



Independent Communications Authority of South Africa

**REPORT ON COVERAGE OF 2014
NATIONAL AND PROVINCIAL ELECTIONS**

OCTOBER 2014



Dr Stephen Mncube
ICASA Chairperson



Cllr Rubben Mohlaloga
(Chair: Elections Monitoring
Committee)



Cllr Nomvuyiso Batyi
(Deputy: Elections Monitoring
Committee)



CEO
Pakamile Pongwana

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ICASA Personnel:

- Rubben Mohlaloga (Chairperson)
- Nomvuyiso Batyi (Deputy Chairperson)
- Fikile Hlongwane (Project Leader)
- Kgomotso Mokitle
- Maano Dzebu
- Gordon Mashigo
- Ndawo Khanyile
- Ngwako Serumula
- Ndondo Dube
- Siphwe Hlongwane
- Veronica Barnard

ICASA Divisions:

- Licensing and Compliance
- Markets and Competition
- Legal & Complaints and Compliance Committee (CCC)
- Information Technology
- Administration
- Human Resources
- Communication

Part Time Election Monitoring Officers:

1. Benjamin Mabiletsa
2. Bonisile Ndlovu
3. Cheryl Masinge
4. Cyril Mkhize
5. Emmanuel Mlake
6. Euginia Seanego
7. Gary Bapela
8. Glen Molomo
9. Jimmy Singo
10. Joshua Motsieloa
11. Keabetswe Tsitsi
12. Lethabo Malatsz
13. Lydia Phoshoko
14. Mantwa Makou
15. Meriam Gidi
16. Mongezi Dyonashe
17. Mpho Muridili
18. Mziyanda Mbedla
19. Nokulunga Moshime
20. Noluthando Tsemame
21. Nomfundo Sogiba
22. Nomonde Gwegwana
23. Nonhlanhla Shilabye
24. Nothando Shabane
25. Pretty Mkhize
26. Sindiswa Shabane
27. Stanley Mohlala
28. Stanley Zulu
29. Tebogo Lusenga
30. Themba Mahlangu
31. Thando Nkala
32. Tricia Molosi
33. Tshepiso Nonyane
34. Tshepo Mofokeng
35. Tumelo Kgamedi
36. Wayne Maphalle
37. Xolani Vundhla

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Africa Scope Pty Ltd

COURIERS:

- Katlego Global Logistics

INDEPENDENT ELECTORAL COMMISSION (IEC)

SECTION ONE: PROJECT REPORT

1. INTRODUCTION

One of the key benchmarks used in democratic countries worldwide to determine the maturity of the political parties' system and its institutions is the extent to which elections are conducted in a free and fair environment and equal access to different political players to media coverage.

In the South African context, in order to ensure that the right to free and fair elections is upheld as enshrined in the Bill of Rights of the Constitution of the Republic of 1996, the Independent Electoral Commission (IEC) is bestowed with this responsibility.

Over the years, the elections in South Africa have seen an increase in the number of contesting political parties both at National and Provincial level. In 2014, 43 political parties contested the general elections and of this number 29 contested at National level.

2. LEGISLATIVE FRAMEWORK

Section 192, of the Constitution of the Republic of South Africa of 1996 ("the Constitution"), provides for the establishment of an independent authority which is to regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society. Further, section 16 of the Constitution, provides for the freedom of expression as an essential feature of South Africa's democracy.

In 1999, the Independent Communications Authority of South Africa ("the Authority") was given a responsibility to monitor the coverage of elections for the first time. The Authority derives its mandate to regulate and monitor Party Elections Broadcasts ("PEB's"), Political Advertisements ("PA's") and equitable treatment of political parties by broadcasting Licensees during election period from sections 56, 57, 58 and 59 of the Electronic Communications Act ("EC Act") as well as Regulations on National and Provincial Party Elections Broadcasts and Political Advertisements, 2014 ("the Regulations").

The primary objects of the EC Act, in particular sections 2, require the Authority in its regulatory framework to ensure amongst others, that broadcasting services, viewed collectively, provide for regular news services; actuality programmes on matters of public interest; programmes on political issues of public interest; and programmes on matters of international, national, regional and local significance. Thus it is within its legislated jurisdiction that the Authority's report intends to provide an overview of the performance of broadcasting service Licensees, who, besides the SABC which is obligated in terms of section 57 to cover elections, expressed an interest to broadcast PAs and PEBs during the election period and to determine whether they complied with the EC Act and Regulations on Party Election Broadcasts, Political Advertisements the Equitable treatment of Political Parties by Broadcasting Licensees and Related Matters.

3. THE PROJECT PROCESS AND METHODOLOGY

A Committee of Council, an Elections Committee ("the Committee") was established in terms of Section 17 of the ICASA Act of 2000 (as amended) to deal with the monitoring of broadcasting licensees' coverage of the 2014 National and Provincial elections. The Committee comprised representatives from Council, the Markets and Competition Division, Licensing and Compliance Division and the Legal and CCC Division.

The Authority conducted workshops with broadcasting Licensees from 25 February 2014 to 04 March 2014 in all provinces. The monitoring of broadcasters' coverage of the 2014 elections commenced in Mid-March 2014 and ended on 30 June 2014. A total of sixty two (62) broadcasting licensees were monitored: thirty four (34) community sound broadcasting licensees, 18 public sound broadcasting services, five (5) commercial broadcasting licensees and three (3) SABC television broadcasting services. Recordings were couriered from all nine provinces and delivered to the Authority's headquarters for monitoring.

The Authority further contracted AfricaScope (Pty) Ltd, to develop the data capturing software for monitoring the coverage of elections by broadcasting Licensees. In

addition, the software was used to analyse data and ensure the integrity and safety of all information monitored and captured.

AfricaScope Pty Ltd conducted several training workshops with the monitoring team to describe the process that would be used throughout the monitoring period.

AfricaScope (Pty) Ltd used handheld capturing devices to allow the monitors to capture information collected from the monitoring of broadcasts. As a consequence the questionnaire was converted into an electronic format. These devices allowed the monitors to capture information collected from the monitoring of Licensee's broadcast material. The analysis of content was conducted by 37 monitors who underwent training tailored for this purpose. All news, current affairs PEBs, PAs and PSAs making specific reference to the 2014 National and provincial elections were analysed. Information analysed was captured as follows:

- Type of recording (e.g. television or radio)
- Name of broadcasting station and/or channel
- Date and duration of the broadcast
- The main language used in the broadcast
- Start and end time of the programmes
- The type of broadcast (e.g. current affairs, news, political advertisement)
- The primary and secondary topics of the recording
- The geographic focus of the election material (i.e. national or provincial)
- The name of the political party(s) mentioned in the recording
- Names of agencies mentioned in the recording (e.g. IEC, ICASA, etc.)
- Election segment start and end time
- Duration of the election segment.

SECTION TWO: MONITORING ANALYSIS

1. INTRODUCTION

The sections below outline the findings of the Authority's monitoring process over the three months period. Overall, 20 106 election items were monitored, providing significant data relating to various aspects of the coverage afforded to political parties and the elections generally by participating broadcast media. Content monitored on sound and television broadcasting services during the election period included political adverts (PAs), party election broadcasts (PEBs), public service announcements (PSAs), news bulletins and current affairs programmes. Table 1 provides a breakdown of the number of items monitored per category.

Table 1: Number of broadcast items broadcast per category

Category	TV	Radio	Total
Current Affairs	380	2 770	3 150
News	1 200	12 281	13 481
PA	226	1 750	1 976
PEB	33	578	611
PSAs	74	814	888
Total	1913	18193	20106

As illustrated above, current affairs comprised 3 150 items, news 13 481 items, PAs 1 976 items, PEBs 611 items and 888 PSAs items.

Radio items were dominant in that they constituted 90% while television made up 10%.

