

# **BROADCASTING BILL**

A Bill to make provision for the regulation of broadcasting with a view to promoting independent, pluralistic broadcasting in the public interest; for that purpose to establish a juristic person to be known as the Independent Broadcasting Authority which shall function wholly independently of State, governmental and party political influences and free from political or other bias or interference; to define the powers, functions and duties of that Authority; to provide for the exercise of powers relating to the administration, management, planning and use of the broadcasting services frequency bands to the said Authority; 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 regulatory authorities for the broadcast sector should be independent and adequately protected against interference, particularly of a political or economic nature; that the appointments process for members of such an authority should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party; and that such an authority should be formally accountable to the public through a multi-party body;

## **NOTING THAT —**

- the Southern Sudanese broadcasting system comprises public, commercial and community elements; and

- that the broadcasting system makes use of radio frequencies that are public property;

**ENCOURAGING —**

- the development of Southern Sudanese expression by promoting the development of an independent and pluralistic broadcast sector that encourage the dissemination of a wide range of information, ideas and opinions and will help foster Southern Sudanese values and artistic creativity; 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:—

**ARRANGEMENT OF SECTIONS**

PART I: DEFINITIONS AND PURPOSE

PART II: BROADCASTING POLICY FOR SOUTHERN SUDAN

PART III: ESTABLISHMENT, MEMBERSHIP AND MEETINGS OF THE AUTHORITY

Establishment of Independent Broadcasting Authority

Tenure and removal

Remuneration of Members

Rules of procedure

Part IV—FUNCTIONS, DUTIES AND POWERS OF AUTHORITY

*Functions of the Authority*

*Investigations*

*Committees*

*Appointment of Chief Executive Officer*

Part V—FUNDING AND REPORTING OF AUTHORITY

*Funding for the Authority*

*Audit and annual report*

	<i>Broadcasting frequencies</i>
Part VII—LICENSING	
	<i>Broadcast licence requirement</i>
	<i>Existing broadcasting services</i>
	<i>New licence tenders</i>
	<i>Assessing licence applications</i>
	<i>Licence frequency</i>
Part VIII—GENERAL LICENCE CONDITIONS	
	<i>General licence conditions</i>
	<i>Undue concentration of ownership</i>
	<i>Licence fees</i>
	<i>Additional terms and conditions</i>
Part IX—SPECIFIC LICENCE CONDITIONS	
	<i>Specific Licence Conditions</i>
	<i>Licence condition amendments</i>
	<i>General restriction on specific licence conditions</i>
Part X—THE ADVERTISING, PROGRAMME AND TECHNICAL CODES	
	<i>The Advertising and Programme Codes</i>
	<i>The Advertising Code</i>
	<i>The Programme Code</i>
Part XI—BREACH OF LICENCE CONDITIONS	
	<i>Complaints and Monitoring</i>
	<i>Investigations</i>
	<i>Sanctions</i>
Part XII—APPEALS	
	<i>Appeals</i>
Part XIII—FINAL PROVISIONS	
	<i>Repeals</i>
	<i>Institutional arrangements</i>
	<i>Rules and Regulations</i>
	<i>Short title</i>

## **PART I: DEFINITIONS AND PURPOSE**

### **Definitions**

1. In this Act, unless the context otherwise requires—

“advertisement” means 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;

“Advertising Code” means a set of standards governing broadcast content which constitutes an advertisement;

“Annual Report” is the report required to be prepared by the Authority pursuant to section 21.

“Authority” means the Independent Broadcasting Authority established by section 5;

“basic service” means the minimum package of television and/or radio channels which subscribers to a satellite or cable service are required to purchase;

“broadcasting” means the dissemination of broadcast programming, including through terrestrial transmitters, cable, satellite or any other medium, for public consumption and for simultaneous reception, whether or not by subscription, through a radio and/or television broadcast receiver or other related electronic equipment, but does not include communications internal to a private organisation or government body, such as closed circuit television or internal address systems, or Internet communications;

“broadcaster” means an organisation that engages in broadcasting, be it a public service broadcaster, a commercial broadcaster or a community broadcaster;

“Broadcasting Frequency Plan” means a plan for the allocation of the broadcasting frequency spectrum among the various uses such as television and radio, national and local licences, and public, commercial and community broadcasters;

“broadcasting frequency spectrum” means that part of the electromagnetic wave spectrum which is part of the public domain and which may from time to time be assigned to be used for broadcasting uses, but does not include other frequencies, such as those used for telecommunications purposes;

“broadcasting service” means 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;

“cable broadcasting” means the transmission by cables of broadcasting services, including re-transmission by cables of broadcast signals;

“commercial broadcaster” means a broadcasting organisation that is neither a public broadcaster nor a community broadcaster;

