

NOTICE 102 OF 2014

Independent Communications Authority of South Africa
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**INDEPENDENT COMMUNICATIONS AUTHORITY
OF SOUTH AFRICA**

**GENERAL NOTICE – FINDINGS DOCUMENT AND REGULATIONS ON PARTY
ELECTION BROADCASTS, POLITICAL ADVERTISEMENTS, THE EQUITABLE
TREATMENT OF POLITICAL PARTIES BY BROADCASTING LICENSEES AND
RELATED MATTERS**

A. Introduction

1. Aim of the Findings document

The primary purpose of this Document is to highlight key issues raised by stakeholders during the consultation process of elections broadcasting regulations on Party Elections Broadcasts (PEBs), Political Advertisements (PAs), the equitable treatment of political parties by broadcasting licensees and related matters for the 2014 national and provincial elections. The secondary purpose is to highlight the Authority's reasons informing its decisions as contained in the final regulations.

The regulations on PEBs, PAs, and the equitable treatment of political parties by broadcasting licensees during national and provincial elections were published in **GNR.247 in *Government Gazette* No 31980 of 3 March 2009** and they are all applicable to broadcasting service licensees and political parties contesting the elections during an election period. Their main purpose was to prescribe the framework and guidelines under which PEBs and PAs shall be conducted and carried by the broadcasting service licensees during the elections.

2. Legislative Background

The constitution of the Republic of South Africa (SA) places a duty on Parliament to establish an independent regulatory institution which is required to provide for the regulation of broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society¹.

The Independent Communications Authority of South Africa (“the Authority”) is responsible for publishing guidelines for public broadcasts during an election period (attached as annexure B), and is also responsible for arbitrating and resolving disputes that occur regarding infringements of regulations governing the public media and electoral matters.

ICASA is empowered in terms of sections 56, 57, 58 and 59 of the Electronic Communications Act (ECA) of 2005 to regulate and monitor PEBs, PAs and the equitable treatment of political parties by broadcasting licensees during an election period. These sections further outline how election broadcasts should be handled by broadcasters, political parties and the Authority.

In order to comprehensively review the Elections Broadcasting Regulations, and fulfil the provisions of the above-mentioned sections of the ECA, the Authority published an Explanatory Memorandum on the Review of the Draft Regulations on Party Election Broadcasts, Political Advertisements, the Equitable Treatment of Political Parties by Broadcasting Licensees and related matters Document on 15 November 2013 inviting inputs from interested stakeholders and the general public. The document specifically mentioned the Allocation Criteria, Time Slots and PEBs on television as the cornerstone of the review, although stakeholders were invited to raise any other related matters.

The closing date for the receipt of representations was 7 January 2014. The Authority received Six (6) submissions from the following stakeholders:

- Democratic Alliance (DA)
- Economic Freedom Fighters (EFF)
- National Association of Broadcaster (NAB)
- South African Broadcasting Corporation (SABC)
- Support Public Broadcasting (SOS) and Media Monitoring Africa (MMA)
- T.O. Mbetshu

¹ Section 192 of the Constitution, 1996

3. Analysis of submissions on Draft Elections Regulations

The Explanatory Memorandum on the Review of the Draft Regulations on Party Election Broadcasts, Political Advertisements, the Equitable Treatment of Political Parties by Broadcasting Licensees and related matters raised the following significant concerns:-

- the Allocation Criteria;
- whether to exclude PEB's on TV; and
- the increase of the number of time slots, and reduction of the minutes for those slots.

For the purposes of consistency, the submissions are analysed in terms of the outline of the draft regulations that were published on the 15 November 2013. Below is the analysis of the submissions.

3.1 Definitions

The NAB submitted that the Authority has defined pieces of legislations mentioned in the draft regulations; however the definition of "Broadcasting Act" was omitted. They proposed that it be included.

