

PUBLIC SERVICE BROADCASTING BILL

A Bill to promote high quality public service broadcasting and the free flow of information in the public interest; for that purpose to establish a public service broadcasting corporation for Southern Sudan which shall function wholly independently of State, governmental and party political influences and free from political or other bias or interference; and to provide for incidental matters.

RECOGNISING THAT —

- The right to freedom of expression, including the public's right to a pluralistic media, is a fundamental human right, protected under Article 28 of the Interim Constitution of Southern Sudan;
- The right to freedom of expression is also recognised under Article 19 of the International Covenant on Civil and Political Rights, to which Sudan is a State party, and under Article 9 of the African Charter on Human and Peoples' Rights, to which Sudan is also a State Party;
- The Declaration of Principles on Freedom of Expression adopted by the African Commission on Human and Peoples' Rights states that State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government;

NOTING THAT —

- the Southern Sudanese broadcasting system comprises public, commercial and community elements;
- the broadcasting system makes use of radio frequencies that are public property; and
- public service broadcasting is necessary to uphold and fulfil the principles of universal access and equality and diversity in broadcasting;

ENCOURAGING —

- the development of Southern Sudanese expression by providing a wide range of programming that refers to Southern Sudanese opinions, ideas, values and artistic creativity by displaying Southern Sudanese talent in radio and television programming; and

AND IN ORDER TO —

- align the broadcasting system with the democratic values of the constitution and to enhance and protect the fundamental rights of citizens,

BE IT THEREFORE ENACTED by the Southern Sudan Legislative Assembly,
as follows:—

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PART I: DEFINITIONS AND PURPOSE

Definitions

1. In this Act, unless the context otherwise requires: –
 - (a) “advertisement” is any public announcement intended to promote the sale, purchase or rental of a product or service, to advance a cause or idea or to bring about some other effect desired by the advertiser, for which broadcasting time has been given up to the advertiser for remuneration or similar consideration;
 - (b) “broadcasting service” is a defined service which consists in the broadcasting of television or sound material to the public, sections of the public or subscribers to such service;
 - (c) “code of broadcasting practice” is a set of standards relating to programme content and broadcast practices;
 - (d) “independent producer” is an individual or company who produces programmes for radio or television and who is independent of any particular broadcaster;
 - (e) “ethnic/minority programming service” is a unit within a broadcaster devoted to a certain language or ethnic group and which provides news services and other programming by and for that group, in its language, and reflecting its culture and interests;
 - (f) “programme schedule” is a plan indicating the general types of programmes proposed to be broadcast, along with the percentage of broadcasting time to be devoted to such programmes and to advertising, and the target audience;
 - (g) “public broadcasting fee” is a levy on the electricity bill for purposes of providing financial support to public broadcasting;
 - (h) “senior staff” are defined as staff who report directly to the Director General; and
 - (i) “sponsorship” is the participation of a natural or legal person, who is not engaged in broadcasting activities or the production of audiovisual

works, in the direct or indirect financing of a programme with a view to promoting the name, trademark or image of that person.

Purpose

2. The purposes of this Act are: –
 - (a) to promote the provision of high-quality broadcast programming to the public at large;
 - (b) to promote and guarantee the independence of the public service broadcaster from political or commercial interference within a framework of accountability to the public; and
 - (c) to ensure stable financial provision for the public service broadcaster;
 - (d) to establish the Southern Sudan Broadcasting Corporation; and
 - (e) and to provide for matters connected therewith.

PART II: ESTABLISHMENT AND GUIDING PRINCIPLES

Establishment

3. (1) The Broadcasting Corporation of Southern Sudan (hereinafter called “SSBC”) is hereby established as a non-profit public service broadcasting organisation with its seat in Juba and serving the whole of Southern Sudan. SSBC is a public institution which is accountable to the public through the Southern Sudan Legislative Assembly.
 - (2) SSBC shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies, and no person or entity shall seek to influence the members or staff of SSBC in the discharge of their duties, or to interfere with the activities of SSBC, except as specifically provided for by law. This autonomy shall be respected at all times.
 - (3) SSBC shall have all powers, direct or incidental, as are necessary to undertake its functions as provided for in this Act. In particular, it shall have full legal personality, including the power to acquire, hold and dispose of property.

