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Office of the President

IEC-Registered Political Party
 Date of Registration: **04 February 2025**
 Registration Number **803** (Nationally)

Date : **31st December 2025**

Independent Communications Authority of South Africa (ICASA)

350 Witch-Hazel Avenue
 Eco Point Office Park
 Eco Park
CENTURION
 0157
 South Africa

To: MKgatshe@icasa.org.za

Cc: cg_municipalelectionsbroadcasting@icasa.onmicrosoft.com

Dear Ms Kgatshe,

ARISE AFRIKA ARISE INDEPENDENT CONGRESS (AAAIC) hereby submits its
 written representations on the Draft Municipal Party Elections Broadcasts and Political
 Advertisements Regulations, 2026, pursuant to the Authority's call for public comment.

AAAIC is a duly registered political party with a demonstrable interest in the regulation
 of election broadcasting, particularly at municipal level and within communities that
 rely predominantly on community broadcasting services for political information, voter
 education, and democratic participation.

This submission is made in good faith and in support of ICASA's constitutional and statutory mandate in terms of sections 56–59 of the Electronic Communications Act, 2005.

However, AAAIC respectfully submits that certain provisions of the Draft Regulations, if adopted without amendment, may give rise to unintended and disproportionate effects on smaller political parties, independent candidates, and community broadcasting service licensees.

In particular, AAAIC raises concerns that the Draft Regulations, as presently framed, may:

- Unduly constrain community radio stations through uniform compliance obligations not proportionate to their developmental mandate and operational capacity;
- Inadvertently chill political expression and participatory democratic dialogue at local level;
- Entrench substantive inequality in political communication, contrary to sections 1(d), 16, and 19 of the Constitution.

AAAIC emphasises that these representations are advanced not merely as policy preferences, but as material considerations relevant to the Authority's obligations under the Promotion of Administrative Justice Act, 2000 (PAJA), including the duty to consider all relevant factors, avoid irrational or disproportionate outcomes, and ensure procedurally fair administrative action.

In this regard, AAAIC respectfully requests that:

1. These representations be fully and meaningfully considered prior to the finalisation of the Regulations;
2. AAAIC be afforded an opportunity to make oral representations should the Authority elect to convene public hearings;
3. The Authority explicitly address, in its reasons for the final Regulations, the impact of the regulatory framework on community broadcasters and smaller political participants.

AAAIC reserves its constitutional and statutory rights in respect of the final Regulations, including the right to seek appropriate relief should the adopted framework unjustifiably limit political rights or fail to meet the requirements of lawful, reasonable, and procedurally fair administrative action.

We trust that the Authority will receive this submission in the constructive spirit in which it is made, namely to strengthen electoral fairness, democratic participation, and regulatory proportionality.

Yours faithfully,

Ben Mothupi: (Electronically signed)

(**BEN MOTHUPI**) Founder, Leader & President
(BCom Law & LLB)

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Submitted by:

ARISE AFRIKA ARISE INDEPENDENT CONGRESS (AAAIC)

A registered political party committed to constitutional democracy, participatory governance, social justice, and the advancement of marginalised voices within South Africa's multi-party political system.

1. EXECUTIVE SUMMARY

- 1.1. This submission is made in response to the call for written representations on the Draft Municipal Party Elections Broadcasts and Political Advertisements Regulations, 2026 ("the Draft Regulations").
- 1.2. **ARISE AFRIKA ARISE INDEPENDENT CONGRESS (AAAIC)** supports the **constitutional mandate of ICASA** to regulate election broadcasting in a manner that is fair, equitable, and consistent with the values of an open and democratic society.
- 1.3. However, AAAIC submits that the Draft Regulations, while **procedurally neutral**, risk producing **substantively unequal outcomes**, particularly for:
- Smaller political parties;
 - Independent candidates; and
 - Grassroots political formations whose primary interface with voters is through **community radio broadcasting services**.
- 1.4. AAAIC's core submission is that **overly restrictive, uniform regulation of community radio during election periods undermines political pluralism, chills democratic participation, and indirectly entrenches dominance by well-resourced political actors**, contrary to the Constitution.