1.1 Items by Month

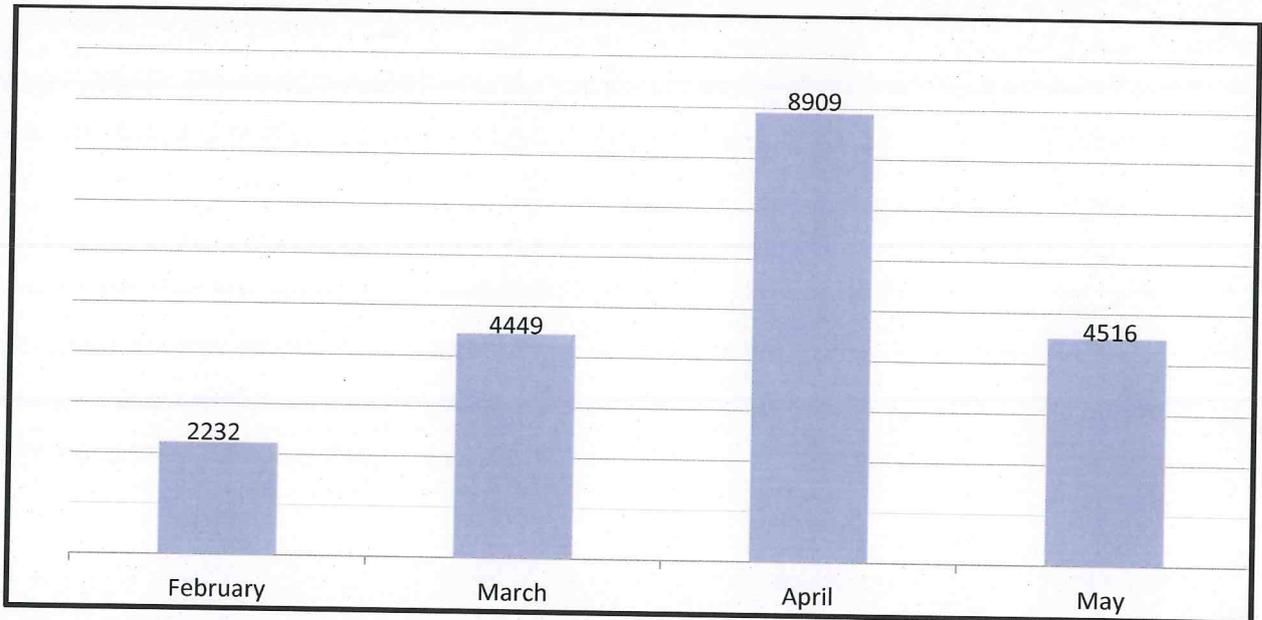


Figure 1: Number of broadcast items reviewed by month =20 106

Figure 1 reveals that 8909 election items were broadcast in April. Further in-depth analysis of political parties is provided in section dealing with items by political party – coverage across radio and television.

1.2 Frequency of items recorded by broadcast date

Figure 2 shows the frequency of items broadcast for the three most mentioned political parties - the ANC, DA and EFF. The frequency of broadcast items in April increased significantly for all three parties and maintained their volumes up until Election Day.

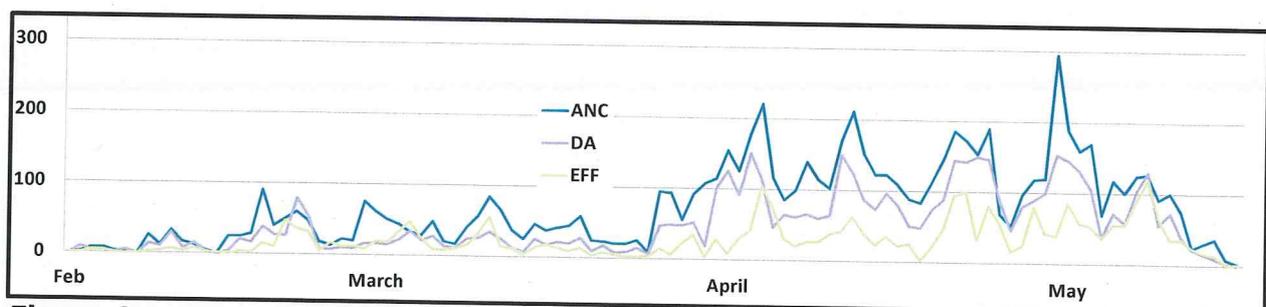


Figure 2: Frequency of items recorded by broadcast date for ANC, DA and EFF

1.3 Content and Categories covered Per Broadcasting Sector

Table 2 provides the number of items broadcast by licensees per category. A total of 12 695 items were broadcast on the public service broadcasting stations compared to 4 456 on commercial and 2 955 on community broadcasting services. It is clear that PBS play a distinctive role in the broadcasting the different types of election related material. The small number of PEB's on community sector, could be attributed to the fact that Political parties chose to submit their PEBs to the public service broadcaster.

Table 2: Election broadcast items by type of broadcaster

Broadcast types	Broadcaster category			Total
	Commercial	Community	PBS	
Current Affairs	398	525	2225	3148
News	3160	2096	8209	13465
PA (Political Advertisements)	625	192	1159	1976
PEB (Party Election Broadcasts)	-	109	520	629
PSA (Public Service Announcements)	273	33	582	888
TOTAL	4456	2955	12695	20106

1.4 Items by radio and television

1.4.1 Radio

Figure 3 provides both graphical and tabular information on the number of election items monitored for radio stations that submitted material for monitoring and had election relevant content. Of the 24 radio stations represented, Umhlobo Wenene FM (8.8%), Phalaphala FM (7.2%) and SAFM (7.1%) had the largest number of election related items monitored. Twenty nine smaller stations provided 6.1% of the election items. PBS Licensees had the highest number of election broadcast items.

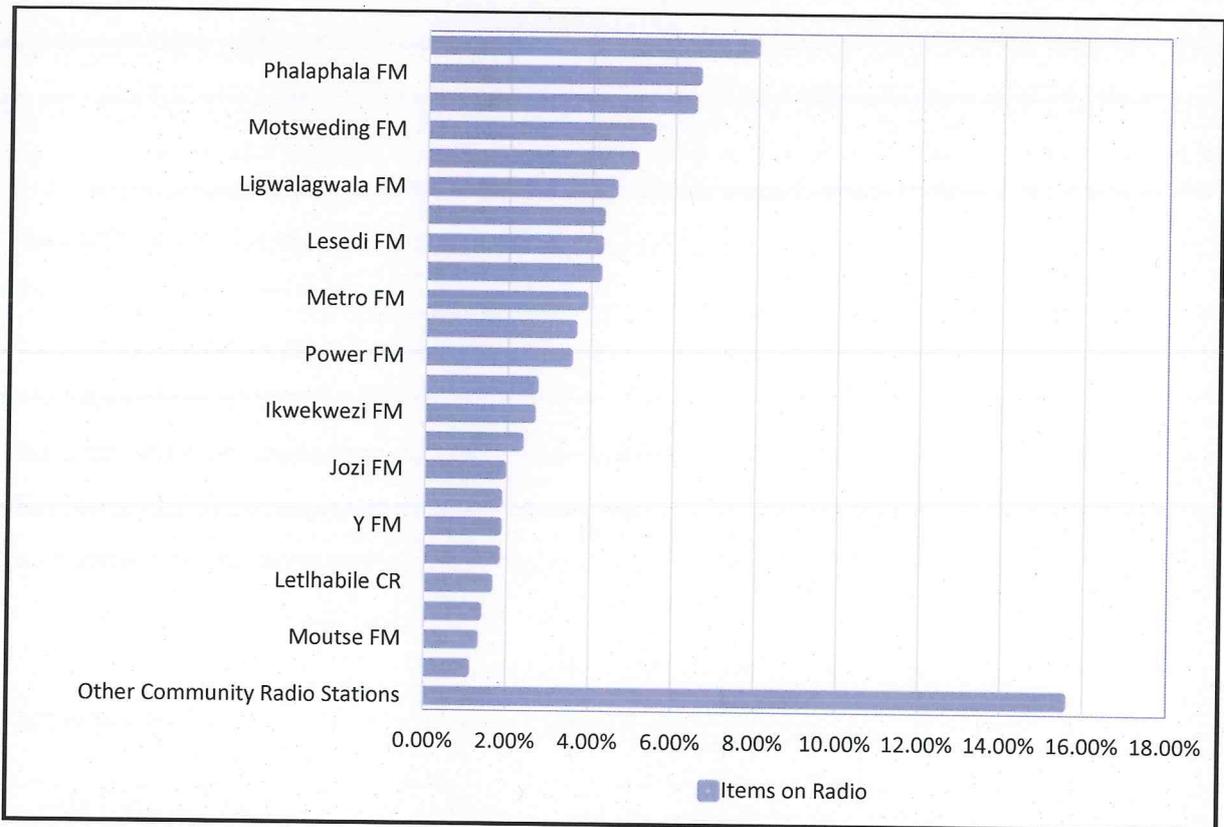


Figure 3: Election broadcast items by radio stations

1.4.2 Television

Figure 4 illustrates the share of election relevant content broadcast by television stations and submitted to ICASA. Television services broadcast 1 844 items during the election period. Free to air television services combined, broadcast 1339 items, constituting 72.61% and the remainder was broadcast by eNCA on a subscription service Licensee.