Guiding Principles

4. (1) SSBC has an overall mandate to provide a wide range of programming for the whole territory of Southern Sudan that informs, enlightens and entertains, and that serves all the people of Southern Sudan, taking into account ethnic, cultural and religious diversity.
- (2) SSBC shall provide innovative and high quality broadcasting, which reflects the range of views and perspectives held in society, satisfies the needs and interests of the general public in relation to informative broadcasting, and complements programming provided by private broadcasters.
- (3) To fulfil its public service broadcasting role, SSBC shall strive to provide a broadcasting service that: –
 - (a) is independent of governmental, political or economic control, reflects editorial integrity and does not present the views or opinions of SSBC;
 - (b) includes comprehensive, impartial and balanced news and current affairs programming, including during prime time, covering Sudanese, Southern Sudanese and international events of general public interest;
 - (c) contributes to a sense of Southern Sudanese identity, while reflecting and recognising the cultural diversity of Southern Sudan and its status in Sudan as well as internationally;
 - (d) gives a voice to all ethnic, cultural and religious communities, including through the establishment of dedicated Programming Services and the provision of programming in all Southern Sudan national languages;
 - (e) strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences;
 - (f) provides appropriate coverage of the proceedings of key decision-making bodies, including the Southern Sudan Legislative Assembly and the State assemblies;
 - (g) includes programmes that are of interest to different regions;
 - (h) ensures the diffusion of important public announcements;
 - (i) provides a reasonable proportion of educational programmes and programmes oriented towards children;
 - (j) promotes gender equality;

- (k) promotes programme production within Southern Sudan; and
 - (l) contributes to informed debate and critical thought.
- (4) To encourage and promote programme production within Southern Sudan, and to ensure that its programmes reflect a wide variety of views and perspectives, SSBC shall progressively work towards the goal of obtaining 20% of its total broadcasting from independent producers based in Southern Sudan.

PART III: STRUCTURE

Board of Directors

5. (1) SSBC shall be governed by a Board of Directors (hereinafter called “the Board”) with overall responsibility for SSBC’s accountability, through the Southern Sudan Legislative Assembly , to the people of Southern Sudan.
- (2) The Board shall be composed of nine (9) members who shall have some relevant expertise, by virtue of their education or experience, including in the fields of broadcasting policy, law, technology, journalism, entertainment, business or education, social and labour issues and who shall be known for their high moral standards, integrity, impartiality and competence.

Role of the Board

6. (1) The Board has overall responsibility for the determination of internal policy, for ensuring compliance with all policies and the Guiding Principles set out in section 4, for ensuring that SSBC meets the highest standards of decency, integrity and value for money, for appointment of senior staff, including the Director General, and for setting the overall strategy of SSBC.
- (2) The Board shall not interfere with the day-to-day management of SSBC or with the editorial independence of the staff, although it does have responsibility for ensuring that, overall, editorial policy respects the Guiding Principles set out in section 4.

(3) The Board shall, after consultation with the Director General, approve the Statutes of SSBC, which shall, in accordance with this Act and other relevant legislation, establish policies, operational guidelines and procedures.

(4) The Board shall, after consultation with the Director General, prepare an Annual Report and budget for SSBC, which shall be presented to the Southern Sudan Legislative Assembly for its approval.

