

ARTICLE 19

Uganda: Communications
Regulatory Authority Bill,
2012

March 2012

Legal analysis



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About the Article 19 Law Programme

The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available online at <http://www.article19.org/resources.php/legal/>.

If you would like to discuss this analysis further, please contact Barbora Bukovska, Senior Director for Law and Policy at barbora@article19.org. Additionally, if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at legal@article19.org or call us at +44 20 7324 2500.

Introduction

In March 2012, the Government of Uganda tabled the Communications Regulatory Authority Bill, 2012 (the Bill), a major piece of legislation intended to consolidate and harmonise two existing and overlapping laws - the Uganda Communications Act and the Electronic Media Act - and merge the regulators they establish into a single Communications Regulatory Authority (the Authority). The resulting Bill principally covers broadcasting, telecommunications and postal services, but takes in cinemas and video libraries as well.

ARTICLE 19 welcomes the initiative to create a more coherent legal framework governing these sectors. Moreover, the Bill contains a number of positive features. It places significant emphasis on making communications services widely available at affordable rates, and proposes innovative funding arrangements for the Authority, which will minimise its reliance on funding allocated by Parliament - thus potentially enhancing its independence.

At the same time, the Bill is out of step with international standards in many and significant ways. Most notably, with the exception of the funding arrangements, it fails to provide any credible safeguards of the Authority's independence from the Government. The powers of the Minister responsible for information and communications technology (ICT Minister) over the Authority will include approving its budget, appointing and dismissing members of its Board, and issuing binding guidelines to them. The Minister will even be able to recommend removal of judges on the Communications Tribunal appointed to hear complaints against, amongst others, the Minister.

In this analysis, ARTICLE 19 provides a brief assessment of the Bill, focusing on those parts relevant to the establishment and functioning of the Authority and the regulation of broadcasting.

Our analysis and recommendations are based on international standards on freedom of expression, derived from relevant instruments such as Article 19 of the *International Covenant on Civil and Political Rights*, Article 9 of the *African Charter on Human and Peoples' Rights*, and the *Declaration of Principles on Freedom of Expression in Africa*, adopted by the African Commission on Human and Peoples' Rights. These standards are also encapsulated in the ARTICLE 19 publication *Access to the Airwaves - Principles on Freedom of Expression and Broadcast Regulation*.¹

¹ London, March 2002; available at <http://www.article19.org/pdfs/standards/accessairwaves.pdf>.

ARTICLE 19's analysis includes detailed recommendations on how the Bill should be amended to meet the international freedom of expression standards and calls on the government of Uganda to urgently review and amend this important piece of legislation accordingly.

Summary of Recommendations:

- The guarantee of the Authority's independence found in Clause 7 should be further elaborated. In particular, the Authority's Board and staff should be required at all times to operate in an independent and impartial manner, while external persons and entities should be prohibited from improperly influencing or interfering with the Authority's work.
- Clause 6, which permits the ICT Minister to issue binding "policy guidelines" to the Authority, should be removed.
- The Authority should be bound to comply with international human rights treaties and agreements entered into by Uganda. Consideration should be given to binding it in addition to the standards set out in the *Declaration of Principles on Freedom of Expression in Africa*.
- Promoting freedom of expression and the free flow of information and ideas should be central objectives of the Bill and the Authority's activities, expressly recognised as such in Clauses 2 and 4.
- Beyond a requirement to promote a wide variety of programmes, the Authority should be required to ensure that those programmes reflect and serve society as a whole, including vulnerable or marginalised groups, by providing access to a wide range of information and viewpoints in a wide range of languages.
- In addition to safeguarding competition, the Authority should be required to ensure pluralism of broadcasting organisations and of ownership of those organisations.
- The ICT Minister and Cabinet should play no role in the selection of members of the Authority's Board. Nominations should be solicited from civil society, professional organisations or the public at large, and appointments should be made by Parliament in a manner that ensures broad cross-party support, after an open process allowing for public comment. The Authority's Director-General should be appointed and as necessary removed by the Board.
- The NCC's membership should, as far as possible, represent a broad cross-section of Ugandan society.
- Consideration should be given to increasing the term of the Authority Board members to more than three years, and staggering the terms. Consideration should also be given to increasing or decreasing the number of members to an uneven number.

- Persons who are employed in the civil service or other branches of government, who hold an elected or appointed position in government, or who hold an official office in, or are an employee of a political party should be ineligible for appointment to the Board of the Authority.
- Persons who have been convicted of a serious crime or a crime involving dishonesty should also be ineligible to serve, unless a substantial period of time has passed since the conviction.
- Removals from the Authority's Board should be decided on by the same body that appoints its members, such as a cross-party committee of Parliament, and should be subject to judicial review.
- The remuneration and allowances of the Authority's Board members should be set by Parliament, without any discretion in relation to individual members, or should be set in a fixed proportion to some other measure, such as the salary paid to ministers.
- The Authority should be made responsible for the development, in an open and participatory manner, of a frequency plan for those frequencies allocated for broadcasting. The plan should ensure that the available frequencies are shared equitably and in the public interest among the three tiers of broadcasting (public, commercial and community), the two types of broadcasters (radio and television) and broadcasters of different geographic reach (national, regional and local).
- Clauses 25(2) and 40(2) of the Bill should be consolidated into one provision setting out the criteria by which applications for licences shall be judged.
- Rather than requiring the individual applicant for a licence to be of sound financial standing, the Authority should enquire whether the proposed service is adequately resourced.
- Political parties should be ineligible for a broadcasting licence.
- Additional criteria for deciding on a licence application should be whether the proposed service:
 - o contributes to the realisation of the frequency plan;
 - o promotes the availability of a wide range of viewpoints;
 - o contributes to diversity of media ownership.
- Clause 25(2)(d) of the Bill should be deleted: "social, cultural and economic values" is too vague and broad as a selection criterion.
- High-value frequencies should be awarded through a properly announced tender procedure, while licenses for frequencies in underserved areas and for community broadcasting should be made available on a rolling basis.
- The Authority should be prohibited from imposing any licence condition that does not serve the objectives of the Bill. A schedule should be set out in advance establishing the duration and cost of different types of broadcasting licences.

- Parliament, rather than the ICT Minister, should be responsible for approving the Authority's budget and any loans, grants, gifts and donations it wishes to accept.
- Parliamentary scrutiny of the Authority's budget should be retrospective, not prospective.
- The Authority should be required to submit an annual report on its activities, including its audited accounts, to Parliament and to publish this report online. It should not be required to submit any reports to the ICT Minister.
- The Authority's meetings and documents should in principle be accessible to the public, and it should organise public consultations prior to adopting major decisions or policies.
- Persons licensed by the Authority should not be required to register with the Media Council.
- The registration requirement for television sets and the licensing requirement for cinemas and video or film libraries found in Clauses 33 and 39 respectively are unnecessary and should be removed.
- Clauses 29(a) and 32 of the Bill, requiring broadcasters to respect "public morality" and "ethical broadcasting standards", are too vague and should be deleted. Clause 31 should be amended to state that the Authority may develop minimum broadcasting standards in consultation with licensed broadcasters and the public at large.
- The Bill should stipulate that the Authority will not enforce any content rules on a subject where the broadcasting sector has implemented an effective system of self-regulation.
- Any person resident in Uganda should be permitted to complain to the Authority about broadcast content.
- The ICT Minister should not have the authority to compel an investigation by the Authority; Clauses 53(2) and 54(2) of the Bill should be deleted.
- A warrant issued by a Magistrate should be required for searches of broadcasters' premises as well as private dwellings. The Bill should state that no warrant may be issued where a search has as its goal or likely consequence that the identity of a confidential source for a news story will be disclosed.
- The provisions on the application of sanctions in case of breach of licence conditions should be reviewed for consistency and readability. It should be made explicit that sanctions will be applied in a graduated fashion, starting with a warning or fine, with suspension or revocation of the licence reserved for very serious cases, or where other remedies have had insufficient effect.
- Licence holders should be guaranteed the right to make representation any time a complaint against them is investigated.
- Involvement in "treasonable offences" is too vague a ground for licence suspension or revocation and should be removed from the Bill.