“community broadcaster” means a broadcaster which is controlled by a non-profit entity and operates on a non-profit basis, carries programming serving a particular community including by reflecting the special interests and needs of that community, and is managed and operated primarily by members of that community;

“free-to-air” means the provision of terrestrial broadcasting without a direct charge for reception to the recipient;

“independent producer” means an individual or company who produces programmes for radio or television and who is not controlled by any individual broadcaster;

“licence” means a licence issued by the Authority for purposes of providing a broadcasting service to the public;

“licensee” means an individual or organisation who has been granted a licence under this Act to provide a broadcasting service to the public;

“local content” means broadcast material produced by a licensee, by a resident of Southern Sudan or by a company the majority of whose shareholdings are held by such residents, or a co-production in which the above mentioned persons have at least a 50% financial interest but shall not include advertisements;

“Minister” means the minister in charge of the Ministry responsible for broadcasting;

“Ministry” means the Ministry responsible for broadcasting;

“Programme Code” means a set of standards relating to general broadcasting content and practices;

“Programme Schedule” means a plan indicating the general types of programmes proposed to be broadcast, along with the proportion of broadcasting time to be devoted to such programmes and to advertising, and the target audience but for cable or satellite services the Programme Schedule means a description of the basic service and of all other services provided;

“public broadcaster” means a broadcaster subject to public ownership which has a mandate to broadcast in the public interest;

“satellite broadcasting” means the dissemination of a broadcasting service by means of satellite transmission;

“sponsorship” means 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;

“subscriber” means a person who receives a broadcasting service at a specific location in exchange for a prescribed fee, without further transmitting that service to any other person;

“technical code” means a set of standards relating to general technical matters; and

“terrestrial broadcasting” means the dissemination of a broadcasting service via the electromagnetic wave spectrum for direct reception by homes or businesses without needing equipment other than radio or television equipment.

## **Purpose**

2. The purposes of this Act are: –
  - (a) to make provision for the regulation of broadcasting with a view to promoting independent, pluralistic broadcasting in the public interest;
  - (b) to establish a juristic person to be known as the Independent Broadcasting Authority which shall function wholly independently of State, governmental and party political influences and free from political or other bias or interference;
  - (c) to define the powers, functions and duties of that Authority;
  - (d) to provide for the exercise of powers relating to the administration, management, planning and use of the broadcasting services frequency bands to the said Authority;
  - (e) and to provide for incidental matters..

## **PART II: BROADCASTING POLICY FOR SOUTHERN SUDAN**

### **Broadcasting policy**

3. Broadcast regulation in Southern Sudan shall seek to promote the following policy goals—
  - (a) to uphold constitutional principles, and in particular respect for human rights, democracy and the rule of law;
  - (b) to protect and promote the right to freedom of expression;
  - (c) to encourage creative national broadcasting, including by licensing all three types of broadcaster, namely public, commercial and community;
  - (d) to promote a diverse range of quality broadcasting services which serve all of Southern Sudan's national languages and ethnic, religious and cultural communities;
  - (e) to enhance the public's right to know through promoting pluralism and a wide variety of programming on matters of public interest;
  - (f) to prevent monopolisation of ownership and promote fair competition in the broadcasting sector;
  - (g) to promote accurate, informative and balanced programming;
  - (h) to encourage the provision of quality educational programming;
  - (i) to promote the widest possible geographic distribution of broadcasting services, including by licensing national and local broadcasters;
  - (j) to develop and promote broadcasting reflecting national and regional culture and identity;
  - (k) to promote the appropriate use of new technology; and
  - (l) to enhance the overall financial and competitive viability of broadcasting in Southern Sudan.

## **PART III: ESTABLISHMENT, MEMBERSHIP AND MEETINGS OF THE AUTHORITY**

### **Establishment of Independent Broadcasting Authority**

4. (1) Independent Broadcasting Authority of Southern Sudan (hereinafter called “the Authority”) is hereby established as a public institution which is accountable to the public through the Southern Sudan Legislative Assembly.
- (2) The Authority 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 the Authority in the discharge of their duties, or to interfere with the activities of the Authority, except as specifically provided for by law. This autonomy shall be respected at all times.
- (3) The Authority shall have all powers, direct or incidental, as are necessary to undertake its functions as provided for in this law. In particular, it shall have full legal personality, including the power to acquire, hold and dispose of property.

### **Members of the Authority**

5. The Authority shall consist 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 or business and who shall be known for their high moral standards, integrity, impartiality and competence.

### **Appointment of Members**

6. (1) Members of the Authority 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 Sudan 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.

(3) 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.