Appointment of the Board

7. (1) Members of the Board shall be appointed by the President of the Government of Southern Sudan with the approval of the Southern Sudan Legislative Assembly by a two-thirds majority, and after a process in accordance with the following principles: –

- (a) there shall be an open nominations process;
- (b) transparency and openness, including public parliamentary hearings;
- (c) all nominations shall be published in advance and the public shall be given an opportunity to make representations concerning these candidates; and
- (d) membership of the Board as a whole shall, to the extent that this is reasonably possible, represent a broad cross-section of Southern Sudanese society.

(2) No one shall be appointed to the Board if he or she: –

- (a) is not a citizen of Sudan;
- (b) is employed in the civil service or any other branch of government;
- (c) holds an official office in, or is an employee of, a political party;
- (d) holds an elected position at any level of government;
- (e) holds a position in, receives payment from or has, directly or indirectly, significant financial interests in broadcasting or telecommunications;
- (f) is an undischarged bankrupt or insolvent; or
- (g) has been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime and/or a crime of dishonesty or theft, for which he or she has not been

pardoned, unless five years have passed since the sentence was discharged;

provided that individuals who have been nominated shall be given an adequate opportunity to take any necessary steps to remove a barrier to their appointment under this sub-section.

(3) Where, by virtue of a will, gift or otherwise, a Member obtains an interest noted in subsection (2)(e), he or she shall, within a period of two (2) months, either dispose of the interest or resign from his or her position as Member.

(4) In any case where subsection (3) becomes applicable to a Member, he or she shall not take part in any decision-making process of the Authority until he or she has disposed of the relevant interest.

Independence of Members

8. (1) All members of the Board shall be independent and impartial in the exercise of their functions and shall, at all times, seek to promote the Guiding Principles set out in section 4.

(2) Board members shall neither seek nor accept instruction in the performance of their duties from any authority, except as provided by law.

(3) Board members shall act at all times in the overall public interest and shall not use their appointment to advance their personal interests, or the personal interests of any other party or entity.

Tenure

9. (1) Members shall serve on the Board for six (6) years and may be re-elected to serve a maximum of two (2) terms.

(2) Notwithstanding sub-section (1), from among the first group of appointees to the Board three (3) individuals shall be identified by lot whose initial term of office shall be just two (2) years and another three (3) individuals whose initial term of office shall be just four (4) years and, for these individuals, their first term shall count as a full term.

(3) The President may remove a member from the Board only upon a recommendation passed by a two-thirds majority vote of the Southern Sudan Legislative Assembly, after a hearing and where that individual: –

- (a) becomes, by virtue of section 6(2), ineligible for appointment to the Board;
- (b) commits a serious violation of his or her responsibilities under this Act, including by failing to promote the public service broadcasting principles set out in section 4, by engaging in corrupt practices, or for gross negligence of duty;
- (c) is no longer able to perform his or her duties effectively, including by death or incapacity; or
- (d) fails, without valid excuse, to attend meetings of the Board for a period of more than six (6) months.

(4) No Member shall be removed from office without first being given an opportunity to be heard.

(5) Any Member who is removed from office pursuant to this section shall be provided with written reasons for his or her removal and shall have the right to appeal his or her removal to the courts.

(6) A Member may at any time resign his or her office by giving notice in writing to the Southern Sudan Legislative Assembly.

(7) Where a Member is removed from office, or a Member resigns or dies, that Member shall be duly replaced under the same conditions, and in the same manner, as he or she was appointed.

Remuneration of the Board

10. (1) Members of the Board shall receive a sitting allowance.
- (2) Members of the Board shall be compensated for actual expenses, including travel, accommodation and subsistence, incurred as a result of their duties as members of the Board.
- (3) The level of the sitting allowance and other expenses shall be determined by the Southern Sudan Legislative Assembly.