- Part XI of the Bill should be deleted. There is no need for a dedicated Communications Tribunal. Cases arising from the Bill can be heard by the High Court, which could set up a specialised chamber as necessary. Alternatively, a significant overhaul is necessary to ensure the ICT Minister, and the Government more generally, have no powers that can be used to improperly influence the Tribunal.

Analysis of the Communications Regulatory Authority Bill

Independence of the Communications Regulatory Authority

One of the most essential requirements under international standards relevant to broadcasting and telecommunications is that regulatory bodies should be independent and protected against interference, particularly from political or business interests. This requirement is expressed, for example, in Principle VII(1) of the *Declaration of Principles on Freedom of Expression in Africa*:

Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.²

Clause 7 of the Bill provides that, subject to the Bill, the Authority "shall exercise its functions independently of any person or body". This is a positive provision, but ARTICLE 19 believes it could be improved by adding some more substance on what the Authority's independence entails. Independence has an internal and an external aspect. On the one hand, the Board and staff of the Authority should at all times be impartial in the exercise of their functions, refuse to accept instructions from a third party except as provided for by law, and refrain from using their position to improperly advance their personal interests or those of a relative or business partner. On the other hand, external persons and entities should be prohibited from seeking to improperly influence members of the Board or staff of the Authority in the performance of their duties, or otherwise interfering with the activities of the Authority. This also means that Clause 6, which permits the ICT Minister to issue binding "policy guidelines" to the Authority, should be removed. A rule of this kind has no place in a modern broadcasting law.

Evidently, securing the Authority's independence requires more than a single provision guaranteeing its autonomy in general terms. The arrangements on such subjects as membership, funding and accountability should be designed to shield the Authority from political or commercial interference in practice. As will be seen in the following sections, ARTICLE 19 has serious concerns about the Bill in this regard.

Recommendations:

² *Declaration of Principles on Freedom of Expression in Africa*, adopted by the African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002, Banjul, The Gambia.

- The guarantee of the Authority's independence found in Clause 7 should be further elaborated. In particular, the Authority's Board and staff should be required at all times to operate in an independent and impartial manner, while external persons and entities should be prohibited from improperly influencing or interfering with the Authority's work.
- Clause 6 of the Bill, which permits the ICT Minister to issue binding "policy guidelines" to the Authority, should be removed.

Broadcast policy

Since the broadcast media are a channel - indeed, the foremost channel - for the dissemination of information and ideas, any regulation of broadcasting is also regulation of speech. Restrictions on freedom of expression should be limited to what is necessary in a democratic society in order to serve a legitimate interest, as stated in Principle II(2) of the *Declaration of Principles on Freedom of Expression in Africa*:³

Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.

In the case of broadcasting, there is a clear need for regulation, since the number of frequencies available is limited and uncontrolled use would lead to interference between the signals of different broadcasters. The manner of regulation should serve the needs of a democratic society. As the *Declaration* makes clear in Principle III, this implies a duty to promote diversity:

Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things-:

- availability and promotion of a range of information and ideas to the public;
 - pluralistic access to the media and other means of communication, including by vulnerable or marginalised groups, such as women, children and refugees, as well as linguistic and cultural groups;
- [...]

Any broadcasting legislation should be geared towards these goals.

The Communications Regulatory Authority Bill does not contain any explicit statement of a broadcast policy, but a number of provisions

³ See note 2.

cast some light on the considerations that will underpin decision-making by the Authority.

Clause 4 of the Bill lists the functions of the Authority, and these include allocating, licensing and managing the use of the radio frequency spectrum "in a manner that ensures widest variety of programming and optimal utilization of resources" (subsection c); ensuring "equitable distribution of services throughout the country" (subsection m); promoting competition (subsection o); and ensuring that the standards it sets comply with international communication agreements and treaties to which Uganda is a party (subsection i).

These provisions are relevant to promoting diversity and pluralistic access and ARTICLE 19 welcomes them, particularly the attention given to ensuring universal and affordable access. However, we feel this subject is given insufficient prominence. Facilitating the free flow of information and ideas should be front and centre. The expansion and modernisation of the telecommunications and broadcasting sectors in Uganda - the main subjects on which Clauses 2 and 4 are focused - are a means, not an end. The ultimate objective of these developments should be to realise the right to freedom of expression. In the area of broadcasting, the Authority should not merely promote a wide variety of programmes, but should ensure that those programmes reflect and serve society as a whole, including vulnerable or marginalised groups, by providing access to a wide range of information and viewpoints in a wide range of languages. Its role should go beyond safeguarding competition between broadcasters, to ensure there is pluralism of broadcasting organisations and of ownership of those organisations.

ARTICLE 19 also recommends expressly binding the Authority to international human rights standards and treaties to which Uganda is a party, in addition to those in the field of communications. Most relevantly this includes the *International Covenant on Civil and Political Rights*, which guarantees freedom of opinion and expression under its Article 19. Consideration should also be given to referring to the *Declaration of Principles on Freedom of Expression in Africa* as a guiding instrument.

Recommendations:

- Promoting freedom of expression and the free flow of information and ideas should be central objectives of the Bill and the Authority's activities, expressly recognised as such in Clauses 2 and 4.
- Beyond promote a wide variety of programmes, the Authority should be required to ensure that those programmes reflect and serve society as a whole, including vulnerable or marginalised groups, by providing access to a wide range of information and viewpoints in a wide range of languages.
- In addition to safeguarding competition, the Authority should be required to ensure pluralism of broadcasting organisations and of ownership of those organisations.

- The Authority should be bound comply with international human rights treaties and agreements entered into by Uganda. Consideration should be given to binding it in addition to the standards set out in the *Declaration of Principles on Freedom of Expression in Africa*.

Membership and appointments process of the Authority

A broadcast regulatory body is only as independent as its members are. It is therefore essential that the nomination and appointments process is set up in a way which minimises the risk of political or commercial interference. As will be discussed further below, the Bill contains proper safeguards of the Authority's Board members' independence from the sector they regulate. By contrast, ARTICLE 19 observes there are no credible guarantees of the Board's political independence. The appointments process risks rendering the Authority little more than an extension of the Ministry of Information and Communications Technology.

The Bill foresees an 8-member board, consisting of three prominent specialists from the fields of communications/broadcasting, law and engineering; two eminent persons who represent the public, one of whom shall be knowledgeable in communications or broadcasting and one of whom shall be a woman; a Director General; and two senior civil servants, one from the responsible Ministry and the other from the Directorate of Information and National Guidance. All members will be appointed by the ICT Minister with the approval of the Cabinet.

Although we welcome the concept of a Board consisting of recognised experts in a range of relevant fields, the involvement of the Minister and Cabinet in the selection process is very problematic. Admittedly, it is not unheard of in democracies for appointments to the broadcast regulator to be made by the government or, more commonly, the head of state. However, in those countries where this is provided for, it is generally a mere formality and the actual decision is taken by a body that is independent from government. The arrangement currently foreseen in the Act is clearly out of step with international standards, as reflected in Principle VII(2) of the *Declaration of Principles on Freedom of Expression in Africa*:

The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.

The inclusion of civil servants amongst the Board's membership also clearly undermines its independence from the Government.

A significant overhaul of the appointments process is necessary. Nominations should not be made by the government but should be solicited from civil society and professional organisations, or

simply from the public at large through advertisements in leading media. The Bill already foresees consultation of the Uganda Institute of Professional Engineers and the Uganda Law Society prior to the appointment of the two Board members who are legal and engineering specialists. However, professional organisations should nominate the members of the Board, not merely be consulted.

The appointments should be made by Parliament through a transparent process that ensures broad support for the Board. For example, the members could be selected by a cross-party committee of Parliament. Prior to making the final selections, a shortlist should be published and public comment should be sought on the candidates, to ensure maximum transparency.

The Director-General, who will be in charge of the Authority's day-to-day operations, need not be appointed by Parliament. At present, Clause 15 provides that s/he is appointed by the ICT Minister on the recommendation of the Board. Once an independent Board has been established, there is no reason why that Board could not be put in charge of recruiting and selecting the Director-General, with no involvement of the Minister.