## **Tenure and removal**

7. (1) Members shall serve on the Authority 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 Authority 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 Authority 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 Authority;

(b) commits a serious violation of his or her responsibilities under this Act, including by failing to promote broadcasting policy as set out in section 3, by engaging in corrupt practices, or for gross negligence of duty;

(c) is no longer able to perform his or her duties effectively, including through death or incapacity; or

(d) fails, without valid excuse, to attend meetings of the Authority 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 Members**

8. Members of the Authority Councillors shall, from the funds of the Authority, be paid such remuneration and allowances as the Southern Sudan Legislative Assembly may determine.

## **Rules of procedure**

9. (1) The Authority shall appoint its own Chairperson and Vice-Chairperson from among its membership.
- (2) The Authority shall, subject to this Act, adopt such rules, in relation to meetings and other matters, as it considers necessary and appropriate to enable it to perform its functions and all business shall be conducted in accordance with such rules.
- (3) The Authority shall meet as often as it deems necessary and shall, in any case, meet at least once in every two months.
- (4) Meetings of the Authority shall be convened by the Chairperson, or in his or her absence the Vice-Chairperson, provided that it shall be mandatory to convene a meeting within seven days of a request for such a meeting by not less than two Members.
- (5) The Chairperson or, in his or her absence the Vice-Chairperson, shall preside at all meetings of the Authority.
- (6) The quorum for meetings of the Authority shall be five members, save that the quorum for a meeting at which the Authority is to determine an application for a broadcasting licence shall be seven Members.
- (7) A decision at a meeting of the Authority shall be adopted by a simple majority of the Members present and voting except as otherwise decided by the Authority. In case of an equality of votes, the Member presiding at the meeting shall have a casting vote in addition to his or her original vote.
- (8) The Chief Executive Officer of the Authority shall attend all meetings of the Authority as a non-voting member, unless in any particular case the Authority otherwise directs.
- (9) Minutes shall be kept in proper form of each meeting of the Authority and shall be confirmed by the Authority at the next meeting and signed by the Member presiding at the meeting.

## **Authority may invite others to meetings**

10. The Authority may invite any person to attend a meeting of the Authority 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.

## **Disclosure of interest**

11. (1) A member of the Authority or of a committee thereof who has, directly or indirectly, an interest in a matter under discussion by the Authority or committee shall disclose the fact and nature of his or her interest to the Authority or committee.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the Authority or committee.
- (3) After a disclosure under subsection (1), the member in question—
  - (a) shall not take part in nor be present during any discussion, deliberation or decision of the Authority or committee; but
  - (b) may be counted for the purpose of forming a quorum of the Authority or committee.

## **PART IV: FUNCTIONS, DUTIES AND POWERS OF THE AUTHORITY**

### **Functions of the Authority**

12. (1) The Authority is charged with the oversight of broadcasting in Southern Sudan, consistent with constitutional and international guarantees of freedom of expression, and with promoting the public interest in the broadcasting sector.
- (2) The functions of the Authority are—
  - (a) to develop and implement a Broadcasting Frequency Plan to ensure orderly and optimal use of the broadcasting frequency spectrum;
  - (b) to issue licences to provide broadcasting services to the public;
  - (c) to oversee the development of the Advertising Code and Programme Code;
  - (d) to oversee the implementation of the Advertising Code, the Programme Code and the Technical Code; and
  - (e) to ensure that licence conditions are respected by licensees.

(3) In discharging its responsibilities, the Authority shall endeavour to promote broadcasting policy as set out in section 3.

(4) The Authority shall, subject to the provisions of this Act, have exclusive power in relation to its functions as set out in subsections 2(a)-(d).

(5) This section shall not imply that the Government does not have the power to set policy in relation to broadcasting, provided that such policy shall be in accordance with the principles set out in section 3.

### **Powers of the Authority**

13. The Authority shall have all such powers as may be reasonably necessary for the purpose of carrying out its functions under this Act and of regulating its own procedure.

### **Investigations**

14. The Authority shall have the power to conduct investigations and hold hearings as necessary to discharge its responsibilities under this Act.

### **Committees**

15. (1) The Authority 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 Members and such other persons as may be required or desirable.

(2) The Authority may delegate any of its functions under this Act to any of its officers or committees.

(3) Persons who are disqualified by this Act from being Members of the Authority shall also be disqualified from being appointed to a committee.

### **Appointment of Chief Executive Officer**

16. (1) The Authority shall, by notification in the *Gazette*, appoint a Chief Executive Officer.

(2) The provisions of section 7 shall apply, with the necessary modifications, to the Chief Executive Officer.

(3) The Authority shall set the conditions of employment of the Chief Executive Officer and may, outside of these conditions and by a vote of not less than six (6) Members, remove the Chief Executive Officer from office.