Rules of Procedure

11. (1) The Board shall appoint its own Chairperson and Vice-Chairperson, and shall adopt such rules, in relation to meetings and other matters, as it considers necessary and appropriate to enable it to perform its functions.
- (2) The Board shall meet as often as it deems necessary and shall, in any case, meet at least once every three months. Meetings of the Board shall be convened by the Chairperson, provided that the Chairperson shall be required to convene a meeting at the request of not less than three (3) members. The quorum for meetings of the Board shall be five (5).
- (3) The Board may, for the purpose of assisting it in the effective discharge of its functions, appoint such committees as it deems necessary, consisting of one or more of its Members and such other persons as may be required or desirable. Such committees are presided by a Member.
- (4) Persons who are disqualified by this Act from being Members of the Board shall also be disqualified from being appointed to a committee.
- (5) The Director General shall attend Board meetings as a non-voting member, except where the Board has specifically ruled otherwise.
- (6) Except as otherwise provided, the Board and its Committees shall take decisions on the basis of a majority vote of those members present, provided that in case of an equal vote, the Chairperson, Vice-Chairperson or presiding Member shall have a deciding vote.
- (7) The Board and its committees may invite any person to attend a meeting of the Board or one of its committees for the purpose of advising it on any matter under discussion, provided that the person so attending shall have no right to vote at the meeting.
- (8) Minutes shall be kept in proper form of each meeting of the Board or its committees and shall be confirmed by the Board or the relevant committee at the next meeting and signed by the Member presiding at the meeting.

Appointment of Senior Staff

12. (1) The Board shall, as soon as is practical after its establishment and by a vote of at least two-thirds of its members present and voting, appoint a Director General for SSBC.

- (2) The Board may, by a vote of at least two-thirds of its members present and voting, remove the Director General from office.
- (3) If the Director General is removed from office, or resigns or dies, he or she shall be duly replaced. Pending replacement, the Board will designate or appoint an acting Director General.
- (4) The appointment procedure for the Director General shall be open and transparent, and provide an opportunity for the public to make representations.
- (5) The provisions of section 7(2), section 7(3) and section 8 shall apply, with the necessary modifications, to the Director General.
- (6) The Board shall not exercise its power to remove the Director General from office under sub-section (1) unless the Director General has breached the provisions of section 6(2) or he or she has committed a serious violation of his or her responsibilities under this Act, including by failing to respect the Guiding Principles set out in section 4 or to advance the interests of SSBC.
- (7) A Director General shall have the right to appeal any removal from office under this section to the courts.
- (8) The Director General shall be appointed for a five (5) year period and may be reappointed. If no successor has been appointed at the end of the tenure of a Director General, that person shall remain in office for up to an additional three (3) months until a new Director General has been appointed.
- (9) The Director General shall, subject to section 10, be responsible for day-to-day management and, along with his or her editorial staff, editorial policy.
- (10) The Board shall appoint other senior staff upon nomination by the Director General.

Staffing

13. (1) The Director General shall, in accordance with the approved budget, appoint staff as required.
- (2) The Director General and staff shall neither seek nor accept instruction in the performance of their duties from any authority other than the Board, except as provided by law.

- (3) The Director General and staff shall not use their appointments for personal benefit, or for the benefit of any party or entity other than SSBC.

PART IV: SERVICES

Public Service Channels

14. (1) SSBC shall, at a minimum, broadcast one free-to-air terrestrial public service television channel that cover the territory of Southern Sudan and three free-to-air terrestrial public service radio channels that cover the territory of Southern Sudan.
- (2) SSBC shall be guaranteed frequencies appropriate to its broadcasting obligations as provided for in sub-section (1).

Additional Channels

15. SSBC shall be entitled to broadcast channels additional to those specified in section 14, whether this be via terrestrial broadcasting, satellite, cable or any other technical means, whether or not these channels are public service in nature, provided that where such broadcasting is otherwise licensed, SSBC shall also be required to obtain a license in the prescribed manner.

Other Services

16. SSBC may engage in other activities, such as publishing, producing videos or providing teletext services, or otherwise disseminating content, including over the Internet, that are related to its general mandate, as long as these activities are consistent with the Guiding Principles set out in section 4.