We welcome the fact that there is a requirement to include at least one woman on the Board, but it would be better if there were a more general requirement to ensure that the Board's membership represents, as far as possible, a broad cross-section of Ugandan society, including in terms of gender balance. A broadcast regulator that reflects the diversity of society is more likely to deliver a broadcasting sector that serves all parts of society.

ARTICLE 19 also notes that the boards of broadcast regulators generally have an uneven number of members, in order to reduce to risk of split votes. This could be considered in Uganda too. Furthermore, staggering the terms of the Board members would ensure a measure of continuity and a smoother handover from one member to the next. It would also make the Board a bit more independent from the serving Parliament, since not all members would be up for reappointment at the same time. From this point of view, we also consider the three-year term that Board members will enjoy a bit short. In some ways a long single term is preferable to a renewable term, since members may feel constrained by the need to avoid any decisions that would prejudice their reappointment.

It is important to enforce certain 'rules of incompatibility' to ensure that no one is appointed to the Board who faces a conflict of interest or is clearly unsuitable for the position. In this regard, Clause 9 provides a number of positive rules, making any person ineligible who is involved, directly or indirectly, in a communications business (including manufacturers and distributors of equipment) as owner, shareholder, partner or otherwise, or has other financial or proprietary interests therein. Insolvents and persons who are mentally, physically or otherwise unable to perform the functions of a Board member are also excluded.

Additional exclusions are needed to prevent political interference with the Authority. Persons who are employed in the civil service or other branches of government, who hold an elected or appointed position in government, or who hold an official office in, or are an employee of a political party should also be ineligible for appointment. Consideration should also be given to excluding persons who have been convicted of a serious crime or a crime involving dishonesty, unless a substantial period of time has passed since the conviction.

To ensure that these rules do not narrow the field of qualified candidates too far, the Act could provide that any candidate who makes it to the shortlist will be given a reasonable time to eliminate any barrier to his or her appointment.

The process by which a Board Member can be removed is almost as important in terms of safeguarding the Authority's independence as the appointments process. Clause 10 of the Bill sets out a reasonable list of circumstances which may justify a removal, such as conviction of a serious offence, continuous inability to discharge the functions of a Board member, loss of eligibility to serve, and abuse of office. However, removals are decided upon by the Minister on the recommendation of the Authority. This arrangement would be problematic even if the Authority were otherwise independent from the Government, since the power to block dismissals gives the Minister a measure of influence over the composition of Board. The Minister could conceivably abuse this power to keep persons s/he deemed useful or sympathetic on the Board. Removals from the Board should be decided on by the same body that appoints its members, i.e. preferably a cross-party committee of Parliament. A removal should always be subject to judicial review.

The remuneration of Board members is another area where care should be taken to avoid opportunities for political influence. Unfortunately, Clause 12 grants the ICT Minister the right to set the level of remuneration or allowances in consultation with the ministers responsible for public service and finance. It would be better if the level of salary were set by Parliament - without any discretion in relation to individual members - or were set in a fixed proportion to some other measure, such as the salary paid to ministers.

Recommendations:

- The ICT Minister and Cabinet should play no role in the selection of members of the Authority's Board. Nominations should be solicited from civil society, professional organisations or the public at large, and appointments should be made by Parliament in a manner that ensures broad cross-party support, after an open process allowing for public comment. The Authority's Director-General should be appointed and as necessary removed by the Board.

- The membership of the Board of the Authority should, as far as possible, represent a broad cross-section of Ugandan society.
- Consideration should be given to increasing the term of Board members to more than three years, and staggering the terms. Consideration should also be given to increasing or decreasing the number of members to an uneven number.
- Persons who are employed in the civil service or other branches of government, who hold an elected or appointed position in government, or who hold an official office in, or are an employee of a political party should be ineligible for appointment to the Board.
- Persons who have been convicted of a serious crime or a crime involving dishonesty should also be ineligible to serve, unless a substantial period of time has passed since the conviction.
- Removals from the Board should be decided on by the same body that appoints its members, such as a cross-party committee of Parliament, and should be subject to judicial review.
- The remuneration and allowances of Board members should be set by Parliament, without any discretion in relation to individual members, or should be set in a fixed proportion to some other measure, such as the salary paid to ministers.

Funding and accountability of the Authority

Clause 74 of the Bill sets out the sources of funding the Authority may dispose of. These include an allocation made by Parliament, license fees, a levy on the gross annual revenue of operators in the sector, and such loans, grants, gifts and donations as are approved by the ICT Minister, the Minister responsible for finance and Parliament.

ARTICLE 19 broadly welcomes these arrangements, in particular the fact that the Authority will have a number of sources of income of its own, reducing its dependence on allocations from the national budget and thereby increasing its independence. The special levy on operators in the sector is an innovative and positive way to fund the Authority, so long as the overall financial burden on the sector is not such that it prejudices the quality or affordability of the services provided. Clause 75(3), read together with Schedule 5, would cap the levy at 2.5%, which seems appropriate as an upper level. One concern with the funding scheme however is that, once again, government ministers play a role by approving loans, grants, gifts and donations. This role should be reserved for Parliament. Similarly, approval of the Authority's budget, as foreseen in Clause 77, should be by Parliament rather than the ICT Minister. Moreover, it would be better if control of the budget were retrospective - an annual discussion in Parliament about next year's budget could easily spill over into a debate on what the Authority should be

doing over the coming year, and thus harm its independence. Discussion of the budget after the fact is sufficient to deal with any major abuse.

Given that it exercises public authority and operates with public funds, ARTICLE 19 believes the Authority should also be directly accountable to the public. Its meetings and documents should in principle be open to visitors and it should organise public consultations prior to adopting major decisions or policies. Moreover, while we welcome the requirement in Clause 4(2) for the Authority to prepare an annual report of its activities, this report should be submitted directly to Parliament and published on the Authority's website, rather than being sent to the ICT Minister first.

Recommendations:

- Parliament, rather than the ICT Minister, should be responsible for approving the Authority's budget and any loans, grants, gifts and donations it wishes to accept.
- Parliamentary scrutiny of the Authority's budget should be retrospective, not prospective.
- The Authority should be required to submit an annual report on its activities, including its audited accounts, to Parliament and to publish this report online. It should not be required to submit any reports to the ICT Minister.
- The Authority's meetings and documents should in principle be accessible to the public, and it should organise public consultations prior to adopting major decisions or policies.

Licensing of broadcasters

Parts IV and VII of the Bill deal with licensing of broadcasters and other telecommunications service providers. Although fairly rich in detail on the licensing process, there is little guidance on the kind of overall broadcasting landscape the Authority should pursue.

ARTICLE 19 observes that in many democracies, the broadcast regulator is explicitly tasked with drawing up a plan to promote the optimal use of the available broadcasting frequencies. In addition to assisting the regulator with structured decision-making, such a frequency plan also makes the regulator more accountable – the public can criticise licensing decisions that appear out of step with the plan. Accordingly, we recommend that the Authority be given the task to develop a frequency plan, in an open and participatory way, seeking input from the public. It should reserve equitable numbers of frequencies for each type of broadcaster, as explained in paragraph 9.3 of the ARTICLE 19 publication *Access to the Airwaves – Principles on Freedom of Expression and Broadcast Regulation*:⁴

⁴ London, March 2002. Available online at

The frequency plan should ensure that the broadcasting frequencies are shared equitably and in the public interest among the three tiers of broadcasting (public, commercial and community), the two types of broadcasters (radio and television) and broadcasters of different geographic reach (national, regional and local).

Turning to the licensing process, Clause 40(2) sets out the criteria that the Authority must take into account when deciding on a licence application. These are, briefly put, whether the applicant is an eligible person - defined in Clause 1 as "a person with sound financial standing, who is not subject to any criminal proceedings and who is capable of carrying out the functions of an operator"; whether the applicant has the capability to operate the service for which the license is sought; and whether granting the licence contributes to the objectives of the Act and is in the public interest. Furthermore, Clause 25(2) adds three criteria to be applied specifically in the case of a licence for broadcasting. These are whether the applicant has adequate technical facilities; the location of the proposed station and its geographic reach; and "social, cultural and economic values."