3.2 Time Allocation

The EFF commended the Authority for increasing the number of time slots from four (4) to eight (8) slots a day. However they share the same view with the DA and both the SOS and MMA that there is no specific clause of the regulations that relates to the timing of allocation of time slots or the determination as to which party is allocated which slots. The DA further elaborated that there is always pressure on political parties that makes it difficult to meet the initial broadcasting dates, hence their concern about who actually gets what time. The SABC submitted that the PEB's should be scheduled according to the allocation as determined and confirmed in writing by the Authority to the SABC and political parties concerned.

The EFF, SOS and MMA submitted that the regulations are not clear about which time of day will be allocated, particularly taken into consideration that there is "prime time" when it comes to broadcasting. They are of the view that as far as Party Elections Broadcast is

concerned, it is critical to ensure that during elections, prime time is equitably allocated using the criterion as proposed by EFF in their submission.

The SOS and MMA urge the Authority to be fair in the timing of slots and not to be influenced by majority parties when allocating the time slots. They further submitted that the principle of equitability is also applied in determining which slots are allocated as they are of the view that some time slots will have greater audiences and therefore have greater reach and influence than others.

The DA submitted that the requirement to wait for the finalization of submission of candidate lists from the IEC, for purposes of allocating slots, will cause delay. Therefore they require the Authority to apply its mind and come up with a solution that would address this issue.

3.3 Election Period versus Election Broadcast Period

The EFF, SOS and MMA submitted that Elections Broadcast should be declared much earlier to allow for the quality of coverage and education of the public. They are concerned that the Authority only released the draft regulations a month before the elections year. They are of the view that Election Broadcast Period is completely separate from the Election Period, and therefore propose that the Authority need not wait for an elections period to be declared to inform the public about what parties are intending to do. The EFF further submitted that the Authority should in future announce the Elections Broadcast Period at least three months before the year of voting to enable all parties enough time to prepare.

3.4 Content

The DA does not support the requirement in regulations 6(11), which stipulate that "*Content broadcast as PA cannot be broadcast as PEB*". Their contention is that the cost of production of advertisements is extremely high, and is in fact inhibitive for smaller political parties.

3.5 Equitable treatment

The SOS and MMA submitted that equitability cannot be measured solely by the number of seats that a particular party holds in parliament. It is their believe that given the current electoral system, this definition goes against the general principle of free and fair elections

as parties merely due to their size are automatically given preferential treatment, which inevitably denies voters the ability to be fully informed.

They further submitted that the Authority should revise the manner in which it defines equitable treatment. They share a similar view with EFF which requires that the criterion be reviewed. The EFF is of the view that the best criterion to be adopted should be to only use the rest of the criterion, excluding *history*, since the use of history is unfair and it gives old parties an advantage when they come to elections.

The SOS and MMA are of the view that, in addition to the general principle of equitability, Broadcasters should be encouraged to offer prime time slots as well as potentially slightly greater airtime to the smaller parties – at the same time clearly not favouring one or other small political parties.

3.6 Quality of Broadcasts

The EFF together with SOS and MMA submitted that the Authority mentions only in passing how news and current affairs should be reported. They are of the view that the Authority is not using its influence on this particular issue to ensure that there will be fair and just reporting by journalists. It is their view that, this is in light of allegations of political interference by the ruling party in the SABC news with an attempt to have political developments that are detrimental to them not reported. They further stated that if the Authority is truly concerned with quality and fair reporting, it must investigate these allegations with the view to set up extra regulatory measures in particular on SABC to ensure fair reporting of elections.

The SOS and MMA are of the view that there is no guidance as to how quality is to be determined or defined. They submit that the regulations offer guidance in this regard: Quality – PEBs to satisfy technical requirement of a broadcaster i.e. in a format that is in line with the requirements of the broadcaster; and Quality- as linked to ethical guidelines and principles.

The NAB propose that the term “quality” in both clause 4(5) and Annexure B be deleted, and be substituted with the term “format”. They are of the view that the more appropriate term is “format”, as format stipulates technical specification, while quality is a subjective term that refers to the perceived quality of the content or output.