(4) A Chief Executive Officer who has been removed by the Authority pursuant to subsection (3) shall be provided with written reasons and shall have the right to appeal his or her removal to the courts.

(5) The Chief Executive Officer shall be responsible to the Authority for the proper administration and management of the functions of the Authority in accordance with policy laid down by the Authority.

(6) The Authority shall, in accordance with the budget and in consultation with the Chief Executive Officer, establish a full-time Secretariat of the Authority, along with such staff as it considers necessary and appropriate to enable it to perform its functions.

(7) The Chief Executive Officer and employees of the Authority shall be independent and impartial in the exercise of their functions and shall, at all times, seek to promote broadcasting policy as set out in section 3.

### **Limitation of liability**

17. (1) No proceedings, civil or criminal, shall lie against the Authority for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that it did not act in good faith or with reasonable care.

(2) No proceedings, civil or criminal, shall lie against any member, officer or employee of the Authority for anything done or said, or any failure to do or say anything in the course of the discharge of his or her duties as a member, officer or employee of the Authority, unless it is shown that the person did not act in good faith or with reasonable care.

## **PART V: FUNDING AND REPORTING OF AUTHORITY**

### **Funding for the Authority**

18. (1) The Authority shall have a fund to be known as the Independent Broadcasting Authority Fund.

(2) The Authority may receive funds paid into the Fund from the following sources—

- (a) licence fees paid by broadcasters under this Act;
- (b) grants from the Government;
- (c) grants from local or foreign bodies;
- (d) loans; and
- (e) moneys received from other sources.

(3) Three months prior to the end of each financial year, the Authority shall submit for approval a budget statement for the following financial year to the Southern Sudan Legislative Assembly.

(4) The budget statement shall be deemed to have been approved thirty days after having been placed before the Southern Sudan Legislative Assembly, unless it decides otherwise.

(5) Notwithstanding any contrary provision in any other law, the Authority shall not be liable to pay income tax on any property held or received or on any income earned and the Authority is hereby exempted from the payment of such tax.

## **Audit and annual report**

19 (1) Within four (4) months after the end of each financial year the Authority shall prepare a report of its activities during that financial year (the Annual Report).

(2) The Authority shall maintain accounts of all monies received and spent by it and shall, within four (4) months after the end of each financial year, commission an audited statement of accounts, prepared in accordance with generally accepted accounting practice.

(3) The Authority shall submit copies of the Annual Report and audited accounts to the Southern Sudan Legislative Assembly as soon as practicable.

(4) The Annual Report shall include the following information—

- (a) a copy of the auditor's report;
- (b) a statement of financial performance and of cash flows;
- (c) the budget for the coming financial year;

- (d) a description of the activities of the Authority during the previous year;
  - (e) information relating to licensing, complaints and research;
  - (f) a description of any sanctions applied by the Authority and the decisions relating thereto;
  - (g) information relating to the Broadcasting Frequency Plan;
  - (h) an analysis of the extent to which it has met its objectives of the previous year;
  - (i) its objectives for the coming year; and
  - (j) any recommendations in the area of broadcasting.
- (5) The Authority shall publish and disseminate widely the Annual Report, along with its audited accounts.

## **PART VI: FREQUENCY PLANNING**

### **Broadcasting frequencies**

20. (1) The Authority shall, in consultation with interested stakeholders and the Government, develop and from time to time revise a Broadcasting Frequency Plan, which shall include a locator map, in order to promote the optimal use of the broadcasting frequency spectrum and the widest possible broadcasting diversity.
- (3) The Broadcasting Frequency Plan shall ensure that, in accordance with broadcasting policy as set out in section 4, the broadcasting frequency spectrum is shared equitably and in the public interest among public, commercial and community broadcasters, radio and television broadcasters, and local and regional broadcasters and broadcasters whose geographic area of coverage extends to the whole of Southern Sudan.
- (4) The Broadcasting Frequency Plan, along with any revisions to it, shall be published and disseminated widely.
- (5) The Broadcasting Frequency Plan may reserve certain frequencies for future use for specific categories of broadcasters in order to ensure diversity and equitable access to frequencies over time.



## **PART VII: LICENSING**

### **Broadcast licence requirement**

21. (1) It is prohibited to provide a broadcasting service except in accordance with a valid broadcasting licence.
- (2) The Authority shall have exclusive responsibility in relation to issuing and renewing licences.
- (3) The Authority shall maintain a register of licences, which shall be available for public inspection.