There is clearly some duplication in these criteria, with both Clauses 25(2) and 40(2) of the Bill requiring sufficient technical capabilities, on top of the requirement for the applicant to be an "eligible person" with the capability to function as an operator. These two clauses could easily be consolidated into one, which would enhance the readability of the Bill.

Overall, however, the criteria are sensible and in line with international standards. A minor point is the requirement for applicants to have sound financial standing; a more relevant question is whether the proposed service is adequately resourced, since the applicant may be personally wealthy but unwilling to invest in the service, or conversely, he may be indigent but backed by willing investors. The eligibility criterion, as currently worded, could deter local groups from applying for a community broadcasting licence.

Democracies typically prohibit political parties from operating a broadcasting station, to avoid giving them an unfair advantage (and to prevent a carve-up of the scarce frequencies amongst a range of partisan stations). Of course, political parties should have equitable access to the airwaves - this can be accomplished by making the promotion a wide range of viewpoints one of the selection criteria, so that applicants are encouraged to include balanced political programmes in their service.

<http://www.article19.org/pdfs/standards/accessairwaves.pdf>.

In line with the discussion above, we recommend recognising two additional criteria - firstly, whether the proposed service would contribute to realisation of the frequency plan, and secondly, whether granting the licence would promote diversity of media ownership. These criteria could come in the place of the overly vague "social, cultural and economic values" which the Authority is required to have regard to.

One question the Bill is silent on is at what time an application for a licence may be made. In democracies, high-value frequencies are typically awarded through a tender procedure, starting with a call for applications in relevant media and on the regulator's website. Licenses for frequencies in underserved areas and for community broadcasting are made available on a rolling basis.

Under Clause 4 of the Bill, the Authority enjoys broad discretion to prescribe the terms and conditions of licences. Although conditions will necessarily vary depending on the nature of the service being licensed, we believe the Authority should at least be constrained from imposing conditions that do not serve the objectives of the Act. Moreover, the Authority should be required to set out the duration and costs of different types of broadcasting licences in a schedule published in advance, to avoid arbitrary decision-making. Terms of licences should be sufficient to enable licence holders to recoup their investment, yet short enough to ensure periodic review of the quality and diversity of the service provided. The time limits for licences may of course differ depending on the tier and type of broadcaster.

Clause 45 of the Bill states that an application for renewal of a licence must be made at least two months in advance. In considering the application, the Authority is required to have regard to the performance of the operator. Here, we would suggest that there be a presumption of licence renewal, which can be overcome if continuation of the service is no longer in the public interest.

Clause 42 of the Bill allows the conditions of a licence to be modified during its term if the Authority considers it necessary to achieve the objectives of the Act, or if it is in the public interest to do so. In principle this power is not very problematic, particularly since the Bill offers a number of safeguards against arbitrary amendments, such as a requirement to hear the operator and to ensure equality of treatment. However, these guarantees should be backed up by the possibility of judicial review before an independent and impartial court, rather than a complaint to the ICT Minister, as currently foreseen.

We welcome the requirement, under Clause 46 of the Bill, for licence holders to submit an annual report on their activities to the Authority. It would be even better if the Authority published these reports online and sought public comment on them.

Recommendations:

- The Authority should be made responsible for the development, in an open and participatory manner, of a frequency plan for those frequencies allocated for broadcasting. The plan should ensure that the available frequencies are shared equitably and in the public interest among the three tiers of broadcasting (public, commercial and community), the two types of broadcasters (radio and television) and broadcasters of different geographic reach (national, regional and local).
- Clauses 25(2) and 40(2) of the Bill should be consolidated into one provision setting out the criteria by which applications for licences shall be judged.
- Rather than requiring the individual applicant for a licence to be of sound financial standing, the Authority should enquire whether the proposed service is adequately resourced.
- Political parties should be ineligible for a broadcasting licence.
- Additional criteria for deciding on a licence application should be whether the proposed service:
 - o contributes to the realisation of the frequency plan;
 - o promotes the availability of a wide range of viewpoints;
 - o contributes to diversity of media ownership.
- "Social, cultural and economic values" is too vague and broad as a selection criterion and should be deleted.
- High-value frequencies should be awarded through a properly announced tender procedure, while licenses for frequencies in underserved areas and for community broadcasting should be made available on a rolling basis.
- The Authority should be prohibited from imposing any licence condition that does not serve the objectives of the Bill. A schedule should be set out in advance establishing the duration and costs of different types of broadcasting licences.
- Licence holders should benefit from a presumption of licence renewal, capable of being overcome when renewal is not in the public interest.
- Decisions to modify the conditions of a licence should be subject to judicial review before an independent and impartial court, rather than review by the ICT Minister.
- Consideration should be given to requiring the Authority to publish the annual activity reports of licence holders online and inviting public comment on them.

Other registration and licensing requirements

In addition to the licensing regime described in the previous section, the Bill prescribes a range of further registration and

licensing requirements that in our view are unnecessary and open to abuse.

Clause 26 of the Bill requires a person licensed by the Authority to install or operate a radio or TV station or communications apparatus to register with the Media Council established under the Press and Journalist Act. Apart from ARTICLE 19's concerns about the independence of the Council, particularly after the Government's recent attempts to alter its composition,⁵ we question why such registration is necessary. As will be seen in the following section, the Authority already has extensive and to some extent excessive powers of oversight over the content of broadcasts. There is no need for further accountability to the Council.

Clause 33 of the Bill makes it compulsory for every person with a television set to register it with the Authority. Failure to do so can be punished by a fine or even imprisonment of up to one month. It is not clear to us what purpose this requirement serves, since as far as we can tell the Authority does not have any power to collect a tax from TV owners. In any event, such a levy would bring in little money in a country with such a low rate of TV ownership; it would be expensive to collect, and it would discourage TV ownership amongst the poor, contrary to the objective of the Bill to promote the wide availability of communications services. The penalties for non-compliance are also unreasonable. In short we strongly recommend the deletion of Clause 33 in its entirety.

Finally, Clause 39 of the Bill prohibits the operation of a cinema or video or film library without a licence issued by the Authority. Failure to do so can result in a year's imprisonment. This requirement is ostensibly based on safety grounds; when considering a licence application the Authority is required to consider whether the applicants' premises provide adequately for "safety, health or convenience of the persons attending a video or cinematographic exhibition". In reality, this is a thinly veiled control mechanism. The Authority has no expertise in the field of health and safety and there is no reason to impose a licensing requirement distinct from what would apply to any commercial or educational property that may host gatherings of persons, such as a university auditorium or a shoe shop. Clause 39, too, should be deleted.

Recommendations:

- Persons licensed by the Authority should not be required to register with the Media Council.
- The registration requirement for television sets and the licensing requirement for cinemas and video or film

⁵ See ARTICLE 19's submission to the UN Human Rights Council's Universal Periodic Review on Uganda, October 2011; available at <http://www.article19.org/data/files/pdfs/submissions/uganda-upr-submission.pdf>.

libraries found in Clauses 33 and 39 respectively are unnecessary and should be removed.

Content and sanctions

Given that broadcasting frequencies are scarce and are provided to licence holders on behalf of the public, it is appropriate to set up a system which ensures that broadcasting content serves the public interest. Clearly, content regulation by a public authority also brings with it the danger of unjustified political control. As Principle IX(3) of the *Declaration of Principles on Freedom of Expression in Africa* states, "effective self-regulation is the best system for promoting high standards in the media".

In line with this principle, we recommend a two-tiered approach to content regulation: the Authority should be empowered to enforce certain content rules, but only in areas where the broadcasting sector has not yet implemented an effective system of self-regulation. Moreover, any complaints system should be set up in conformity with Principle IX(1) of the Declaration, which states in relevant part:

- complaints shall be determined in accordance with established rules and codes of conduct agreed between all stakeholders; and
- the complaints system shall be widely accessible.