The SOS and MMA are of the view that the Authority should ensure that regulations are clearly in line with the general ethical principles of the Broadcasting Complaints Commission of South Africa (BCCSA) and the Advertising Standard Authority Code. They believe that this will help ensure that where there is a complaint or concern or need for clarity the codes can be used for guidance.

3.7 Natural disaster or Human Error

The EFF, SOS and MMA submitted that there is nowhere in the document where ICASA mentions the possibilities of sabotage, human error or natural disaster. If it were to happen that a political party's PEB could not be broadcast or was interrupted during a broadcast due to unforeseen circumstances, it is solely left up to a broadcaster to either rebroadcast or not. They propose that the Authority must clearly state as to what happens in such a situation. They further propose that the broadcaster must rebroadcast at a suitable time of the same status as originally allocated. However, should these happen that it is not possible to rebroadcast, a fine must be considered.

The SOS and MMA propose that the section on sabotage be significantly strengthened to ensure that in addition to actions of such a nature being criminal or prosecutable, the regulations help to ensure that no party or interest group can benefit from such actions. They believe that if there was an interruption during the broadcast of Party 'A's PEB the broadcaster can decide to rebroadcast or not. This creates a case of preferential treatment whereby certain parties will get rebroadcast whilst others will not.

3.8 Monitoring and Compliance

The SOS and MMA propose that the Authority must ensure that extensive monitoring takes place throughout the election period and further that the monitoring report be made public as soon as possible after the Election Period. They urge the Authority to ensure that there is suitable capacity in place for quality monitoring to take place.

4. Conclusion

The Authority has finalised and adopted the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014 in terms of sections 56, 57, 58 and 59 of the Electronic Communications Act (ECA) of 2005. These Regulations seek to prescribe the framework and guidelines under which PEB(s) and PA(s) shall be conducted and carried by the Broadcasting Service Licensees, during the national and provincial

elections. They represent the policy position adopted by the Authority in response to the findings generated by the Draft Regulations' consultative process. As mentioned in the beginning of this document, the Authority engaged on a public consultation process with the intention to consider submissions from stakeholders before publishing the final regulations. It is within that understanding that the Authority wishes to highlight its reasons informing the decisions as contained in the final regulations.

The Authority has incorporated the proposal by the NAB to include the definition of "Broadcasting Act" as it is fair and correct.

With regard to the time allocation, the Authority concurs with the SABC that PEB's will be scheduled according to the allocation as determined and confirmed in writing by the Authority to the SABC and/or interested broadcaster and political parties concerned.

The Authority is of the view that the allocation of PEB slots and the sequence thereof will be done at the Authority's Head Office, through the drawing of slots, in the presence of an official of the Independent Electoral Commission ("the IEC"), representatives of political parties contesting the elections, the broadcasters that have submitted their intention to broadcast PEBs (including the SABC) and the media. Therefore the issue of allocating "prime time slots" equitably will be addressed by the above-mentioned process. It is significant to note that the Authority has improved the chances for political parties to be on prime time by increasing the number of slots, i.e. four (4) slots during prime time. All PEB's will be a maximum of one minute in duration, excluding the top and tail disclaimer, which will be inserted by the broadcasters.

The Authority has considered the submission by the SABC where they found that audiences complain about lengthy two-minute slots and of which some political parties have realised tend to drive audiences away rather than getting the message across to them. Some parties have even submitted PEB's of 30 or 45 seconds after being advised about this by their agencies, effectively opting not to use their allocated two minutes. They believe that it would be beneficial to both audiences and political parties to reduce the slots to one minute for the following reasons:

1. Parties will be motivated to develop crisp, clear, attention-getting PEB's which will better hold audience attention; and
2. The amount of available PEB's slots can effectively be doubled and by so doing address the challenge that the Authority always has in accommodating more parties on an equitable basis.