### **New licence tenders**

22. (1) The Authority shall, from time to time, determine whether it is in the public interest, based on the Broadcasting Frequency Plan, broadcasting policy, interest by potential broadcasters and market capacity, to issue a competitive tender with a view to issuing an additional licence(s) to provide a broadcasting service(s).
- (2) The Authority shall adopt regulations in advance setting out the process to be followed in submitting an application and a description of what information must be provided, as well as a schedule of the annual licence fees, established in accordance with section 34.
- (3) Where a tender is issued pursuant to subsection (1), the Authority shall publish widely a notice to that effect. The notice shall include all relevant information about the proposed licence(s), including the deadline for receipt of applications, any application fee and the annual licence fee.
- (4) Any such tender shall require applicants to provide, in relation to the proposed broadcasting service, at least the following information—
  - (a) the ownership structure;
  - (b) the sources of finance and the proposed financial plan over the period of the licence;
  - (c) the organisation and management structure, including the personnel and expertise available to deliver the service;
  - (d) the programme schedule or, in the case of a cable or satellite service, information about the channels proposed to be provided

within the basic service, as well as any other channels which may be purchased; and

- (e) the technical facilities for delivery of the service.

### **Non-tender licence applications**

23. (1) From time to time, the Authority may also receive applications, in the absence of a call for applications pursuant to section 25, to provide a broadcasting service.

(2) Any licence application under subsection (1) shall include the same information as is required for tender licence applications pursuant to subsection 25(4).

### **Assessing licence applications**

24. (1) The process for assessing licences shall be fair, non-discriminatory and transparent.

(2) Licence applications shall include consideration of the application by the Authority at a public hearing and anyone may provide written comments on the application. Public hearings shall be held in the area of geographic reach of the broadcaster.

(3) The Authority shall cause any applications for a broadcasting licence to be published in the *Gazette* at least 60 days prior to the hearing referred to in subsection (2), provided that such publication shall not involve sensitive commercial or other information provided by the applicant.

(4) The Authority shall take the following factors into account in deciding whether or not to issue a broadcasting licence to an applicant—

- (a) the technical capacity of the applicant to deliver a quality service, taking into account the nature of the proposed service;
- (b) the nature and extent of the financial resources of the applicant and the financial viability of the proposal;
- (c) the effect of licensing the proposed service in terms of concentration of ownership, cross ownership and fair competition;
- (d) the promotion of the widest possible diversity of programming, taking into account the proposed Programme Schedule, the demand

and the need for that service, and the broadcasting services already being provided in that area;

- (e) the need to promote locally produced programming which serves the needs and interests of the people of Southern Sudan; and
- (f) the need to promote broadcasting produced in the different regions, states and languages, and by the different cultures of Southern Sudan.

(5) The Authority shall provide written notice of its decision to all applicants for broadcasting service licences. Where an application is refused, this notice shall include the reasons for the refusal, as well as information regarding the applicant's right of appeal.

(6) A licence shall not be issued to a political party or to a body which is substantially owned or controlled by someone with a senior post in a political party.

(7) A licence shall not be issued to an individual who is not a resident or citizen of the Sudan, or to an entity which does not have recognised legal status in the Sudan or which is subject to majority control by non-residents or non-citizens.

(8) Upon the grant by the Authority of an application under subsection (5), it shall cause notification of that decision to be published in the *Gazette*.

### **Licence frequency**

25. (1) Prior to deciding whether or not to issue a new broadcasting licence, the Authority shall ensure that appropriate frequencies for the proposed service are available.

(2) A licence shall stipulate any frequency or frequencies to be used for dissemination of the licensed service.

### **Licence Renewals**

26. (1) An application for the renewal of a licence shall be made in accordance with conditions set out in the licence, provided that in the absence of such conditions, the application shall be made before the beginning of the last nine months before the date of expiry of the existing licence.

- (2) A licensee shall be entitled to have a broadcasting service licence renewed, provided that the Authority may refuse to renew a licence where the licensee has operated in significant breach of its licence conditions or where this is clearly in the public interest, based on broadcasting policy as set out in section 3.
- (3) At the time of renewal, either a licensee or the Authority may propose amendments to the licence conditions and the Authority may accept or reject these amendments, provided that any amendments imposed by the Authority must meet the conditions set out in section 36.
- (4) The Authority may, when considering an application for the renewal of a licence, require such new or additional information as it may deem necessary.
- (5) If at the date of expiry of a licence the Authority has not yet reached a decision in respect of an application to renew it, the licence shall continue to be of effect until the application for its renewal is granted or refused by the Authority.
- (6) The Authority shall provide a licensee with written reasons, in advance of a final decision, of any proposed decision not to renew a licence and shall give the licensee an opportunity to make oral and/or written representations.
- (7) Where the Authority does not renew a licence, it shall provide written reasons for its decision.