Clauses 29 and 31 of the Bill deal with the content of broadcasts. The former provision prohibits content that is "contrary to public morality", while the latter requires broadcasters to respect certain "minimum broadcasting standards" which are set out in Schedule 4.

It is beyond the scope of this analysis to discuss the various heading mentioned in Schedule 4 of the Bill in detail. Suffice it to say that the content rules found in the Schedule are extremely broad and vague and therefore wide open to abuse – not to mention the chilling effect they may have on broadcasters even before they are enforced. Typical examples are the requirements to "ensure harmony", to refrain from "distortion of facts" and to respect "public morality" (this requirement appears in the Schedule as well as in Clause 29). This is not to say that the concerns underlying the Schedule are illegitimate – indeed, most of the subjects mentioned in the Schedule would be found in any democracy's broadcasting code. However, the applicable rules need to be elaborated in far more detail, in consultation with the broadcasting sector and the public at large. For comparison, the most recent UK broadcasting code⁶ runs to 134 pages, against the single page of Schedule 4.

⁶ The Ofcom Broadcasting Code, 28 February 2011; available at <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/broadcastingcode2011.pdf>

Mention should also be made of Clause 32 of the Bill, which states that "the ethical broadcasting standards which apply to broadcasters are the professional code of ethics specified in the First Schedule to the Press and Journalist Act". It is not clear, however, whether these standards are intended to be mandatory for broadcasters or why they would be necessary on top of the minimum broadcasting standards and the general laws (on defamation, privacy, etc.) that broadcasters are subject to like anyone else.

Complaints to the Authority about broadcasting content, or indeed about any matter within the Authority's purview, may be made "by or on behalf of a person whom the Authority considers to have an interest" (Clause 52(b) of the Bill). The Authority may then decide to open an inquiry; but it is required to do so when directed by the ICT Minister (Clause 53(2)). The Authority has broad powers of investigation under the Bill, and may dispatch inspectors who have the authority to conduct searches and seizures, although they require a warrant before entering a private dwelling (Clauses 57 and 58 of the Bill). If the Authority is satisfied that the operator has breached a licence condition, it may direct the operator in writing to remedy the breach (Clause 55 of the Bill). It may also impose a fine, after considering any representations by the operator (Clause 44(2) of the Bill). In the case of serious and repeated breach of the licence conditions, or where the operator "is engaged in or is supporting activities amounting to a treasonable offence", the Authority may suspend or revoke a licence, although it must give the operator 60 days' written notice and grant it the right to make any representations (Clause 44(1) and (4) of the Bill).

While we agree with the general direction of these provisions, there are a number of problems. First, any person resident in Uganda should in principle be permitted to complain about broadcast content, since every resident is a potential consumer of broadcasts and therefore a stakeholder. The Authority should decide on its own whether a complaint merits investigation; the ICT Minister should play no role in this.

Second, ARTICLE 19 suggests that the Bill should explicitly require the Magistrate issuing a search warrant under Clause 58 to verify that the search in question does not have as its goal or likely consequence that the identity of a confidential source for a news story will be disclosed. The protection of media practitioners' sources is a fundamental right recognised in international law and in Principle XV of the *Declaration of Principles on Freedom of Expression in Africa*. For the same reason, a warrant issued by the Magistrate should also be required for searches of broadcasters' offices.

Third, some of the clauses are rather difficult to read and at times appear to be contradictory. This is true in particular of Clause 43, whose different parts do not follow any logical order. The underlying thought appears to be that sanctions should be applied in

a graduated fashion, starting with a warning or fine, with suspension or revocation of the licence reserved for very serious cases, or where other remedies have had insufficient effect. If this is meant it is positive, but should be stated more explicitly. Also, the licence holder should be invited to make representations in all cases where a complaint against it is investigated, not only where serious sanctions are under consideration.

Fourth, we are concerned that involvement in "treasonable offences" - a rather Orwellian expression - is far too vague a ground for licence suspension or revocation. We suggest that any concerns about national security be dealt with through the minimum broadcasting standards in the manner discussed above.

Finally, any decision to impose a sanction on a broadcaster should be subject to judicial review.

Recommendations:

- Clauses 29(a) and 32 of the Bill, requiring broadcasters to respect "public morality" and "ethical broadcasting standards", are too vague and should be deleted. Clause 31 of the Bill should be amended to state that the Authority may develop minimum broadcasting standards in consultation with licensed broadcasters and the public at large.
- The Bill should stipulate that the Authority will not enforce any content rules on a subject where the broadcasting sector has implemented an effective system of self-regulation.
- Any person resident in Uganda should be permitted to complain to the Authority about broadcast content.
- The ICT Minister should not have the authority to compel an investigation by the Authority; Clauses 53(2) and 54(2) of the Bill should be deleted.
- A warrant issued by a Magistrate should be required for searches of broadcasters' premises as well as private dwellings. The Bill should state that no warrant may be issued where a search has as its goal or likely consequence that the identity of a confidential source for a news story will be disclosed.
- The provisions on the application of sanctions in case of breach of licence conditions should be reviewed for consistency and readability. It should be made explicit that sanctions will be applied in a graduated fashion, starting with a warning or fine, with suspension or revocation of the licence reserved for very serious cases, or where other remedies have had insufficient effect.
- Licence holders should be guaranteed the right to make representation any time a complaint against them is investigated.
- Involvement in "treasonable offences" is too vague a ground for licence suspension or revocation and should be removed from the Bill.

The Uganda Communications Tribunal

Part XI of the Bill foresees the establishment of a special Communications Tribunal, with jurisdiction to hear and determine all matters relating to communications services arising from decisions made by the Authority or the Minister (Clause 71).

The establishment of a dedicated communications court is unusual and we question whether the caseload will be sufficient to justify its existence. More worrying, however, is the fact that the safeguards for the Tribunal's independence are seriously flawed. The ICT Minister will have a number of highly inappropriate powers, such as the authority to appoint four "technical advisers" to the Tribunal (Clause 68(5) of the Bill); to authorise grants, gifts or donations from the government to the Tribunal (Clause 68(b) of the Bill); and to nominate a member of the Tribunal for dismissal by the President on a number of somewhat vague grounds (Clause 70(2) of the Bill). Surely the power to recommend removal of the judge is one that every defendant would wish to have - but none ought to have.

Recommendations:

- Part XI of the Bill should be deleted. There is no need for a dedicated Communications Tribunal. Cases arising from the Bill can be heard by the High Court, which could set up a specialised chamber as necessary. Alternatively, a significant overhaul is necessary to ensure the ICT Minister, and the Government more generally, have no powers that can be used to improperly influence the Tribunal.

Annex: Communications Regulatory Authority Bill, 2012

THE UGANDA COMMUNICATIONS REGULATORY AUTHORITY BILL, 2012

ARRANGEMENT OF CLAUSES

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23. Licence to use frequency spectrum
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25. Installation of television and radio stations.

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26. Registration of television and radio stations.

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27. Broadcasting licence.
 28. Right to broadcast.
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- ##### *Licensing of televisions sets*
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SCHEDULES

A Bill for an Act

ENTITLED

THE UGANDA COMMUNICATIONS REGULATORY AUTHORITY ACT, 2012.

An Act to consolidate and harmonise the Uganda Communications Act and the Electronic Media Act; to dissolve the Uganda Communications Commission and the Broadcasting Council and reconstitute them as one body known as the Uganda Communications Regulatory Authority; and to provide for related matters.

BE IT ENACTED By Parliament as follows:

PART I—PRELIMINARY.