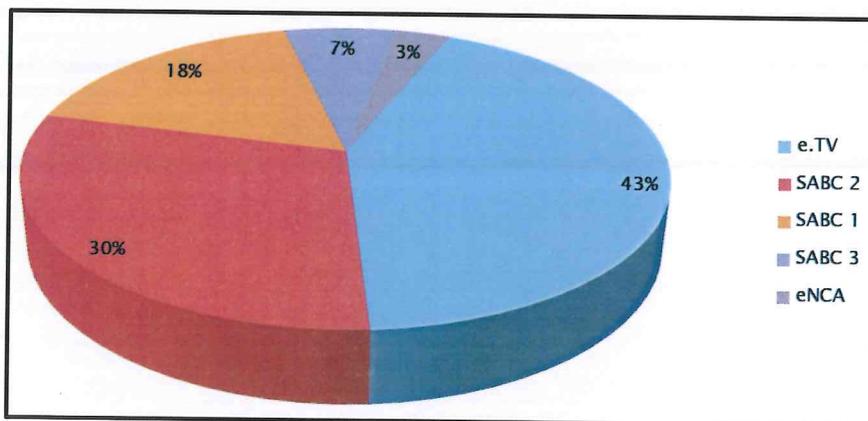


Figure 4: Election broadcast items by television station

2. OVERALL LANGUAGE DISTRIBUTION

Figure 5 below shows that all official languages were used on various broadcast media during the election period. Analyses of language distribution revealed that English still remained a dominant language of broadcast at 55%, followed by isiXhosa and isiZulu at 8%, Sepedi and SeTswana 6%, seSotho 5%, siSwati 4%, Afrikaans 3%, Tshivenda 2% and Xitsonga 1%.

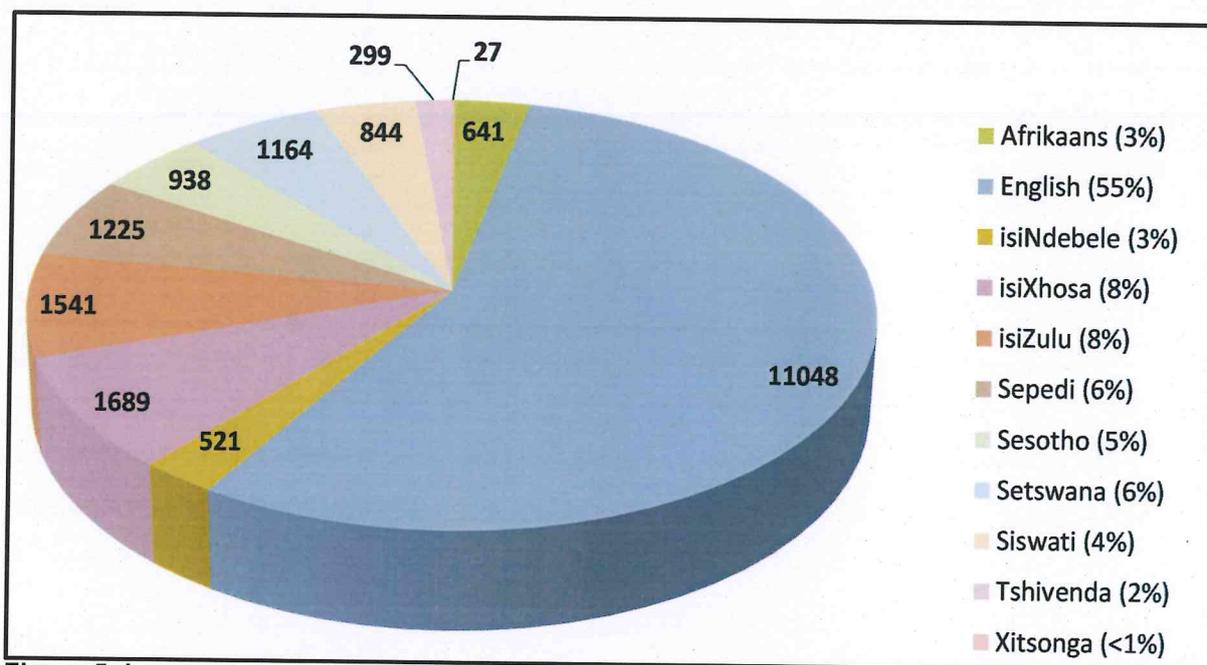


Figure 5: Language Distribution

3. Findings on Party Election Broadcasts, Political Advertisement, Public Service Announcements, Current Affairs and News Items

As mentioned under introduction above, a total of 20 106 items were monitored across the broadcast services. Of the items monitored ten (10) political parties as illustrated in Figure 6 below, received the most coverage during the election period. These were ANC, DA, EFF, COPE, IFP, NFP, AGANGSA, UDM, ACDP and FFPLUS.

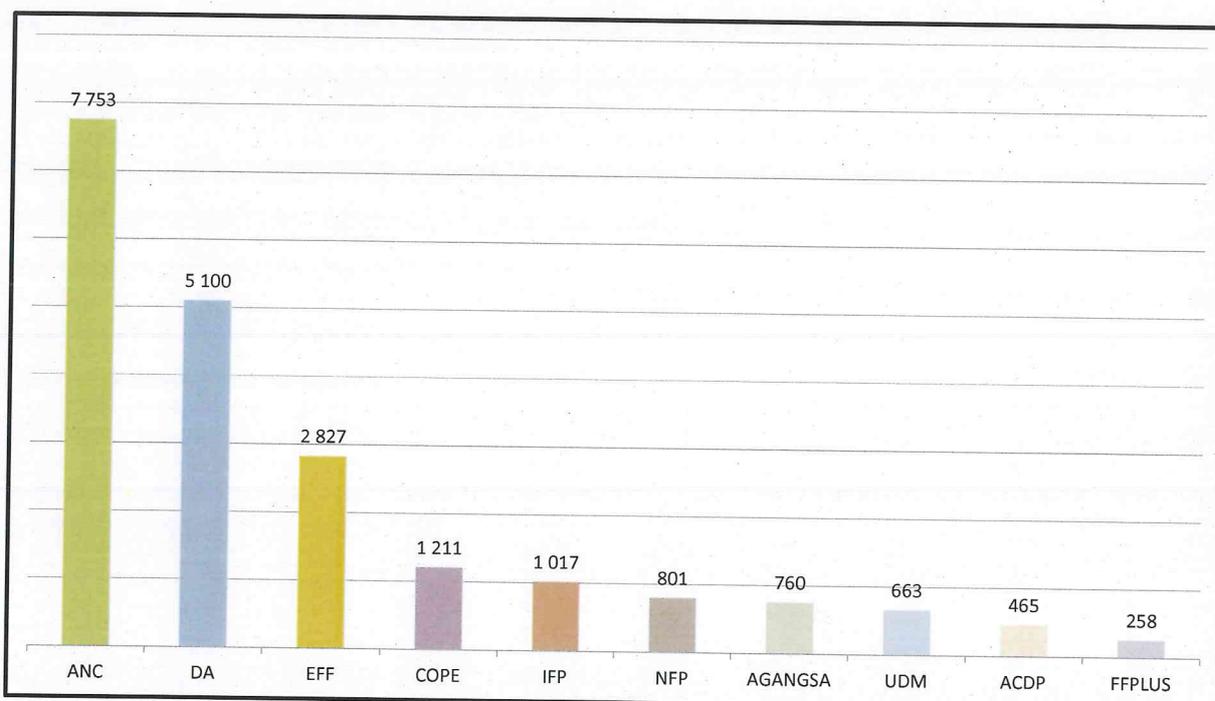


Figure 6: Broadcast items by political party Top 10

From the figure above, three parties received the most coverage namely; the ANC (34%), DA (22%) and the EFF (12%). The coverage of the remaining political parties, making up the top 10, trailed after these three parties.

3.1 Number of PEBs Monitored

The Authority allocated PEB slots to all contesting parties at national and provincial level based on the formula attached as Appendix A of this report. During the election period, 611 PEBs were monitored and below is the breakdown of the number of PEB's broadcast per party.