The following schedule will apply for each qualifying broadcast day in the election broadcast period for PEB's. This will effectively cover all major audience segments throughout the day. All PEB's will be scheduled a minimum of one (1) hour apart from each other.

TV		RADIO	
TIME SLOT	NUMBER OF PEB's	TIME SLOT	NUMBER OF PEB's
06:00 – 10:00	2	06:00 – 09:00	2
10:00 – 14:00	2	09:00 – 12:00	2
14:00 – 18:00	2	12:00 – 15:00	1
18:00 – 22:00	2	15:00 – 18:00	2
		18:00 – 21:00	1

It is important to highlight that all PEB's must be in the language/s of the relevant broadcasting service licensee concerned. In the case of parties contesting provincial elections in a particular province only, PEB's will be allocated slots on radio services based in that province only.

The Authority has noted the request to consider the requirement not to wait for the finalization of the IEC list and the proposal that the Authority should announce the elections broadcast period before the President's proclamation, which parties are of the view that it will cause delay; However, section 56 of the ECA stipulates that:-

"A party election broadcast and a political advertisement must not be broadcast on any broadcasting service except during an election period and then only if, and to the extent authorized by the provisions of sections 57 and 58". Therefore the Authority will not be able to disregard the IEC process and the President's proclamation, as the implementation of the elections regulations will depend on such processes.

On the issue of the difference between the contents of PAs and PEBs in terms of regulations 6(11), the Authority is of the view that the clause disallowing PA's to be used in exactly the same form as PEB's must be retained to avoid public perception of a broadcaster favouring any particular party that may resort to this. There must be a difference between a PA and a PEB. The Authority has a code of conduct for broadcasters and this Code can be used for guidance to ensure general ethical principles.

With regard to the equitable treatment issue, the Authority has done research and has understood equitable treatment as relating to two matters, one on the allocation of broadcasting time slots and another on fair representation of political parties in terms of

news and current affairs. The Authority's position in 2011² provides that the concepts equitable and equal are not synonymous. Equal generally refers to giving similar treatment or equal subjection. Equitable on the other hand generally means just/fair/impartial. Sections 57 (4) and 59 of the ECA directs the Authority to ensure that contesting parties are treated equitably.

The Authority is guided by Section 57(6) of the ECA to ensure that the PEB adhere to technical quality acceptable to the Authority. Section 57(6) provides that "*A party election broadcast must conform to a technical quality acceptable to the Authority*". In ensuring that the technical quality is acceptable to the Authority it is recognised that the PEBs will be broadcast on the platforms of the broadcasting service licensee and hence should be in line with the technical quality of the broadcasting service licensees as stipulated in Annexure C.

The issue of possible non-broadcast of slots due to a breakdown in transmission, though very unlikely, will be handled by broadcasting them in the same slot 48 hours later, due to the time required for technical arrangements that have to be put in place for rescheduling. Should such a breakdown occur in the last two days of the PEB Broadcast Period, the broadcaster concerned will have to come up with a solution, possibly using other slots on the same day. The most important aspect for these regulations during elections is finding the right balance between the respect for editorial independence and the need for rules to guarantee that media coverage is balanced. Therefore the Authority has attached the guidelines to provide a framework to broadcasting service licensees covering the elections.

Upon publication of these regulations political parties and broadcasters should notify the Authority in writing of the name, physical and postal address, telephone number and, where available, cellular phone number and e-mail address of the nominated person. All correspondence should be marked specifically **Attention: Ms Fikile Hlongwane. Delivery address: Block D, Pinmill Farm, 164 Katherine Street, Sandton. Further enquiries in that regard may be directed to her via e-mail at: FHlongwane@icasa.org.za or by facsimile: 011 566-3198 or by telephone: 011 566-3197; between 10h00 and 16h00, Monday to Friday only.**



DR STEPHEN MNCUBE
CHAIRPERSON

² GG 34086, Municipal Elections Broadcasting Regulations