## **PART VIII: GENERAL LICENCE CONDITIONS**

### **General licence conditions**

27. (1) Licences are not transferable without the prior approval of the Authority.
- (2) Compliance with all matters specified in the licence application, including the Programme Schedule, is deemed to be a licence condition.
- (3) Terrestrial broadcasters are required to keep a master recording of all programmes and advertisements broadcast for at least twenty-eight (28) days after they have been broadcast provided that where specific broadcast material is the subject of a dispute, the relevant broadcaster shall, at the request of the

Authority, keep a master recording of that broadcast material until the matter has been resolved fully.

(4) Satellite broadcasters are required to keep a register of the programme channels and advertisements distributed for at least twenty-eight (28) days after they have been distributed, provided that where specific broadcast material is the subject of a dispute, the relevant broadcaster shall, at the request of the Authority, keep a record of it until the matter has been resolved fully.

(5) If a service has not been initiated within six (6) months after the date specified in the licence for the commencement of the service, or if a broadcaster fails to broadcast for six months, without valid excuse, that licence shall lapse.

(6) Licences shall be valid for the following period of time—

- (a) 5 years for a community broadcasting licence;
- (b) 7 years for a commercial radio broadcasting licence; and
- (c) 10 years for a commercial television broadcasting licence.

(7) Licensees are required to report annually to the Authority on their activities, including the observance of licence conditions.

## **Copyright**

28. (1) Broadcasters may only broadcast programmes which they produced or for which they hold broadcasting rights and copyright must be clearly indicated as part of the credits displayed with each programme.

(2) The name of the producer of every programme shall be displayed or read out at the end of the programme.

## **Undue concentration of ownership**

29. (1) No legal or natural person shall exercise direct or indirect control over more than one national free-to-air television service.

(2) No legal or natural person shall exercise direct or indirect control over a national free-to-air broadcasting service and a national newspaper.

(3) No legal or natural person shall exercise direct or indirect control over a national free-to-air television service and a national free-to-air radio service.

- (4) For purposes of this section, financial or voting interests of 40% or more shall be deemed to constitute control.
- (5) Subsection 1 shall not apply to a national public broadcaster.

### **Local content requirements**

30. (1) Every licensed broadcaster shall be required to include within each broadcasting service the following minimum quotas of local programming—
- (a) 10% within 6 months of the coming into force of this Act;
  - (b) 20% within 2 years of the coming into force of this Act; and
  - (c) 40% within 5 years of the coming into force of this Act.
- (2) In exceptional circumstances, the Authority may agree to delay or waive the above requirements for a particular broadcasting service.

### **Licence fees**

31. (1) The Authority shall, from time to time as it deems necessary, in consultation with interested parties and taking into account market considerations, produce a schedule of the applicable annual licence fees, setting out the rates for various types of broadcasting services.
- (2) For purposes of subsection (1), the Authority may classify licensed services by—
- (a) tier (public, commercial or community);
  - (b) type (such as radio or television, terrestrial, free-to-air or subscription, satellite or cable and analogue or digital); and
  - (c) scope (national, regional or local, or according to the number of subscribers).
- (3) This schedule shall be published in the *Gazette* and be placed before the Southern Sudan Legislative Assembly for a period of 30 days and, unless the Legislative Assembly decides otherwise, come into force at the end of this period.
- (4) Licensees shall be required to pay the applicable annual licence fee for each broadcasting service it operates into the Independent Broadcasting Authority Fund, provided that payment of the licence fee may be phased through the year.

## **Additional terms and conditions**

32. (1) The Authority may, from time to time, by notification published in the *Gazette*, adopt regulations setting out general licence terms and conditions either of general application for all licensees or for different types of licensees.
- (2) Such terms and conditions may, among other things—
- (a) the period prior to the expiry of a licence during which any application for renewal must be submitted;
  - (b) specify the minimum amount of programming to be commissioned from local independent producers; or
  - (c) stipulate the categories of information that must be provided by licensees in their annual reports to the Authority, pursuant to subsection 27(7).

## **Application to licensees**

33. (1) Changes in licence conditions pursuant to sections 31 and 32 shall not apply retroactively to broadcasters licensed pursuant to this Act.

# **PART IX: SPECIFIC LICENCE CONDITIONS**

## **Specific Licence Conditions**

34. (1) The Authority may attach such reasonable conditions to a broadcasting service licence as it deems necessary to promote broadcasting policy as set out in section 3.
- (2) Such conditions may, in particular—
- (a) set the minimum number of hours to be broadcast on a daily, weekly or annual basis;
  - (b) set minimum local content requirements over and above the minimum specified in this Act;
  - (c) specify maximum amounts of repeat programming; or
  - (d) specify the language or languages in which the programmes are to be broadcast and in what minimum proportions.