Table 3: Number of PEBs and duration per political party

	Political party	No.	Duration	
			Min	Sec
ANC	African National Congress	209	209	0
DA	Democratic Alliance	181	181	0
ACDP	African Christian Democratic Party	39	36	54

	Political party	No.	Duration	
			Min	Sec
UCDP	United Christian Democratic Party	36	34	20
APC	African People's Convention	32	31	34
NFP	National Freedom Party	26	26	0
COPE	Congress Of The People	23	20	58
IFP	Inkatha Freedom Party	22	19	32
PAC	Pan Africanist Congress of Azania	14	14	0
EFF	Economic Freedom Fighters	15	13	45
FINLA	First Nation Liberation Alliance	11	10	59
AI JAMA-AH	Al Jama-Ah	10	10	15
UBUNTU	Ubuntu Party	8	8	0
AGANG	Agang South Africa	9	8	12
MP	Minority Front	8	7	59
UDM	United Democratic Movement	3	3	0
AIC	African Independent Congress	2	2	0
PAL	Peoples Alliance	2	2	0
SAPP	South African Political Party	1	1	0
KISS	Keep It Straight And Simple	1	1	0
SAPCO	South African Progressive Civic Organisation	1	1	0
SCV	Sibanye Civic Association	1	1	0
KGM	Kingdom Governance Movement	1	1	0
PA	Patriotic Alliance	1	1	0
		Total=611		

As shown in the table above, of the 611 PEBs monitored, the ANC and the DA combined, had more than half of the PEBs totalling 63.8%. In terms of Regulation 15 of the Regulations, a PEB must not exceed one (1) minute. The Authority's monitoring of elections confirmed as illustrated in the above table that no political parties' PEBs exceeded the minimum requirement. Accordingly Licensees complied with Regulation 15. Further, Licensees complied, throughout the election period, with

Regulation 17 which provides inter alia that a broadcasting service must not transmit a PEB immediately before or after another PEB or immediately before or after PA.

3.2 Number of PAs Monitored

A total of 1 976 PAs were monitored during the election period. In total ANC's PAs constituted 50.19%, DA 47.03%, followed by Inkatha 5.14% and EFF 4.26%. The monitoring process revealed that licensees complied with the provisions as contemplated in Regulation 6 of the Regulations. Below is the list of the top 5 political parties, number and duration of PAs monitored.

Table 4: Political advertisements (PA) – number and duration per political party

	Political party	No.	Duration		
			Hours	Min	Sec
ANC	African National Congress	907	12	24	23
DA	Democratic Alliance	850	10	50	12
IFP	Inkatha Freedom Party	93	0	50	35
EFF	Economic Freedom Fighters	77	1	45	00
UBUNTU	Ubuntu Party	38	0	24	40

3.2.1 PSA Items

The Standard Terms and Conditions Regulations as Published in 2010, define a PSA as *"an announcement broadcast by a broadcasting service licensee aimed at imparting knowledge or information concerning a disaster or immediate grave danger to the public or in the interests of public welfare"*.

During the election period, 888 PSAs were monitored. A significant number were from the Independent Electoral Commission (508 items), followed by ICASA (119 items).

3.3 Number of PSAs Monitored

Table 5: PSAs- number and duration

Agency	No.	Hours	Duration	
			Min	Sec
IEC	508	5	34	32
ICASA	119	1	0	0
Government	42	0	39	8
Churches	15	0	15	4
NGO	3	0	7	2
Media agencies	5	0	2	58
HRC	1	0	1	39
CONTRALESA	1	0	1	14
Public Protector	1	0	0	42
Other	193	1	50	20
TOTAL=888				

3.4 Current Affairs and News Items

The Regulations define news and current affairs programming as follows;

News- "Programming which is not a current affairs programme in which a broadcaster reports on news events of social, political or economic relevance and on matters of international, national and local significance."; and

Current Affairs- "Program which is not a news bulletin but focuses on and includes comment and interpretation and analyses of issues of immediate social, political or economic relevance and on matters of international, national and local significance".

The number and cumulative duration of news and current affairs items per political party, are illustrated in tables 8 and 9, respectively.

With respect to news items three political parties received the most coverage thus dominating media coverage with total items monitored. The ANC with 5 053 items, DA 3 119 items and EFF 2 102 items.

The same three parties dominated current affairs media coverage. The ANC with 1574, the DA 946 and EFF 630. Other political parties trailed behind as reflected in the tables below.

Table 6: Number of News Monitored

POLITICAL PARTIES			No.	Hours: Min: Sec	Rank
ACDP	African Christian Democratic Party		265	07:11:30	9
AIC	African Independent Congress		30	00:44:35	16
ANC	African National Congress		5053	127:51:51	1
ANP	African National Party		25	00:34:22	17
APC	African People's Convention		87	02:56:36	13
AGANGSA	Agang South Africa		556	13:58:55	6
AL JAMA-AH	Al Jama-Ah		7	00:06:42	30
AZAPO	Azanian People's Organisation		160	04:46:40	10
BRA	Bushbuckridge Residents Association		10	00:16:16	23
COPE	Congress Of The People		745	20:53:25	4
Iqela Lentsango	Dagga Party		2	00:12:20	40
DA	Democratic Alliance		3119	75:46:40	2
EFF	Economic Freedom Fighters		2102	53:38:44	3
FINLA	First Nation Liberation Alliance		12	00:26:22	22

POLITICAL PARTIES		No.	Hours: Min: Sec	Rank
FFPLUS	Freedom Front Plus	31	00:58:23	15
FN	Front Nasionaal/Front National	9	00:13:18	26
ICOSA	Independent Civic Organisation Of South Africa	16	00:22:13	19
IFP	Inkatha Freedom Party	604	17:09:39	5
KISS	Keep It Straight And Simple	6	00:10:37	33
KGM	Kingdom Governance Movement	13	00:16:07	21
KZNTA	KwaZulu Natal Transport Alliance	10	00:14:30	24
LDA	Lekgotla For Democracy Advancement	4	00:46:50	35
MCA	Merafong Civic Association	7	00:13:31	31
MF	Minority Front	46	01:22:50	14
NFP	National Freedom Party	542	15:17:49	7
NPSA	National Party South Africa	7	00:14:10	32
PAC	Pan Africanist Congress of Azania	127	44:24:42	11
PAM	Pan Africanist Movement	9	00:13:07	27
PA	Patriotic Alliance	14	00:23:37	20
PMSA	Patriotic Movement Of South Africa	8	00:11:33	29
PAL	Peoples Alliance	10	00:12:27	25

	POLITICAL PARTIES		No.	Hours: Min: Sec	Rank
SCV	Sibanye Association	Civic	3	00:23:30	37
SPP	Sindawonye Progressive Party		1	00:18:00	41
SAMEBA	South Maintenance Estate Association	African And Beneficiaries	6	00:06:12	34
SAPCO	South Progressive Organisation	African Civic	9	00:17:31	28
ULS	Ubumbano Sabangoni	Lwesizwe	1	00:10:40	42
UBUNTU	Ubuntu Party		1	00:41:39	43
UMSA	Unemployment Movement SA		3	00:20:10	38
UCDP	United Democratic Party	Christian	112	03:14:40	12
UNICO	United Congress		3	00:10:25	39
UDM	United Movement	Democratic	469	12:51:52	8
WASP	Workers And Party	Socialist	20	00:19:50	18
XP	Ximoko Party		4	00:53:49	36

Table 7: Number of Current Affairs Monitored

POLITICAL PARTIES		No.	Hours: Min: Sec	Rank
AUP	Africa Unite Party	3	00:06:33	42
ACDP	African Christian Democratic Party	160	16:51:16	9
AIC	African Independent Congress	19	01:45:18	17
ANC	African National Congress	1574	159:08:24	1
ANP	African National Party	9	00:26:39	20
APC	African People's Convention	69	07:42:42	13
AGANGSA	Agang South Africa	191	22:43:09	7
AL JAMA-AH	Al Jama-Ah	8	00:28:23	21
AZAPO	Azanian People's Organisation	117	13:40:50	10
BRA	Bushbuckridge Residents Association	6	00:40:07	28
COPE	Congress Of The People	438	47:37:32	4
DA	Democratic Alliance	946	97:39:50	2
EFF	Economic Freedom Fighters	630	70:26:49	3
FINLA	First Nation Liberation Alliance	4	00:14:49	39
FFPLUS	Freedom Front Plus	20	02:08:49	16
FN	Front Nasionaal/Front National	5	00:13:55	35
ICOSA	Independent Civic Organisation Of South Africa	4	00:25:40	37

POLITICAL PARTIES			No.	Hours: Min: Sec	Rank
IPO	Indigenous Peoples Organisation		3	00:14:53	43
IFP	Inkatha Freedom Party		294	34:53:27	5
IQELA LENTSANGO	Iqela Lentsango-Dagga Party		2	00:10:42	45
KISS	Keep It Straight And Simple		8	00:27:07	22
KGM	Kingdom Governance Movement		5	00:13:16	34
KZNTA	KwaZulu Natal Transport Alliance		7	00:35:30	27
LDA	Lekgotla For Democracy Advancement		7	00:29:12	26
MCA	Merafong Civic Association		5	00:42:42	30
MF	Minority Front		49	05:30:38	14
NFP	National Freedom Party		230	25:56:06	6
NPSA	National Party South Africa		4	00:45:31	36
PAC	Pan Africanist Congress of Azania		87	10:23:35	11
PAM	Pan Africanist Movement		4	00:16:50	38
PA	Patriotic Alliance		24	03:42:29	15
PMSA	Patriotic Movement Of South Africa		2	00:08:25	46
PAL	Peoples Alliance		3	00:12:49	40
SCV	Sibanye Civic Association		5	00:32:33	31
SPP	Sindawonye Progressive Party		7	00:53:44	25

POLITICAL PARTIES				No.	Hours: Min: Sec	Rank
SAMEBA	South African Maintenance And Estate Beneficiaries Association			7	00:46:57	24
SAPP	South African Political Party			5	00:21:43	33
SAPCO	South African Progressive Civic Organisation			3	00:42:00	41
TA	Truly Alliance			2	00:49:40	47
ULS	Ubumbano Lwesizwe Sabangoni			2	00:20:58	44
UBUNTU	Ubuntu Party			6	00:23:25	29
UMSA	Unemployment Movement SA			5	00:40:34	32
UCDP	United Christian Democratic Party			75	08:06:39	12
UNICO	United Congress			12	01:34:50	19
UDM	United Democratic Movement			188	20:59:48	8
WASP	Workers And Socialist Party			15	01:45:19	18
XP	Ximoko Party			7	00:50:42	23

3.5 Items by National and Provincial Focus

The monitoring allowed each current affairs and news election broadcast item to be classified in terms of whether the focus of the topic was either national and/or specifically provincial.