1. Interpretation.

In this Act, unless the context otherwise requires—

“authorised”, in relation to an officer or employee of the Authority, means authorised by the Director General to exercise the powers or perform the duties in respect of which an authorised person is required;

“Authority” means the Uganda Communications Regulatory Authority;

“broadcaster” means a person who composes, packages or distributes television or radio programmed services for reception by subscribers or the public, regardless of the technology;

"broadcasting" means the transmission of sound, video and data, intended for simultaneous reception by the public;

"cinematograph theatre" means any building, structure, tent or other erection of whatever nature or any place or land in or on which a cinematograph or video exhibition is presented to the public either gratuitously or for reward;

"communications" means telecommunications, radio communications, postal communications and includes broadcasting;

"communications services" means services performed consisting of the dissemination or interchange of sound, video or data content using postal, radio or telecommunications media, and includes broadcasting;

"currency point" has the value assigned to it in Schedule 1;

"data" means electronic representations of information in any form;

"Director General" means the Director General of the Authority appointed under section 15;

"eligible person" means a person with sound financial standing, who is not subject to any criminal proceedings and who is capable of carrying out the functions of an operator;

"emission of electromagnetic energy" includes the deliberate reflection of electromagnetic energy by means of any apparatus designed or specially adapted for that purpose whether the reflection is continuous or intermittent;

"electronic media" means communication of any message to the public by means of any electronic apparatus;

"exhibition" means an exhibition of art, film or videotape, to the public, with or without sound effects, by means of any electronic apparatus;

"franking machine" means a machine for the purposes of making impressions on postal articles to denote prepayment of postage and includes any metre or metres and any franking or date stamping dies or incidental dies;

"licence" means a licence issued under this Act;

"Minister" means the Minister responsible for information and communications technology;

"operator" means a person licensed to provide a communication or broadcasting service;

"owner" means a registered proprietor of land or any person having a registrable interest in land;

"postal article" includes any letter, postcard, newspaper, book, document, pamphlet, pattern, sample packet, small packet, parcel package or other article tendered for dispatch or specified in the International Postal Union or in the licence of an operator;

"postal services" means the services performed and facilities provided in connection with—

(a) the collection, transmission and delivery by land, water or air of postal articles;

(b) the issue of postage stamps and the use of franking machines;

(c) the issue and payment of money from one place to another or address commonly referred to as money ordering;

"producer" includes a person who is at any given time, in charge of programme production and transmission to the public by means of any electronic apparatus;

"proprietor" has the meaning assigned to it at common law;

"public operator" means an operator—

(a) designated as a public operator by the Authority; and

(b) who is licensed to offer services, for payment and without discrimination, to the public or other operators and includes a public broadcaster;

"radio communication" means the emitting or receiving over paths which are not provided by any material substance constructed or arranged for that

purpose, of electromagnetic energy of a frequency not exceeding three million megahertz being energy which either—

(a) serves for the conveyance of messages, sound or visual images, whether messages are actually received by any person or not, or for the actuation or control of machinery or apparatus; or

(b) is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence, position or motion of any object or objects of any class;

“radio communications apparatus” or “radio communications station” means any apparatus or station, as the case may be, for emitting or receiving of radio communication other than a domestic radio set and where—

(a) that radio communications apparatus or station cannot lawfully be used without a radio communications licence or without an exemption under section 22;

(b) radio communication in the form of messages, sound or visual images is received or emitted by that apparatus or station;

(c) an apparatus is electrically coupled with another apparatus or station for the purpose of enabling any person to receive or emit messages, sound or visual images;

“radio communications services” means services performed and the facilities provided in connection with communication by means of radio communications apparatus;

“telecommunication” means the emission, transmission or reception through the agency of electricity or electromagnetism of any sounds, signals, signs, writing, images or intelligence of any nature by wire, radio, optical or other electromagnetic systems whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to rearrangement, computation or other processes

by any means in the course of their transmission, emission or reception;

“telecommunications apparatus” or “telecommunication station” means any apparatus or equipment used or intended to be used in connection with the transmission of communications by means of electricity from one place to another place either along a wire joining those two places or partly by wire from each of those two places and partly by radio communication;

“telecommunications line” means any wire, cable, equipment, tower, mast, antenna, tunnel, hole, pit trench, pole or other structure or thing used or intended to be used in connection with a telecommunications system;

“telecommunications service” means a service consisting of the conveyance or reception of any sounds, signs, signals, writing or images by wire, optical or other electronically guided media systems whether or not the signs, signals, writing, images, sounds or intelligence have been subjected to rearrangement, computation or other process by any means in the course of their transmission, emission or reception;

“telecommunications system” means a system for the conveyance through the agency of electric, magnetic, electromagnetic, electrochemical, electromechanical or light energy of—

(a) speech, music and other sounds;

(b) visual images;

(c) signals serving for the importance, whether as between persons and things, of any matter otherwise than in the form of sounds, visual images; or

(d) signals serving for the actuation or control of machinery or apparatus; and including telecommunications apparatus situated in the Republic of Uganda;

“wire” includes optical cable.

2. Objectives of the Act.

The objectives of this Act are to develop a modern communications sector and infrastructure by—

- (a) establishing one regulatory body for communications in accordance with international best practice;
- (b) enhancing national coverage of communications services
- (c) expanding the existing variety of communications services available in Uganda to include modern and innovative communications services;
- (d) reducing the direct role of Government as an operator in the communications sector and minimising the subsidies paid by the Government to the communications sector;
- (e) encouraging the participation of the private sector in the development of the communications sector;
- (f) introducing, encouraging and enabling competition in the communications sector through regulation and licensing of competitive operators to achieve rapid network expansion, standardisation as well as operation of competitively priced, quality services; and
- (g) establishing and administering a fund for the development of rural communications.

PART II—UGANDA COMMUNICATIONS REGULATORY AUTHORITY

3. Establishment of Uganda Communications Regulatory Authority

- (1) There is established the Uganda Communications Regulatory Authority.
- (2) The Authority is a body corporate with perpetual succession and a common seal and may for the purposes of discharging its functions under this Act—

- (a) acquire, hold or dispose of movable and immovable property;
 - (b) sue and be sued in its corporate name;
 - (c) do all acts and things that a body corporate may lawfully do.
- (3) The seal of the Authority shall be authenticated in accordance with Schedule 2.

4. Functions of the Authority

- (1) The functions of the Authority are—
 - (a) to implement the objectives of this Act;
 - (b) to monitor, inspect, licence, supervise, control and regulate communications services;
 - (c) to allocate, license, standardize and manage the use of the radio frequency spectrum in a manner that ensures widest variety of programming and optimal utilization of resources;
 - (d) to process applications for the allocation of satellite orbital locations;
 - (e) to regulate rates and charges for communications services with a view to protecting consumers from excessive tariffs and to prevent unfair competitive practices.
 - (f) to draw up, establish, amend and enforce a national numbering plan and allocate block numbers;
 - (g) to conduct, or authorise any person to conduct, technical evaluations relating to communications services;
 - (h) to coordinate communication in communications with the relevant national and international organisations;
 - (i) to set national communication standards and to ensure compliance with national and international communications standards and obligations laid down by international communication agreements and treaties to which Uganda is a party;
 - (j) to receive, investigate and arbitrate complaints relating to communications services, and take necessary action;
 - (k) to promote and safeguard the interests of consumers and operators as regards the quality of communications services and equipment;
 - (l) to promote research into the development and use of new communications techniques and technologies, including those which promote

accessibility of persons with disability and other members of society to communications services;

(m) to improve communications services generally and to ensure equitable distribution of services throughout the country;

(n) to ensure that basic network operators provide leased lines for value added and other services as may be appropriate;

(o) to promote competition, including the protection of operators from acts and practices of other operators that are damaging to competition, and to facilitate the entry into markets of new and modern systems and services;

(p) to regulate interconnection and access systems between operators and users of telecommunications services;

(q) to advise the Government on communications policies and legislative measures in respect of providing and operating communications services;

(r) to participate in international fora or conferences and other organisations in the field of communications services to which Uganda is a member;

(s) to collaborate with educational institutions in order to promote specialised education in the field of communications;

(t) to establish and administer a fund for the development of rural communications;

(u) to advise the Minister on the administration of this Act; and

(v) to carry out any other function that is related, connected or conducive to the functions of the Authority.

(2) The Authority shall, at least once every three months, within three months after the end of each year or at the request of the Minister, submit to the Minister a report on the performance of its functions.

(3) The Minister shall lay the annual report of the Authority before Parliament.