2. LOCUS STANDI AND CONTEXTUAL POSITIONING

- 2.1. AAAIC is a smaller political party with limited access to capital-intensive media platforms such as television, national commercial radio, and paid digital advertising.
- 2.2. The party's organisational model is **community-centred**, operating largely through:
- Faith-based institutions;
 - Civic forums;
 - Traditional leadership structures;
 - Youth and women's groups; and
 - Local community radio stations broadcasting in indigenous languages.
- 2.3. In this context, **community radio is not merely one of many campaign tools**. It is the **primary mechanism through which political information, voter education, and democratic dialogue occur**.
- 2.4. Any regulatory framework that disproportionately constrains community radio therefore has a **direct and material impact** on the political rights of smaller parties and the communities they serve.

3. STATUTORY AND CONSTITUTIONAL FRAMEWORK

3.1. The Electronic Communications Act (ECA)

3.1.1. Sections 56–59 of the ECA mandate ICASA to:

- Ensure equitable treatment of political parties by broadcasters;
- Regulate election broadcasts and political advertising;
- Prevent unfair discrimination and abuse of broadcasting platforms.

3.1.2. The ECA does **not** require identical treatment of unequal entities; it requires **equitable treatment**, which necessarily implies **contextual differentiation**.

3.2. Constitutional Provisions Implicated

AAAIC submits that the Draft Regulations must be interpreted and applied consistently with:

- **Section 1(d)**: South Africa as a multi-party democratic state;
- **Section 16**: Freedom of expression, including political expression;
- **Section 19(1)–(3)**: Political rights, including the right to campaign for a political cause;
- **Section 36**: Limitation of rights must be reasonable and justifiable.

3.2.1. The Constitutional Court has repeatedly affirmed that **formal equality is insufficient** where it perpetuates substantive inequality (see *Minister of Finance v Van Heerden*).

4. THE CENTRAL ROLE OF COMMUNITY RADIO IN DEMOCRATIC PARTICIPATION

4.1. Community Radio as a Constitutional Instrument

4.1.1. Community radio stations are established to:

- Serve specific geographic or interest-based communities;
- Promote participatory democracy;
- Enable local content creation and dialogue;
- Give voice to historically marginalised groups.

4.1.2. In many municipalities, particularly rural and peri-urban areas, community radio is the **only accessible broadcast medium** for voters.

4.2. The Chilling Effect of the Draft Regulations

4.2.1. AAAIC submits that the Draft Regulations, as currently framed:

- a) Impose **disproportionate compliance obligations** on community broadcasters, equating them with national and commercial broadcasters despite radically different capacities;

b) Create **regulatory uncertainty** around participatory formats such as:

- Call-in programmes;
- Community debates;
- Faith-based discussions on governance and ethics;
- Issue-based civic dialogues;

c) Encourage **regulatory avoidance**, whereby community radio stations elect to exclude political content altogether during election periods to mitigate risk.

4.2.2. The result is not neutrality, but **silencing**, which disproportionately disadvantages smaller parties.

5. BARRIERS TO SMALL POLITICAL PARTIES UNDER THE DRAFT REGULATIONS

5.1. Structural Inequality Embedded in Airtime Allocation

5.1.1. Airtime allocation mechanisms that rely on:

- Prior electoral performance; or
- Existing representation, systematically favour established parties and penalise new or emerging formations.

5.1.2. This approach **constitutionalises incumbency advantage**, contrary to the spirit of political competition.

5.2. Economic Barriers in Political Advertising

5.2.1. Political advertisements remain:

- Market-priced;
- Unsubsidised;
- Effectively inaccessible to smaller parties.

5.2.2. The absence of differentiated pricing or caps on community radio advertising entrenches economic exclusion in political communication.

5.3. Administrative and Technical Barriers

5.3.1. The Draft Regulations assume:

- Legal expertise;
- Technical production capacity;
- Administrative infrastructure, which many smaller parties simply do not possess.

5.3.2. Compliance becomes a **gatekeeping mechanism**, rather than a facilitative one.

6. CRITICAL ANALYSIS: FORMAL EQUITY VS SUBSTANTIVE DEMOCRACY

6.1. AAAIC submits that **treating unequal actors identically does not advance fairness**.

6.2. A regulatory framework that:

- Recognises all parties on paper,
- But advantages only those with resources in practice, fails the constitutional test of **reasonableness and proportionality**.