The data in Figure 7 shows that in terms of current affairs and news election broadcast items about 48% focused on national issues. Gauteng constituted 16% and KwaZulu-Natal (9%). The number of political parties registered for national and provincial elections as well as the concentration of broadcasters would influence the

focus at a national and/or provincial level. While the national issues dominate, 52% of the focus was on provincial issues.

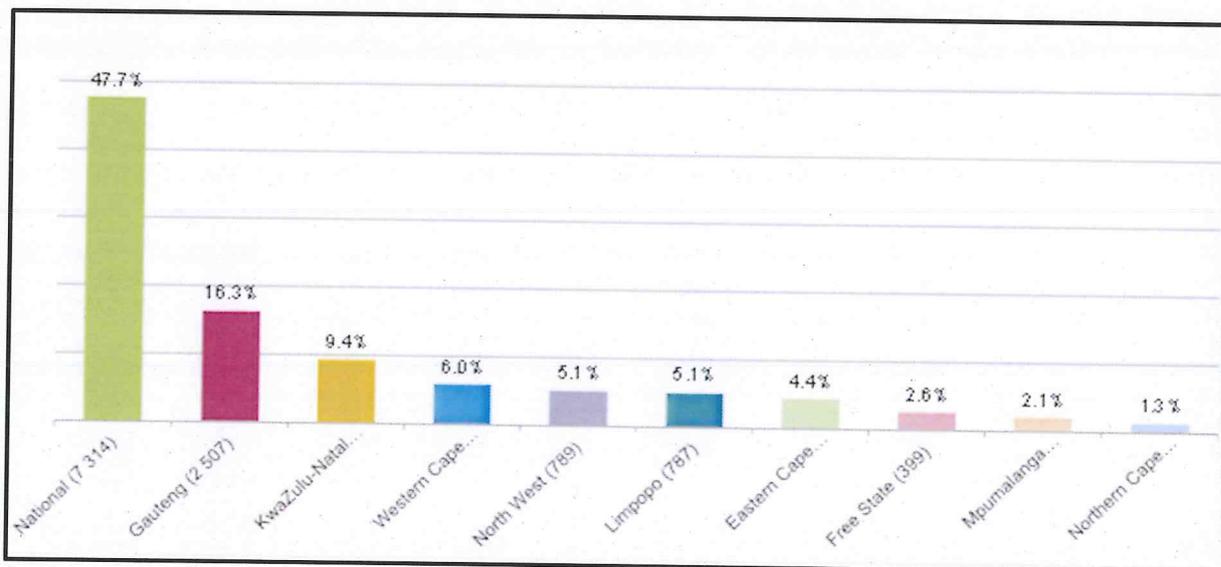


Figure 7: National and/or provincial focus of current affairs and news election items

3.6 Items by Primary and Secondary Topics Allocated to Current Affairs and News Broadcasts

3.6.1 Primary Topics

A total of 13 388 primary items were monitored during the election period on news and current affairs items on radio and television services (See Fig 8. below). Each primary topic reflects the amount of time and frequency of the item in the election broadcasts. The results show that the two key primary topics were party manifestos (30%) and IEC/election management (22%). Political intolerance was ranked as the third most prominent primary topic.

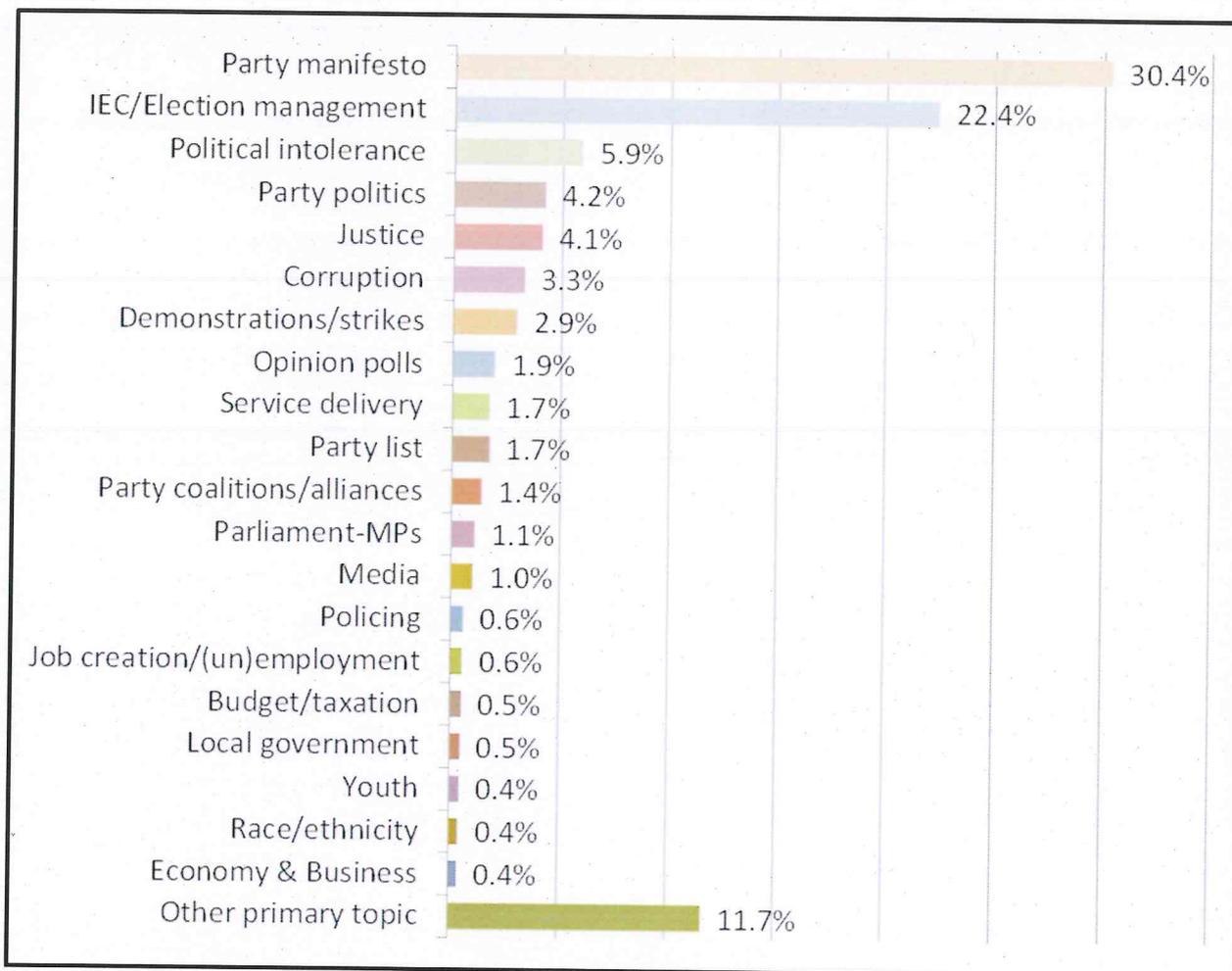


Figure 8. Primary topic for news and current affairs items

3.6.2 Secondary Topics

Secondary topics reflect less amount of time and frequency of the item in the election broadcasts. It is important to note that with secondary topics, more than one could be selected per election broadcast item. Corruption (10%) was the highest ranked secondary topic followed by IEC/election management (8.4%) and job creation (8.2%). Figure 10 below shows the percentage breakdown for each secondary topic.