5. Powers of the Authority

(1) The Authority may in the exercise of its functions—

(a) charge fees for services provided by the Authority;

(b) institute a levy on the gross annual revenue from operators in accordance with section 75;

(c) collect the revenue determined by the Minister in respect of the international incoming telecommunications traffic;

(d) impose a fine on a person who unlawfully possesses, installs, connects or operates any communications equipment or apparatus, or unlawfully provides or performs any communications services.

(2) The Authority may in accordance with this Act, confiscate any apparatus which is possessed, installed, connected or operated unlawfully.

(3) The owner of an apparatus confiscated by the Authority may appeal to the tribunal against the confiscation.

6. Powers of the Minister

(1) The Minister may, in writing, give policy guidelines to the Authority regarding the performance of its functions.

(2) The Authority shall comply with the policy guidelines given by the Minister under this section.

7. Independence of the Authority

Subject to this Act, the Authority shall exercise its functions independently of any person or body.

8. Board of the Authority

(1) The Authority shall be governed by a Board.

(2) The Board shall consist of the following—

(a) one person with experience and knowledge in telecommunications, broadcasting or postal

communications who shall be the chairperson;

(b) one professional engineer who is a member of the Uganda Institute of Professional Engineers;

- (c) one prominent lawyer who is a member of the Uganda Law Society;
- (d) two eminent persons of good repute and proven integrity representing the public, one of whom shall be knowledgeable in communications or broadcasting and one of whom shall be female;
- (e) the Director General of the Authority;
- (f) one senior officer from the Ministry responsible for communications technology;
- (g) one senior officer from the Directorate of Information and National Guidance.

(3) All members of the Board shall be appointed by the Minister with the approval of Cabinet.

(4) The persons referred to in subsection (2) (b), (c), (f) and (g) shall be appointed after consultation with the relevant bodies.

(5) A member of the Board shall hold office on the terms and conditions specified in the instrument of appointment.

(6) A member of the Board shall hold office for three years and shall be eligible for reappointment for one further term.

9. Disqualification from appointment

A person shall not be appointed to the Board who—

(a) is engaged in an organization which operates or provides communications services, directly or indirectly, as owner, shareholder, partner or otherwise;

(b) is engaged in the manufacture or distribution of communications equipment in Uganda, directly or indirectly, as owner, shareholder, partner or otherwise;

(c) has a financial or proprietary interest in an organization referred to in (a) or (b);

(d) is insolvent;

(e) is incapacitated by mental or physical illness that renders the person incapable of performing the functions of a member of the Board;

(f) is otherwise unable or unfit to discharge the functions of a member of the Board.

10. Vacating office of member of the Board

(1) A member of the Board shall vacate office, if the member—

(a) is declared insolvent;

(b) is convicted of a criminal offence in respect of which a penalty of imprisonment of six months or more is imposed without the option of a fine;

(c) is continuously and persistently unable to discharge the functions of the office of a member of the Board;

(d) subsequently becomes disqualified from being a member under section 9.

(e) fails to disclose to the Authority any interest that member has in a contract or proposed contract connected with the Authority or any other matter;

(f) misbehaves or abuses the office of a member of the Board.

(2) The Minister shall on the recommendation of the Authority determine that a member vacates office under subsection (1).

(3) A member of the Board may resign from office in writing to the Minister.

(4) Where a member resigns or is removed from office under this section, the Minister may in accordance with section 8 appoint another person to replace the member, and to hold office for the remainder of the term of that member.

11. Meetings of the Board

(1) The Board shall meet at least once every three months for the purposes of discharging its functions.

(2) The meetings of the Board shall be conducted in accordance with Schedule 3.

12. Remuneration of members of the Board

The members of the Board may be paid remuneration or allowances approved by the Minister in consultation with the Ministers responsible for public service and finance.

13. Committees of the Board

- (1) The Board may appoint committees—
 - (a) to inquire into and advise the Board on any matter concerning the functions of the Authority as the Board;
 - (b) to exercise the powers or perform a function of the Authority.
- (2) A committee appointed under subsection (1) shall consist of a chairperson and other members of the Board, as the Board may determine.
- (3) A committee may invite any person to attend any of its meetings and may co-opt any person to the committee but that person shall not vote on any matter before the committee.
- (4) Members of a committee appointed under this section may be paid allowances as the Board may, with the written approval of the Minister, determine.
- (5) Subject to any direction given by the Board, a committee appointed under this section may regulate its own procedure.

PART III—SECRETARIAT AND STAFF OF THE AUTHORITY

14. Secretariat of the Authority

- (1) The Authority shall have a secretariat which shall be responsible for the day-to-day operations of the Authority and implementing the decisions of the Board.
- (2) The secretariat shall be headed by a full time Director General.

15. Director General

- (1) The Director General shall be appointed by the Minister on the recommendation of the Board.
- (2) A person shall not be appointed Director General unless that person has considerable knowledge and experience in communications, commerce, finance, law or administration.
- (3) The Director General shall hold office for five years and shall be eligible for reappointment for one further term.
- (4) A person shall cease to hold the office of Director General if that person—
 - (a) resigns
 - (b) is declared insolvent;
 - (c) is convicted of a criminal offence in respect of which a penalty of imprisonment of six months or more is imposed without the option of a fine;
 - (d) is removed from office by the Minister on the recommendation of the Board for—
 - (i) continuously and persistently being unable to discharge the functions of the office Director General;
 - (ii) failing to disclose to the Authority any interest in a contract or proposed contract or any other matter connected to the Authority;
 - (iii) misbehavior or abuse of office.

16. Duties of the Director General

- (1) Subject to this Act and to the general supervision of the Board, the Director General is the chief executive officer of the Authority and is responsible for—
 - (a) implementing the policies and programmes agreed upon by the Authority;
 - (b) managing the funds and property of the Authority;
 - (c) administering, organizing, supervising and generally controlling the staff of the Authority;
 - (d) keeping the Board informed of the activities of the Authority;
 - (e) keeping record of all the transactions of the Authority.
- (2) In the performance of his or her duties, the Director General is answerable to the Board.

17. Secretary to the Authority

(1) There shall be a secretary to the Authority who shall be appointed by the Board on the terms and conditions specified in the instrument of appointment.

(2) The secretary shall be responsible for taking all the minutes of the meetings of the Board.

(3) The secretary shall perform all other duties and functions that the Board or the Director General may assign to the secretary.

(4) The secretary shall, in the discharge of his or her duties, be answerable to the Director General.

18. Other officers and staff of the Authority

(1) There shall be officers and staff of the Authority as may be necessary for the effective performance of the functions of the Authority.

(2) The officers and staff of the Authority shall be appointed by the Board on such terms and conditions as the Board shall determine.

19. Protection of members of the Board and officers of the Authority

A member of the Board or an officer of the Authority or a person acting on the directions of the Board or of an officer of the Authority is not personally liable for any act or omission done or omitted to be done in good faith in the exercise of functions under this Act.

PART IV—LICENSING OF COMMUNICATIONS

Radio, telecommunications and other communications licences

20. Licence for radio communications

A person shall not, without a licence issued by the Authority—

(a) establish or use any radio station or provide radio communication services;

(b) sell, let, hire or otherwise dispose of any radio communications apparatus;

(c) manufacture, possess, install, connect or operate any radio communications apparatus or interference-causing apparatus.

21. Licence for telecommunications

A person shall not, establish a telecommunications station, provide telecommunications services or construct, maintain or operate telecommunications apparatus without a licence issued by the Authority.

22. Exemption from requirement for licence

Notwithstanding sections 20 and 21, a licence is not required for communications apparatus—

(a) exempted by regulations made under this Act;

(b) for use by the police, the armed forces or any other services directly used by the State in the performance of official functions, which comply with technical requirements specified by the Authority.

Management and use of frequency spectrum

23. Licence to use frequency spectrum

The Authority shall exclusively issue licences for—

(a) radio broadcasting or communications apparatus and spectrum use;

(b) possession and operation of radio broadcasting or communications apparatus;

(c) broadcasting and communications as the Authority may consider appropriate.