Competitive Rules

17. SSBC may not use its public funding to subsidise any commercial services it provides, although it may subsidize its public service operations with profits from its commercial services.

PART V: FUNDING

Funding Mechanisms

18. (1) SSBC may obtain funding from the Public Broadcasting Fee, from direct public subsidies, from advertisements, from sponsorship and other commercial activities, and from donations.
- (2) The Board shall formally present a proposed budget for SSBC for the coming year, along with the Annual Report and externally audited accounts, to the Southern Sudan Legislative Assembly for approval.
- (3) Notwithstanding any contrary provision in any other law, SSBC shall not be liable to pay income tax on any property held or received or on any income earned and SSBC is hereby exempted from the payment of such tax.

The Public Broadcasting Fee

19. (1) The level of the public broadcasting fee shall be set by the Southern Sudan Legislative Assembly.
- (2) The manner of collection of the public broadcasting fee shall be determined by the Southern Sudan Legislative Assembly.
- (3) The level of the public broadcasting fee may be set at zero, taking into account economic conditions in Southern Sudan.

Direct Public Subsidies

20. (1) SSBC may receive a direct public subsidy to be paid for out of general public funds.
- (2) The level of the public subsidy will be proposed by the Board and be determined by the Southern Sudan Legislative Assembly for a five year term, and be adjusted for inflation annually.
- (3) The level of the public subsidy shall be sufficient, taking into account SBC income from other sources, to guarantee a high quality service broadcasting service.

Advertisements

21. (1) SSBC may carry advertisements, provided that it shall not: –
- (a) broadcast advertisements which exceed 7½% of the total broadcast time during any given day or 10% of any given hour or programme;
 - (b) rely on the Public Broadcasting Fee or any other public financing to directly subsidise or unfairly promote its advertising.
- (2) All advertisements shall be clearly identifiable as such.
- (3) Advertisements shall be fair and honest, and shall not be misleading or prejudice the interests of consumers.
- (4) Advertisers shall not seek to influence programming.

Sponsorship

22. (1) Sponsored programmes shall be clearly identified as such by credits at the beginning and end of the programme.
- (2) Sponsorship shall in no way affect the content or scheduling of a programme.
- (3) News and current affairs programmes shall not be sponsored.

PART VI: ACCOUNTABILITY

Annual Report

23. (1) The Board shall publish and distribute widely an Annual Report, along with externally audited accounts, for SSBC. Each Annual Report shall include the following information: –
- (a) a summary of the externally audited accounts, along with an overview of income and expenditure for the previous year;
 - (b) information on any company or enterprise that is wholly or partly owned, whether directly or indirectly, by SSBC;
 - (c) the budget for the following year;
 - (d) information relating to finance and administration;
 - (e) the objectives of SSBC for the previous year, the extent to which they have been met and its objectives for the upcoming year;
 - (f) editorial policy of SSBC;

- (g) a description of the activities undertaken by SSBC during the previous year;
 - (h) the Programme Schedule and any planned changes to it;
 - (i) a list of programmes broadcast by SSBC that were prepared by independent producers, including the names of the producers or production companies responsible for each independent production;
 - (j) recommendations concerning public broadcasting;
 - (k) information on public review activities undertaken pursuant to Section 25; and
 - (l) information on complaints by viewers.
- (2) The Board shall formally place the Annual Report and externally audited accounts before the Southern Sudan Legislative Assembly for their consideration.

Annual Review of Director General

24. (1) The Board shall conduct an annual review of the Director General with a view to assessing his or her performance and to providing feedback on it.
- (2) The annual review referred to in sub-section (1) shall be published and widely disseminated.

Public Review

25. (1) In order to ensure transparency and to improve its service in the public interest, SSBC shall make an effort to ensure that it remains under constant review by the public, including by holding public meetings and seminars to look at ways it might better serve the public interest.
- (2) SSBC will make every reasonable effort to hold public meetings and seminars as widely as possible, and will at least conduct annual public meetings or seminars in all States.

