe amendments are necessary but the current iterations are unconstitutional

Our submissions are an attempt to assist the DTPS and the Portfolio Committees in realising:

- the need for a legislative framework that recognises the reality of convergence; and

- the need to ensure independent regulation of electronic communications, as provided for in section 192 of the South African Constitution

- the need to ensure that a human rights framing is foregrounded in ICT policy

POLICY INCOHERENCE: PROCESSES IGNORED

- **2012:** National Integrated ICT Policy Review Process **launched**
- **2013**: Guiding principles for ICT Review Process ("the Framing Paper")
- **2014:** ICT Policy Green Paper published
- **2014:** the DOC SPLIT: **DOC and DTPS**,
- **2014**: Broadcasting Policy Issues Notice
- **2014**: DTPS - National Integrated ICT Policy Discussion Paper ("the Discussion Paper);
- **2015**: ICT Policy Review Report
- **2016**: ICT Policy White Paper published

- DOC split before the finalisation of the ICT policy review and the release of the White Paper.

- No mention was made of the previous iterations of the ICT Policy Review Process

- Aspects of white Paper bear no relation to policy recommendations contained in the Review Report

POLICY INCOHERENCE: ONE DEPARTMENT NEEDED

- Convergence is a technological and economic reality

- Department split flew in the face of technological developments worldwide

- The Review Report: Integrated, complex ICT ecosystem is the departure point for the recommendations

- The ECA: section 2(a): "to promote and facilitate the convergence of telecommunications, broadcasting, information technologies and other services contemplated in this Act"

- We need to ensure that South Africa's ICT needs are met in a holistic and integrated fashion to promote convergence and the development of the sector as a whole.

POLICY INCOHERENCE: NO RIGHTS BASED FRAMEWORK

- MMA and SOS are deeply concerned by the absence of rights-based framing for the ECA.
  - Only reference is the stated objects of the Bill: transformation, open access, cutting the cost of communication, provision of quality services to peoples with disabilities,
    - No mention or reference to the African Declaration on Internet Rights and Freedoms
    - No reference to African Platform on Access to Information

1. Ensuring that the rights of the marginalised, principles of open access and other internet rights needs to be foregrounded

2. Coherent continent-leading policy and law relating to ICT must be framed, by our own constitutional obligations, rights-based obligations and draw on declarations of our continent and other rights-based declarations and instruments

WIRELESS OPEN ACCESS NETWORK (WOAN)

- This proposal highly problematic, some of the reasons are set out below:

  1. No Basis in ICT Policy Review Process

  2. Public Sector Investment:
     - No clarity on Who is to get the licence? Existing licencees?

  3. An Untried Experiment:
     - Rwanda & Mexico not tested viable models

  4. No Feasibility/ Market Study:
     - Socio-Economic Impact Assessment System (SEIAS) report not enough

  5. Licensing Framework and Process:
     - Procedurally flawed & constitutionally invalid

  6. Special Incentives:
     - These may differ from ICASA's standard terms and conditions for I-ECNS licensees

WOAN RECOMMENDATIONS

1. State needs to invest, alongside the private sector

2. Appropriate and effective regulation of existing licensees by ICASA is required

3. State is empowered to develop electronic communications backbone and network infrastructure via state-owned Broadband Infraco, Telkom SA Limited, and Sentech Limited

4. Don't need untested new network (with no research to back it up) but a strong regulatory commitment to providing affordable universal access and service to support infrastructure, services and content

5. We call for the withdrawal of this entire proposal and section in the Bill.

SPECTRUM

- Proposed changes to the spectrum management regime: some technical in nature, others fundamental and others incorrect in principle or unconstitutional or both.

- No clarity or motivation why minister getting involved

- Unconstitutional – undermines the independence of ICASA

- Capacity and Co-ordination
    - Already a shortage of spectrum expertise within both the Department and ICASA.
    - Proposed amendments will make this worse

- Use it or Lose it Principle
    - We support it

SPECTRUM: ONE INDEPENDENT REGULATOR

- ECA vests exclusive control and management of the radio-frequency spectrum and infrastructure regulation to ICASA

- Minister: Powers only to approve the radio frequency spectrum plan & ensure adequate spectrum for the security services

- The Bill makes no amendments to the provisions of the ECA 2005 and the ICASA Act 2000 regarding ICASA itself.

  - In addition white Paper: ICASA is to be replaced, at least in respect of its ICT functions by an entirely new regulator

COMPETITION

- Not clear how bill encourages competition, especially if ICASA is split

- Need a single converged regulator

- There are real competition challenges but subsections may lead to litigation and delays over definitional matters

- We support greater consultation and cooperation between ICASA and Competition Commission

CONCLUSIONS

- In an era of convergence we need one department of communications
- We call for withdrawal of the entire bill
- We need a total re think of a Bill which:
  - Reinforces the independence of ICASA not undermine it
  - Takes cognizance of the ICT review processes
  - Is clearly rooted in a human rights framework, with reference to relevant African principles & our constitution
  - Seeks to build on a multi stakeholder platform, encourages competition & doesn't expose sector to easy abuse for corrupt ends