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From State to 'Independent' Regulation: A Critical Analysis of the Independent Communications Authority of South Africa.

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Abstract

The emergence of independent regulatory authorities (IRAs) in many countries is but one of the many of effects of globalisation in the communications sector. These effects have been such that developing countries like South Africa have also instituted IRAs. The challenge everywhere, though, has been the question of the independence of these agencies. This is particularly evident in most developing countries, where traditionally regulation of the communications sector has been the preserve of the state. Using a combination of institutional analysis, informant interviews and document analysis, this paper explores the independence of the Independent Communications Authority of South Africa (ICASA). Public interest and capture theories of regulation provide the conceptual foundation and direction of the paper.

The assessment of ICASA's independence is mainly based on three indicators identified by the Constitutional Court in relation to regulatory and other state institutions in South Africa, namely: institutional independence, administrative independence, and financial independence. The paper argues that ICASA is not as independent as it should be. First, the interference from the Minister of Communication in certain regulatory aspects such as the National Radio Frequency Plan and infrastructural regulation in general has meant that the Authority is beholden to the whims of the Minister. Second, lack of clear constitutional protection for ICASA has put the Authority in a compromised position, particularly when it comes to dealing with the Department of Communications (DoC). Third, the Authority's funding base is inadequate to enable it to effectively fulfil its mandate, and therefore has the potential to undermine its independence from regulatees.

Declaration

I declare that this research report is my own work. It is submitted for the Degree of Master of Arts at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any form.

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Siphiwe Robert Hlongwane

_____ day of _____ 2008

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Mphefumulo wami mbonge uJehova.

List of Abbreviations

ANC	African National Congress
CODESA	Convention for Democratic South Africa
DoC	Department of Communication
FXI	Freedom of Expression Institute
GEAR	Growth, Employment and Redistribution strategy
IBA	Independent Broadcasting Authority
ICASA	Independent Communications Authority of South Africa
IFP	Inkatha Freedom Party
MACRA	Malawi Communications Regulatory Authority
MDDA	Media Development and Diversity Agency
NAB	National Association of Broadcasters
NCRF	National Community Radio Forum
NGO	Non-governmental Organisation
NP	National Party
PTT	Post, Telephone and Telegraph
RDP	Reconstruction and Development Programme
RSA	Republic of South Africa
SABC	South African Broadcasting Corporation
SAPT	South African Posts and Telecommunication
SATRA	South African Telecommunications Authority of South Africa
SNO	Second National Operator
USA	Universal Service Agency