Complaints Procedure

26. (1) SSBC shall develop a Code of Broadcasting Practice in consultation with interested stakeholders which shall govern its broadcasting practices and programme content.

(2) The Code referred to in sub-section (1) shall, among other things, address the following issues: –

- (a) accuracy, balance and fairness;
- (b) privacy, harassment and subterfuge;
- (c) protection of children and scheduling;
- (d) portrayal of sexual conduct and violence, and the use of strong language;
- (e) treatment of victims and those in grief;
- (f) portrayal of criminal or anti-social behaviour;
- (g) advertising;
- (h) financial issues such as payment for information and conflicts of interest;
- (i) discrimination; and
- (j) leaked material and the protection of sources.

(3) Individuals may lodge a complaint against SSBC for breach of the Code referred to in sub-section (1) and such complaints shall be dealt with by SSBC in a fair and balanced manner.

(4) To give effect to sub-section (3), SSBC shall establish an internal procedure for processing complaints.

(5) The procedure provided for in sub-section (4) shall provide for a range of remedies appropriate to any breach including rectification of any false statements of fact, a right of reply and apologies.

(6) Lodging an internal complaint shall not preclude an individual from pursuing any other remedies which may be available.

PART VII: MISCELLANEOUS PROVISIONS

Archives

27. (1) SSBC shall to keep a master recording of all programmes broadcast for at least twenty-eight (28) days after they have been broadcast.

(2) Where specific broadcast material is the subject of a dispute or complaint, SSBC shall keep a master recording of that broadcast material until the matter has been fully resolved.

(3) SSBC shall establish a broadcasting archive, maintaining a store of material that is likely to be of historical interest to the people of Southern Sudan.

(4) SSBC shall, within its resources, endeavour to make as much of this archival material as possible available over the Internet.

Political Advertisements

28. Except in accordance with the law governing the elections, SSBC shall not carry any advertisement for or on behalf of any political party or candidate for election to political office.

Enforcement by Broadcast Regulator

29. (1) The Independent Broadcasting Authority shall monitor whether or not SSBC has complied with its obligations under the following provisions:—

- (a) section 4(4), dealing with programming from independent producers;
- (b) section 17, dealing with anti-competitive behaviour;
- (c) section 21, dealing with advertising;
- (d) section 22, dealing with sponsorship;
- (e) section 25, dealing with public review of SSBC;
- (f) section 26, dealing with complaints;
- (g) section 27, dealing with archives; and
- (h) section 28, dealing with political advertising.

(2) Where the Independent Broadcasting Authority has reasonable grounds to believe that SSBC is in breach of one of the obligations specified in sub-section (1), it shall refer the matter to the Board, along with any views it may have as to the manner in which the breach should be addressed.

(3) Where a period of more than three months has passed since the Independent Broadcasting Authority has referred a matter to the Board pursuant to sub-section (2), and steps have not been put in place with a view to addressing the breach, the Independent Broadcasting Authority shall have the power to refer the matter to the courts.

PART VIII: TRANSITIONAL AND FINAL PROVISIONS

Existing Laws and Regulations

30. Any laws or regulations which affect, or institutions with responsibility over, broadcasting shall not be affected by the coming into force of this Act, provided that any such laws, regulations or institutions are, at that time, deemed to be amended, repealed or terminated to the extent that they have been superseded, supplanted or contradict provisions in this Act.

Institutional Arrangements

31. (1) The Board shall be appointed in accordance with the provisions of this Act within six (6) months of its coming into force.

(2) All assets of broadcasters owned by the government of Southern Sudan are hereby transferred to SSBC, and all broadcasting companies controlled or owned by the State of

(2) All other institutional arrangements specified in this Act shall be made within six (6) months of its coming into force.

Short Title

32. This Act may be cited as the Southern Sudan Public Service Broadcasting Act 2006.