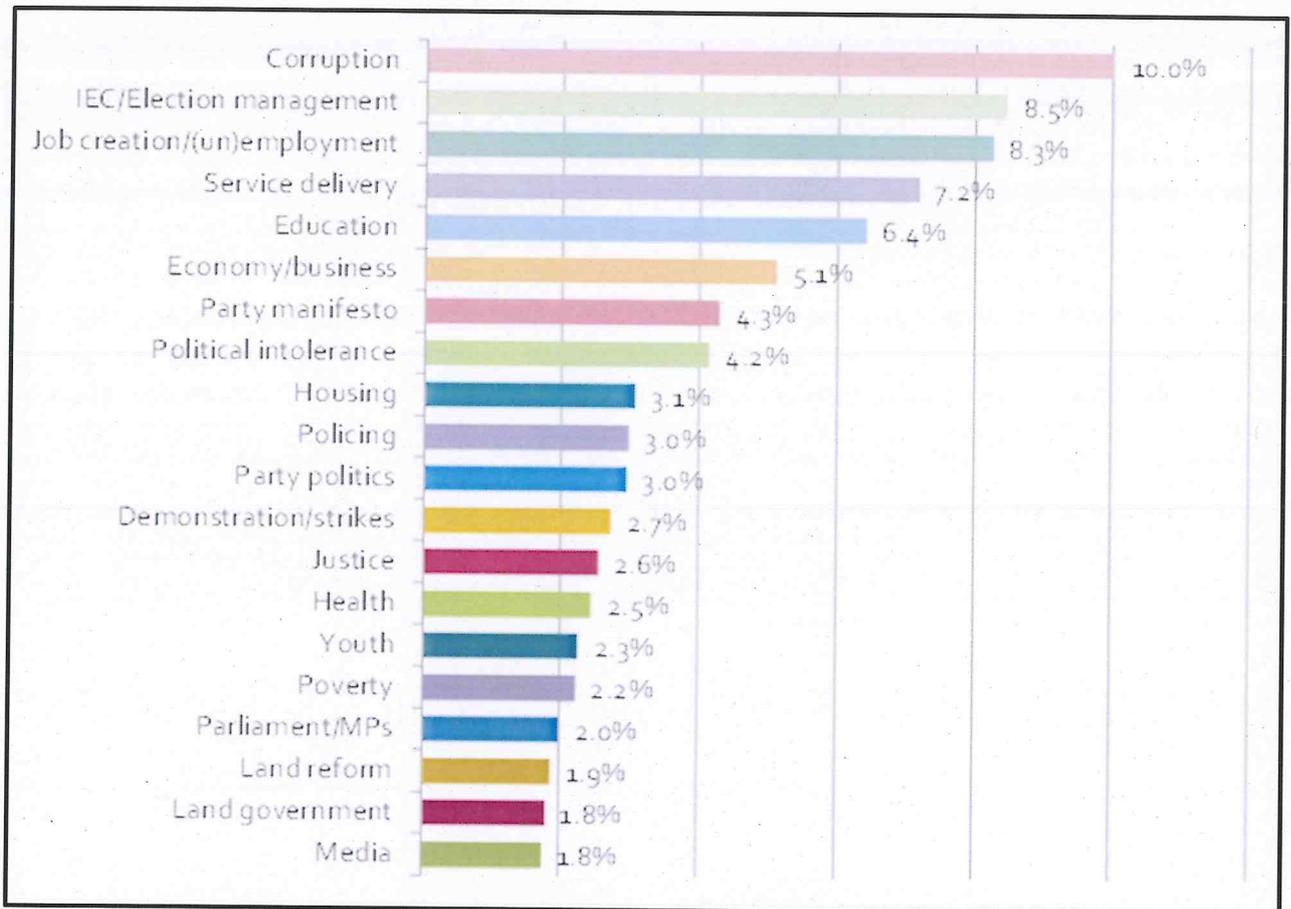


Figure 9: Secondary topic for news and current affairs items

3.6.3 Primary and secondary topic items by political party

Figure 10 shows the ten most prominent primary topics mentioned in relation to the main political parties. The figure also provides percentages for each primary topic mentioned for each of the main political parties.

In media broadcasts that featured the ANC, the key topics were service delivery protests and party politics; whereas DA was job creation/ (un)employment. The EFF and other political parties were involved in discussions in the media on IEC/election management, E-toll issues. Figure 10: Top 10 primary topics by political party

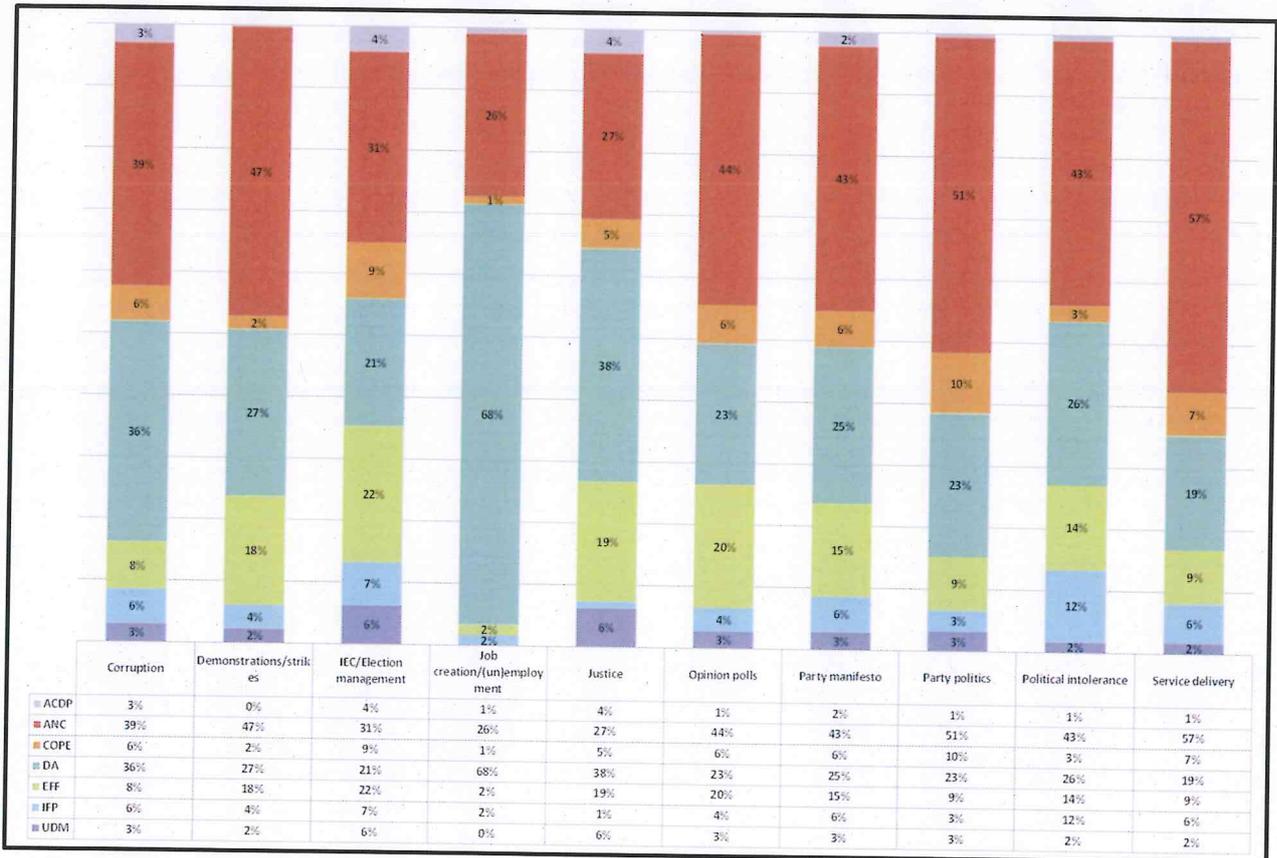


Figure 10: Top 10 primary topics by political party

SECTION THREE: COMPLAINTS AND COMPLIANCE COMMITTEE (CCC)

1. PROCESSING OF COMPLAINTS

Section 17C of ICASA Act of 2000 as amended deals with procedures to be followed by the Complaints and Compliance Committee (CCC); an independent judicial arm of ICASA; established in terms of Section 17A of the ICASA Act, is mandated to investigate and adjudicate all complaints received by it.

Regulation 6 (3) of the Regulations governing aspects of the Complaints and Compliance Committee of the Independent Communications Authority of South Africa procedures ("CCC Regulations") provides that complaints in terms of the election Rules are deemed to be urgent unless the Chairperson determines otherwise.

Regulation 7 of the Regulations provides that in the event of any person being aggrieved by any Political Advertisement (PA) or Political Elections Broadcasts (PEB), that person may lodge a complaint with the Authority within 48 hours after such broadcast occurred.