6.3. Democracy is not measured by the number of parties permitted to exist, but by the **real capacity of those parties to reach voters**.

7. PROPOSED AMENDMENTS AND REGULATORY INTERVENTIONS

AAAIC respectfully proposes the following amendments:

7.1. Separate Regulatory Regime for Community Broadcasters

Introduce explicit provisions recognising:

- The developmental mandate of community radio;
- Reduced compliance thresholds;
- Proportional regulation aligned with capacity.

7.2. Guaranteed Baseline Airtime for All Contesting Parties

Establish a **minimum airtime floor** per municipality for all registered contesting parties, regardless of historical representation.

7.3. Explicit Protection of Participatory and Community Formats

Clarify that:

- Issue-based discussions;
- Community debates;
- Faith and civic dialogues, do not constitute prohibited political advertising, provided reasonable balance is maintained.

7.4. Cost Regulation and Preferential Access

Mandate:

- Capped or subsidised political advertising rates on community radio;
- Transparency in advertising pricing;
- Preferential access for smaller parties and independents.

7.5. Simplified Compliance Mechanisms

Provide:

- Standardised templates;
- Grace periods for minor non-compliance;
- Advisory support from ICASA during election periods.

8. TALKING POINTS FOR ORAL REPRESENTATIONS

If afforded an opportunity to make oral representations, AAAIC will submit that:

1. Community radio is the **constitutional heartbeat** of local democracy;
2. Over-regulation produces silence, not fairness;
3. Equity must be measured by impact, not intent;
4. Smaller parties do not seek advantage, only **meaningful access**;
5. ICASA has both the authority and constitutional obligation to regulate proportionately.

9. ETHICAL AND FAITH-BASED CONSTITUTIONAL FRAMING

- 9.1. South Africa's constitutional vision aligns with a core ethical principle:
that justice must prioritise the least powerful.
- 9.2. Regulation without proportionality becomes exclusion.
 - Neutrality without context becomes injustice.
 - Order without participation becomes domination.
- 9.3. A democracy that hears only the loudest voices is not pluralistic—it is procedural.

10. CONCLUSION AND PRAYER FOR RELIEF

- 10.1. AAAIC supports the objectives of the Draft Regulations but submits that,
without targeted reform, they risk undermining substantive political equality.
- 10.2. AAAIC therefore respectfully requests that ICASA:
 - a) Reconsider the regulation of community radio during elections;
 - b) Adopt a differentiated, proportional regulatory approach;
 - c) Incorporate safeguards for smaller parties and independents; and

- d) Afford AAAIC an opportunity to make oral representations should public hearings be convened.

Ben Mothupi: (Electronically signed)

(BEN MOTHUPI) Founder, Leader & President

(BCom Law & LLB)

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PART B

COALITION SIGN-ON FRAMEWORK

1. PURPOSE OF THE COALITION

Working Title:

“Coalition for Equitable Election Broadcasting and Community Media Protection”

2. Purpose Statement:

To jointly engage ICASA on the Draft Municipal Party Elections Broadcasts and Political Advertisements Regulations, 2026, with the objective of ensuring that the final regulatory framework promotes substantive political equality, protects community broadcasting services, and facilitates inclusive democratic participation at local government level.

3. SIGN-ON TEMPLATE (PRACTICAL TOOL)

Each coalition member completes a short endorsement statement:

“We, _____
[Name of Organisation / Party / Station],

endorse the submission made by **ARISE AFRIKA ARISE INDEPENDENT CONGRESS (AAAIC)** to ICASA on the Draft Municipal Party Elections Broadcasts and Political Advertisements Regulations, 2026, insofar as it raises concerns regarding the regulation of community broadcasting services and the impact of the Draft Regulations on smaller political participants.

This endorsement is made without prejudice to our organisational independence or additional representations we may submit.”

Name: _____

Designation: _____

Organisation: _____

Signature / Email confirmation: _____

Date: _____