## **Licence condition amendments**

35. (1) Broadcasters may propose amendments to their licences to the Authority, which may approve or refuse such amendments, provided that if the Authority fails to respond to a proposal within 60 working days after receiving it, the Authority shall be deemed to have accepted it.
- (2) The Authority may, in respect of any particular broadcasting service licence, and after giving the licence holder an opportunity to make written representations, amend of its own motion any of the prescribed conditions, including adding further conditions—
- (a) if the Authority is of the opinion that this is necessary to promote broadcasting policy as set out in section 4; or
  - (b) in order to give effect to any international treaty governing broadcasting matters to which the Sudan is a party.

## **General restriction on specific licence conditions**

36. No licence conditions shall imposed under sections 32, 34 or 35 unless they—
- (a) are relevant to broadcasting;
  - (b) further broadcasting policy as set out in section 3; and
  - (c) are reasonable and realistic, given the licensee.

# **PART X: THE ADVERTISING, PROGRAMME AND TECHNICAL CODES**

## **The Advertising and Programme Codes**

37. (1) The Authority shall, in consultation with broadcasters, journalists and other interested stakeholders, draw up, and from time to time review and amend, an Advertising Code and a Programme Code for broadcasters.
- (2) The Codes shall be published and widely disseminated and every licensee shall be provided with a copy of each Code.



## **The Advertising Code**

38. (1) The Advertising Code shall address a range of issues relating to broadcast advertising, including the following—
- (a) all advertisements shall be clearly identified as such;
  - (b) no broadcaster shall carry advertisements for medicines which are available only with a prescription;
  - (c) the maximum daily and hourly advertising which may be carried by different licensed broadcasting services, which shall in no case exceed 20% of total daily programming;
  - (d) except in accordance with this section or in accordance with the law governing elections or any regulations issued under it, no broadcaster shall carry any advertisement for or on behalf of any political party or candidate for election to political office; and
- (2) Subject to the law governing elections or any regulations issued under it, the Authority may, by notification published in the *Gazette*, adopt regulations regarding political advertisements during elections, provided that any such regulations shall be based on the principle that parties and candidates should be granted equitable, non-discriminatory access to licensees.
- (3) The Advertising Code may also set rules regarding programme sponsorship.
- (4) For purposes of this Act, sponsorship shall not be deemed to constitute advertising.

## **The Programme Code**

39. (1) The Programme Code shall address a range of issues relating to programming including, among other things, the following—
- (a) balance and impartiality in news and current affairs programming and the duty to strive for accuracy in these programmes;
  - (b) protection of children;
  - (c) classification of programmes, including films, according to the recommended age of viewers;
  - (d) the terms, conduct and editing of interviews;
  - (e) the use of covert recording and subterfuge;

- (f) keeping within accepted boundaries of taste and decency, including in relation to the portrayal of sexual conduct and violence, and the use of strong or abusive language;
  - (g) the coverage of crime and anti-social behaviour;
  - (h) distinguishing between factual material and comment;
  - (i) the treatment of religion, ethnic, religious and cultural communities and relations, gender issues, minors and disadvantaged groups;
  - (j) respect for privacy; and
  - (k) the use of subliminal images or sounds.
- (2) In developing and implementing the Programme Code, the Authority shall have due regard to the rightful place in a pluralist democratic society of robust and challenging debate, of the strong expression of personal views, of the need for original, innovative and stimulating programme-making and of the potential for achieving proper balance over a series of programmes, or over time, rather than in every individual programme.

## **The Technical Code**

40. (1) The Ministry shall, in consultation with broadcasters, journalists and other interested stakeholders, draw up, and from time to time review and amend, a Technical Code for broadcasters.
- (2) The Technical Code shall address a range of issues relating to general technical broadcast standards and formats.
- (3) The Technical Code shall be published and widely disseminated and every licensee shall be provided with a copy.
- (4) The Ministry shall monitor compliance by broadcasters with the Technical Code and, for purposes of implementation, shall inform the Authority of any breaches it observes.

## **Compliance**

41. Compliance with the Advertising, Programme and Technical Codes are deemed to be licence conditions.

## **PART XI: BREACH OF LICENCE CONDITIONS**

### **Complaints and Monitoring**

42. (1) Anyone who believes that a licensee has breached the Advertising Code or the Programme Code may lodge a complaint in writing with the Authority and the Authority shall investigate every such complaint, unless it considers the complaint to be frivolous or manifestly unfounded.
- (2) It shall be the duty of the Authority to ensure that all licensees comply with their licence conditions and, to this end, the Authority may monitor licensees and undertake an investigation where it believes there may have been a breach of a licence condition.