Regulation 4 (9) of the Regulations provides that a party whose PEB has been rejected and has no intention of altering or editing the PEB, may refer the matter to the Authority and inform the concerned Licensee of the referral to the Authority, within 48 hours of being informed in writing of the rejection.

Regulation 4 (10) of the Regulations provides that the Authority must address a notice received in terms of regulation 4(9), in accordance with regulation 6 of the CCC Regulations.

Regulation 6 (6) of the Regulation provides that a party whose PA has been rejected by a broadcasting service licensee and has no intention of altering or editing the advertisement, may refer the matter to the Authority within 48 hours of being informed of the rejection.

Regulation 6 (7) of the Regulations provides that the Authority must address a notice received in terms of regulation 6 (6), in accordance with regulation 6 of the CCC Regulations.

The following sections outline the complaints investigated by the Authority and complaints adjudicated by the Complaints and Compliance Committee ("CCC") during the 2014 National and Provincial Elections period. A total of 7 (seven) complaints were received. Of this number, six (6) were received during the election period and one (1) outside of the election period. Six (6) complaints were against the SABC and one (1) against e-tv. Four (4) of the complaints were heard by the CCC and three (3) of the complaints were resolved by the Authority. The Complaints received were as follows:

Complainant	Political Party concerned	Respondent	Presiding	No. of Complaints
Democratic Alliance	Democratic Alliance	SABC tv	CCC	1
South African Police Service	Democratic Alliance	Democratic Alliance	CCC	1
Economic Freedom Fighters	Economic Freedom Fighters	SABC tv	CCC	1
Inkatha Freedom Party	Inkatha Freedom Party	e-tv	CCC	1
Libertarian Party of South Africa	Democratic Alliance	SABC tv	ICASA	1
First National Liberation Alliance	First National Liberation Alliance	SABC tv	ICASA	1
Member of the public (Neo Lipholo)	African National Congress	SABC Radio (Lesedi FM)	ICASA	1
TOTAL				7

2. Matters before the CCC: Complaints against the SABC

2.1 Complaint by the Democratic Alliance (DA) regarding refusal by SABC to broadcast Democratic Alliance's "Ayisafani" Political Advertisement ("PA")

On 12 April 2014, the DA referred a dispute to the CCC wherein they contended that the SABC's rejection of its "Ayisafani" PA was unlawful, unconstitutional and invalid. Further, DA submitted that the CCC should set aside the SABC's rejection of the PA and to direct the SABC to immediately broadcast the advertisement.

On 15 April 2014, the CCC was called upon to address the question whether the DA's PA violated the Regulations or any other law.

The SABC relied on four (4) grounds for rejecting the PA, namely that:-

- (1) the PA is likely to incite violence;
- (2) provides false information, which is prohibited in terms of the Electoral Code¹;
- (3) violates the code of the Advertising Standards Authority (ASA); and
- (4) contains personal attacks on individuals, which is not allowed.

The DA responded against the four grounds on the following premises:

- The DA did not intend or want to incite violence by the visuals and words used in the PA, however that what is already in the public domain is worse than what is contained in the PA;
- There was no breach of the Electoral Code as the information referred to in the PA was derived from a government official from the Department of Public Works and therefore the SABC has an impermissible interpretation of the Electoral Code;
- The Code of Conduct is a voluntary Code adopted by contract, which does not include political advertising; and
- The SABC does not refer to any provision of any law for not allowing personal attacks on individuals in political advertising.

¹ The Electoral Act (1998, Schedule 2; "Code 1998") contains an "Electoral Code of Conduct".

On 16 April 2014 the parties to the dispute reached an agreement as follows:

- The matter would be postponed sine die (i.e. indefinitely);
- SABC gave an undertaking that the PA in question would be aired immediately; and
- The parties would decide at a later stage whether they will file any papers on the matter.

The matter was therefore concluded on the basis of the settlement agreement, as confirmed by the CCC.

2.2 *Complaint by the Economic Freedom Fighters regarding refusal by SABC to broadcast the Economic Freedom Fighter's Party Election Broadcast (PEB)*

On 22 April 2014, the EFF referred a dispute to the CCC as a result of the SABC refusing to broadcast the EFF's PEB. The basis of the dispute was that the Regulations state that a PEB may not incite violence. Furthermore, it was alleged that the references in the PEB to police killing people and the gratuitous use of visuals showing police pointing guns at people is cause for incitement to action against the police services.

The SABC further contended that, in addition, the Electoral Code of Conduct signed at the IEC by political parties, states that the Code is part of the Electoral Act (73 of 1998) and contains a list of prohibited conduct, including using language which provokes violence.

The SABC further advised the EFF that the Electoral Code of Conduct also includes a clause prohibiting the publication of false information about other candidates or parties. This can also be extended to information that has not yet been tested and confirmed in a court of law, such as those of allegations of corruption the PEB regarding the Nkandla matter.

Finally, the SABC contended that the visual statement on the screen reads: "Destroy e-tolls physically", which is an indication of incitement to violence and promotes a criminal activity, which is not permitted in terms of the ICASA Regulations.

The SABC and EFF exchanged documents as required by the CCC. The hearing was held on 25 April 2014.

In their argument, the EFF said that the e-Tolls would be destroyed once they are in government.

On 26 April 2014, the CCC held that there is nothing in that frame of the PEB that refers to e-tolls being physically destroyed upon electoral victory. The CCC therefore found that the content of the PEB is in contravention of Regulation 4(12)(b) of the Regulations, as it may be perceived as condoning or lending support to an unlawful, illegal or criminal act. Destroying the e-Tolls in this case, would be unlawful and criminal as it would be damage to state property. The matter was therefore closed by virtue of the CCC findings.

2.3 Complaint by the South African Police Services ("SAPS") regarding the Democratic Alliance's "Ayisafani" Political Advertisement

On 20 April 2014, the SAPS lodged a complaint directly with the CCC stating that Democratic Alliance's advertisement is likely to incite violence. The SABC indicated that it will abide by the decision of the CCC and will not oppose the complaint. As a result, the SABC was on an observer status before the CCC on 24 April 2014.

The SAPS submitted that it is a constitutional institution which has no interest in what parties advertise and therefore cannot be drawn in to political "mud-slinging". The portion of the PA attributable to the SAPS, together with the picture are in contravention of the Regulations, more specifically, Regulation 6(9)(b)2.

The SAPS contended that the PA should not contain material that is likely or is calculated to incite violence. The SAPS requires cooperation of members of society and the PA stating that "we have seen a police force killing our own people" is lumped

² "A party that submits a PA to a broadcasting service licensee for broadcast must ensure that the advertisement does not:

(a) Contravene the provisions of the Electoral Code, the Electoral Act, the Constitution, the Act and the Broadcasting Act; or

(b) contain any material that is calculated, or that in the ordinary course is likely, to provoke or incite any unlawful, illegal or criminal act, or that may be perceived as condoning or lending support to any such act."

up with the criticism of another political party. The agenda of other political parties has nothing to do with the SAPS. The general statement is that "the police force is a killer" to an ordinary person and therefore the public is called upon to react. It creates the impression that the SAPS should not be obeyed because they are killers. The same standard of treatment is required as that used with regard to the IEC in performing its duties. The SAPS cannot air its own advertisement to counter the DA's PA. Allowing an advert that can attack the integrity of a state institution mean that the same can be done with the IEC, but then the line cannot be drawn on when this should be limited.

The SAPS is the same institution that will be at every voting station on 7 May 2014. There will be no harm if the portion of the PA pertaining to the SAPS is removed from the PA because the DA is in any event saying that the SAPS is only focused on a "one-liner" in the PA.

Regulation 6(9) is not concerned with issues of defamation (i.e. opinion, fair comment or truthfulness, therefore the points of contention by the DA cannot hold because the question is whether or not they are factually correct, but whether they are likely to incite violence. The "likelihood" test is a preventative measure in nature and does not require that actual harm be proven. The SAPS cannot wait for actual harm to occur before approaching the CCC.

The DA submitted that the CCC must decide whether the two seconds on the PA clip, referring to the SAPS, is likely to provoke violence against the SAPS. The DA, contended that the PA does not encourage viewers to disobey the police but encourages them to vote for the DA to change the state of affairs.

Section 206 of the Constitution stipulates that the Police force is a political responsibility of the president of the country who is responsible for controlling the police and appointing important heads of the police, such as the commissioner.

The DA, further argued that the PA is a legitimate criticism to government of the day and the DA is saying "choose a new National Executive Cabinet"³. The DA emphasised

³ South African Police Services v DA, CCC transcripts page 108, dated 24 April 2014

that, any South African citizen who watches the PA will be aware of what the SAPS has been accused of.