### **Investigations**

43. (1) Where it conducts an investigation pursuant to section 45, the Authority shall provide the broadcaster with adequate written notice of any allegation of a breach and with a reasonable opportunity to make representations. In the case of a complaint, the Authority shall also provide the complainant with a reasonable opportunity to make representations.
- (2) The Authority shall, absent exceptional circumstances, come to a decision in relation to a complaint within two (2) months.
- (3) Where the Authority decides that a licensee is in breach of the Advertising Code, the Programme Code and/or any other licence condition, it shall publish its decision, including reasons for its decision, any sanction to be imposed pursuant to section 47 and notification of the broadcaster's right to appeal from this decision. The Authority shall provide the broadcaster and, where relevant the complainant, with a copy of its decision.

### **Sanctions**

44. (1) Where the Authority determines that a licensee is in breach of the Advertising Code, the Programme Code, the Technical Code and/or any other licence condition or provision of this Act, it may apply one or more of the following sanctions—
- (a) issue an internal instruction to the licensee;

- (b) issue a public written warning to the broadcaster;
  - (c) order the broadcaster to broadcast a statement, correction or retraction at a specified time and in a specified form; or
  - (d) order the broadcaster to take such action or desist from taking such action as it deems necessary to rectify or prevent repetition of the breach.
- (2) In cases of repeated breach of licence conditions, the Authority may order a licensee to pay a fine not exceeding 2% of the licensee's total revenues for the previous year, provided that such fines shall be paid into the Independent Broadcasting Authority Fund.
- (3) In cases of repeated and gross breach of licence conditions, the Authority may order the suspension of part or all of the Programme Schedule of a licensee, or terminate its licence.
- (4) For breach of a rule relating to broadcast content, the Authority shall not impose the sanctions provided for in subsections (2) or (3) except as decided by a majority of the Members and where other, lesser sanctions have failed to prevent further breach.
- (5) Where any body deliberately carries on an unlicensed broadcasting activity in contravention of subsection 21(1), or deliberately transfers a broadcasting licence in contravention of subsection 27(1), the Authority may order the termination of that broadcasting activity, a fine and/or the confiscation of the equipment used in the illegal activity.
- (6) Failure to comply with an order of the Authority under this section shall be deemed to be contempt of court and, where a licensee fails within a reasonable time to comply with such an order, the Authority may request the prosecutor to institute contempt proceedings.

## **PART XII: APPEALS**

### **Appeals**

45. Any person aggrieved by a decision of the Authority granting or refusing to grant a licence, renewing or refusing to renew a licence, imposing conditions

as part of a licence or imposing or refusing to impose a sanction on a licensee may appeal to the courts for a review of that decision.

## **PART XIII: FINAL PROVISIONS**

### **Existing Laws and Regulations**

46. 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.

### **Existing broadcasting services**

47. (1) Within two months of its establishment, the Authority shall initiate a review of all existing broadcasting services with a view to deciding whether or not to issue these services with a valid licence under section 23 of this Act. This review shall be concluded within 12 months of the establishment of the Authority.

(2) Notwithstanding the provisions of this Act, any agreements or licences to provide broadcasting services in force immediately prior to the date of commencement of this Act shall be deemed to be valid broadcasting licences for the purposes of this Act, unless the Authority, acting in the exercise of its duties under subsection (1), decides otherwise.

(3) Where an agreement or licence referred to in subsection (2) under which an existing broadcaster is operating fails to specify the number of broadcasting services which may be provided, the number of such services shall be deemed to be the number being provided at the time this Act comes into force.

### **Institutional arrangements**

48. The Authority shall be established within six (6) months of this Act coming into force.

## **Rules and Regulations**

49. (1) The Authority may, by notification published in the *Gazette*, make rules and regulations for carrying out the purposes of this Act, provided that such rules and regulations are not inconsistent with this Act.
- (2) In particular, the Authority may make rules or regulations relating to—
- (a) its rules of procedure, pursuant to subsection 9(2);
  - (b) the conduct of investigations, pursuant to section 14;
  - (c) the appointment of committees, pursuant to section 15;
  - (d) the appointment of the Chief Executive Officer, pursuant to subsection 16(1);
  - (e) the management of the Independent Broadcasting Fund, pursuant to subsection 18(1);
  - (f) the tendering process for licences, pursuant to subsection 22(2);
  - (g) the process for assessing licence applications, pursuant to section 24;
  - (h) the schedule of licence fees, pursuant to subsection 31(1);
  - (i) additional licence terms and conditions, pursuant to section 32;
  - (j) changes to pre-existing licences, pursuant to subsection 33(2);
  - (k) the Advertising or Programme Codes, pursuant, respectively, to section 37;
  - (l) the process for conducting investigations pursuant to section 43; and
  - (m) the imposition of sanctions, pursuant to section 42.

## **Short title**

50. This Act may be cited as the Southern Sudan Broadcasting Act 2006.