The harm to the DA is that a major opposition party in a democracy is prohibited from criticising government on the basis of the SAPS, which is a significant harm to freedom of expression. What is in the public domain, will, in any event, not cause harm. Freedom of expression is an important right. Prior restraint is when it is decided that "you wish to say something, but you may not". Asking the DA to stop the PA (moving forward) is prior restraint.

The DA submitted that the, Midi Television judgment held that, prior restraint can be exercised where there is grave injustice likely to occur, but there is no risk of provocation on any violence that is not already provoked. The CCC should consider what is already in the public domain.

The SAPS responded that context is a dilemma as it is not known what happened to the two people in the picture in the PA. The police used rubber bullets (not live ammunition), but the PA says that "the police is killing our people". Freedom of speech is not absolute, but is subject to section 36 of the Constitution (limitation of rights), therefore the DA has not advanced any argument that the PA does not contravene Regulation 6(9).

The CCC handed down its findings on 26 April 2014 and found that the PA was making worse an already difficult situation. The PA according to the findings, encouraged people to act against the police and to disobey them. The statement and picture was found to have created the image of the police as the enemy to the broader public and, given the sensitive period of election, the CCC ruled that the offending part of the PA, namely, "We've seen a police force killing our own people" should be removed from the PA.

The matter was therefore closed by virtue of the CCC findings.

2.4 **Matters before the CCC: Complaint against e-tv**

2.4.1 ***Complaint by the Inkatha Freedom Party (IFP) regarding a documentary, "A bloody miracle" by e-tv***

On 29 April 2014, the IFP, submitted a complaint to ICASA's Durban Office. ICASA's head office and the CCC received same on 05 May 2014.

The PEB Schedule published in the government gazette No 37532, on 03 April 2014, expressly stated that "Any complaints related enquiries should be directed to:

Mr. Gordon Mashigo, Legal Adviser: Litigation & CCC Programme Tel: (011) 566 3611

E-mail: gmashigo@icasa.org.za and Ms. Veronica Barnard, Compliance Officer: Licensing and Compliance Programme Tel: (011) 566 3219; E-mail: VBarnard@icasa.org.za .

In their complaint, the IFP stated that e-tv had, on, but not limited to 27 April 2014, broadcast a documentary titled "A bloody miracle". The IFP source of contention is that the party and its leader, Prince Mangosuthu Buthelezi were portrayed as instigators, inciters of violence and hatred as well as the proponents of the bloody civil war leading up to 1994, without having been given the opportunity to respond.

The CCC hearing was held on 19 September 2014 to hear oral arguments from both counsels of the parties. At the time of writing this report the matter had not been finalised and the Committee had not ruled on the matter

3 **Matters before ICASA: Complaints against the SABC**

3.1 ***Complaint by the Libertarian Party of South Africa regarding refusal by SABC to broadcast Democratic Alliance's "Ayisafani" Political Advertisement ("PA")***

On 16 April 2014, the Libertarian Party of South Africa, a registered political party which was not contesting the 2014 general election, lodged an alternate complaint to the one lodged by the DA in respect of the DA's "Ayisafani" PA.

The complaint arose as a result of the decision of the SABC to withdraw the PA from broadcast after the same advert was aired by the SABC. The Libertarian Party of South Africa maintained that the DA conducted itself properly by bringing their complaint against the SABC, however, that in the event that the DA complaint was identified to have a potential pitfall, this would cause the SABC to delay the matter further. The Libertarian Party of South Africa therefore did not intend to be joined to the complaint of the DA, but sought to advance the DA's complaint from a different starting position in the event that the DA's complaint was held to be defective for any reason.

On 17 April 2014, the Libertarian Party of South Africa advised that, in light of the outcome of the DA's complaint settlement with the SABC, it was unnecessary to proceed with their complaint and it may therefore be withdrawn. The matter was therefore closed.

3.2 *Complaint by the First National Liberation Alliance (FINLA) regarding refusal by SABC to broadcast its PEB*

On 22 April 2014, the Authority received a letter from the FINLA in terms of which FINLA set out its complaint regarding rejection of its PEB by the South African Broadcasting Corporation ("SABC").

The Authority took note of the following:

- On 16 April 2014 at 11:51 am, the SABC submitted an electronic mail to FINLA advising that the sound quality of the English Compact Disc does not meet the technical quality standards and is not acceptable for broadcast;
- On 17 April 2014 at 10:20 am, the SABC submitted another electronic mail to FINLA advising that the content of the English Betacam submitted by FINLA promotes racism and is not acceptable for broadcast. In the same communique, the SABC indicated that FINLA should deliver the amended version by 15:00 pm on 17 April 2014 for consideration, failure of which FINLA would forfeit its first scheduled slot(s); and
- On 22 April 2014 at 12:58 pm, the Authority received a complaint from FINLA regarding the SABC's rejection of its proposed PEB.

The Authority reviewed the complaint and was not satisfied that FINLA lodged the complaint with the Authority timeously, in accordance with Regulation 4(9), which provides that:

"A party whose PEB has been rejected and has no intention of altering or editing the PEB, may refer the matter to the Authority and inform the concerned licensee of the referral to the Authority, within 48 hours of being informed in writing of the rejection".

In light of the above, FINLA was advised that it had failed to comply with Regulation 4(9) of the Regulations in respect of timeous submission of its complaint and was deemed to have forfeited its allocated time for its slots. Accordingly, FINLA's complaint was closed.

3.3 Complaint by Member of the public (Neo Lipholo) regarding refusal by SABC to broadcast its PEB

A complaint was received by the Authority on 9 June 2014, from a member of the public, Neo Lipholo, regarding a programme called "Matshohlo", on Lesedi FM, an SABC radio station. The complaint pertained to an interview conducted by the programme host of the day (Moeketsi Rahlaho) with the Premier of the Province of the Free State, Mr Ace Magashule.

The complaint was initially forwarded to the BCCSA on 29 May 2014, and subsequently forwarded to the SABC for a response. The SABC advised that the matter should be referred to the Complaints and Compliance Committee ("CCC") for adjudication, having noted that it pertains to broadcasting coverage of the 2014 national elections.

Given that the matter pertained to elections, the election period concerned was observed.

Section 1 of the Electronic Communications Act 36 of 2005 (the "ECA") defines "election period" as:

"the period commencing with the date on which the election day is proclaimed and ending on the day immediately following upon the day on which candidates of any of the political parties are declared elected".

It was noted that the end of the election period was marked by the day following declaration by the IEC of which political parties are elected. The election period therefore ended on 13 May 2014.

In terms of section 59 of the ECA:

"If, during an election period, the coverage of any broadcasting service extends to the field of elections, political parties and issues relevant thereto, the broadcasting services licensee concerned must afford reasonable opportunities for the discussion of conflicting views and must treat all political parties equitably.

(2) In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service –

without such party having been afforded an opportunity to respond thereto in such programme; or without the view of such political party having been reflected therein, the broadcasting services licensee concerned must afford such party a reasonable opportunity to respond to the criticism.

(3) If, within 48 hours before the commencement of the polling period or during the polling period, a broadcasting services licensee intends broadcasting a programme in which a particular political party is criticised, the licensee must ensure that the political party in question is given a reasonable opportunity to –

(a) respond thereto in the same programme; or

respond thereto as soon as is reasonably practicable thereafter."

It was further noted that the cause of the complaint was apparently broadcast on 28 April 2014, and the complaint was communicated on 29 May 2014, albeit not to the Authority, which was some 17 days after the end of the election period.

Furthermore, it was noted that the wording of the ECA, providing for a right of reply envisages that this should be done, as soon as is reasonably practicable, but nevertheless, within the election period.

In the premises, the Authority advised that it could not entertain the complaint on the basis that it was submitted out of time (outside the election period). Accordingly, the matter was dismissed and closed.

SECTION FOUR: CONCLUSION/S

A core component of the monitoring process was to determine the extent to which broadcasting service licensees complied with the ECA and all prescripts outlined in the Regulations. The 2014 national and provincial elections were the highly contested elections of all the elections ever monitored by the Authority. Although there were reported instances of alleged bias of coverage of elections, the Authority found no evidence of same but rather political parties who were either turned back by the Licensees because their material did not meet the licensee's technical specifications or their PEBs did not conform to the Regulations.

Although community broadcasters generally committed resources and time to broadcast elections, a lot of them advised the Authority from the commencement of election broadcast period that PEB's were not delivered by political parties for broadcast. Further, the Authority noted that not all political parties utilised their free slots (PEBs). The Authority believes that it has played a critical role in ensuring that South Africans were provided sufficient information to make an informed choice on 7 May 2014.

However, political parties should make use of these services, other than the SABC to ensure that voters make informed choices.

In spite of the above mentioned factors, the Authority can declare that overall, broadcast coverage of the 2014 national and provincial elections was fair. Finally, the Authority would like to thank the SABC, community and commercial Licensees who participated in this process.