24. Management of radio spectrum

(1) Notwithstanding any other law, the Authority is exclusively responsible for—

(a) planning, monitoring, managing and allocating the use of the radio spectrum;

(b) establishing technical requirements and standards in respect of—

(i) radio communications apparatus;

(ii) interference-causing apparatus or any class of that apparatus;

(c) negotiating with the International Telecommunications Union or its affiliated bodies on matters relating to radio spectrum.

(2) For the purposes of section 4(c), the Authority may, through spectrum refarming, withdraw spectrum where the Authority is satisfied that the spectrum is not utilized optimally or efficiently.

Installation of television and radio stations.

25. Installation of television and radio stations.

(1) A person shall not install or operate a television station, radio station or any related broadcasting apparatus without a licence issued by the Authority.

(2) The Authority shall, before issuing a licence under this section, take into account—

(a) proof of existence of adequate technical facilities;

(c) the location of the station and geographical area to which broadcast is to be made; and

(d) social, cultural and economic values.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one thousand five hundred currency points or imprisonment not exceeding five years or both.

(4) For the purposes of sub section (3), in the case of a corporate body, any or all the persons who are authorized to sign any document on behalf of the corporate body may be held liable for the contravention.

Registration of television and radio stations

26. Registration of television and radio stations.

(1) A person licensed by the Authority to install or operate a television station, radio station or communications apparatus shall, within fourteen days after obtaining the licence, register the station or apparatus with the Media Council established under the Press and Journalist Act.

(2) The Media Council shall not register any station or apparatus unless the licensee submits to the Media Council, the following particulars, relating to the producer in charge of the station or apparatus—

(a) his or her name and address;

(b) certified copies of the relevant testimonials as proof of his or her qualifications and experience;

(c) the name and address of the station or apparatus; and

(d) other particulars as may be prescribed by the Media Council.

(3) The licensee shall notify the Media Council of any change in the particulars registered with the Council.

(4) A person who contravenes subsection (1) or (3) commits an offence and is liable on conviction to a fine not exceeding fifteen currency points.

Broadcasting licence, right to broadcast and broadcasting standards

27. Broadcasting licence.

(1) A person shall not broadcast without a broadcasting license issued by the Authority.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty five currency points or imprisonment not exceeding three months or both.

28. Right to broadcast.

(1) A person shall not, take any action which is not authorized under this Act or other law, on account of the content of a programme, to prevent the broadcasting of a programme.

(2) Subsection (1) does not absolve a person from complying with any law which prohibits—

(a) the broadcasting of pornographic material and obscene publications; or

(b) any broadcasting which infringes upon the privacy of any individual or which contains false information.

29. Duties of a proprietor and producer.

The holder of a licence or a producer of a broadcasting station or disseminating apparatus shall—

- (a) ensure that what is broadcast is not contrary to public morality;
- (b) retain a record of all that is broadcast, for not less than thirty days.

30. Disqualification of a producer.

A person shall not be appointed a producer of a broadcasting station if that person—

- (a) is less than eighteen years of age;
- (b) is of unsound mind;
- (c) is not ordinarily resident in Uganda;
- (d) does not possess the requisite qualifications prescribed by the Media Council.

31. Minimum broadcasting standards.

A person shall not broadcast any programme unless the broadcast or programme complies with Schedule 4.

32. Ethical broadcasting standards

(1) Subject to this Act, the ethical broadcasting standards which apply to broadcasters are the professional code of ethics specified in the First Schedule to the Press and Journalist Act.

(2) The standards referred to in subsection (1) may be modified by the Authority to accord with this Act.

Licensing of televisions sets

33. Registration of televisions

(1) Every person with a television set shall register the television with the Authority in accordance with regulations made by the Authority.

(2) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding two and half currency points or imprisonment not exceeding one month or both.

PART V—POSTAL SERVICES

34. Licensing of postal services.

(1) A person shall not convey, deliver or distribute postal articles without a licence issued under this Act.

(2) A person shall not require a licence to convey, deliver or distribute the following postal articles—

- (a) articles for delivery to another person or persons to whom they are directed, without hire, reward or other profit or advantage for receiving, carrying or delivering them;
- (b) articles solely concerning goods or other property sent by land, water or air, and delivered with the goods or property to which the letters relate without hire, reward, profit or advantage for receiving them, and the articles are open to inspection and have subscribed on them the words "consignee's articles" or other words to that effect.

35. Subcontracting by a licensee.

(1) In the case of postal services, a licensee may use a subcontractor to perform the services subject to the licensee's responsibility to comply with all obligations and conditions under the licence and this Act.

(2) The liability of a subcontractor of a licensee under subsection (1) in the collection, transmission or delivery of any postal article or for loss or delay of or damage to the article or any other loss or damage in relation to the performance of postal services shall be the same as the liability of the licensee.

(3) Subsection (2) does not affect the liability of the subcontractor to the licensee.

36. Protection of postal articles.

(1) A person engaged in postal services shall protect any postal article and ensure that an employee of that person does not—

- (a) open the article;
- (b) know or disclose the contents of a postal article;

(c) deliver an article in the course of transmission to a person other than the addressee, without the consent of the addressee;

(d) permit that article to be opened or delivered to a person other than the addressee, without the consent of the addressee, or permit anyone other than the addressee to know or to disclose the contents of a postal article.

(2) Any person who negligently or knowingly fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding thirty currency points for the first conviction and a fine not exceeding fifty currency points on a subsequent conviction.

(3) Subsection (1) does not apply to an article opened or disposed of under—

(a) the law regulating customs;

(b) any other law prohibiting or regulating the importation or exportation of an article;

(c) any regulation permitting the opening of a postal article for the purposes of ascertaining details pertaining to the sender or addressee which are necessary in order to return or deliver the postal article.

37. Power to examine postal articles.

(1) The Director General may by notice in writing, require the addressee of a postal article to appear at the office of the Authority, at a time specified in the notice, where—

(a) the Director General has reasonable grounds to believe that the postal article contains prohibited subject matter or has on it or enclosed in it any word, drawing or picture, threatening, obscene or of grossly offensive character; or

(b) the Inspector General of Police requests the action in connection with a criminal investigation.

(2) Where the addressee fails to appear in accordance with the notice or refuses to open the postal article, an authorised officer shall open the article in the presence of a police officer not below the rank of assistant superintendent of police.

(3) After the postal article has been opened under subsection (1) or (2), the article shall be delivered to the addressee unless the police officer present states that it is required as an exhibit in court proceedings, in which case it shall be delivered to the police officer who shall acknowledge receipt.

38. Limitation of liability of a licensee.

(1) The liability of a holder of a licence for—

(a) the loss, misdelivery or delay of or damage to, any postal article in the course of transmission by the licensee;

(b) the interception, detention or disposal of any postal article in accordance with this Act; or

(c) the wrong payment of a money order, shall not exceed that provided for by regulations made by the Authority, the contract governing the service contracted or the Universal Postal Union.

(2) The holder of a licence shall give notice to the public regarding the type of liability under subsection (1) which applies to the licensee.

PART VI—VIDEO AND CINEMA OPERATORS

39. Licence for cinematograph theatre or video library.

(1) A person shall not operate a cinematograph theatre or a video or film library without a licence issued by the Authority.

(2) The Authority shall issue the licence on terms and conditions the Authority may consider necessary.

(3) The Authority shall, before issuing a licence under this section consider whether, at the place or premises of the applicant, there is adequate provision for the safety, health or convenience of the persons attending a video or cinematograph exhibition.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty four currency points or imprisonment not exceeding twelve months or both.

PART VII—GENERAL PROVISIONS RELATING TO LICENCES.

40. Application for a licence.

(1) An application for a licence under this Act shall be made to the Authority in the prescribed form.

(2) Before granting a licence, the Authority shall, take into account the following—

- (a) whether the applicant is an eligible person;
- (b) the capability of the applicant to operate a system or service for which a licence is sought;
- (c) the objectives of this Act;
- (d) whether the grant of the licence is in the public interest.

(3) A licence under this section shall—

- (a) be issued upon payment of the fees prescribed for the licence;
- (b) state the terms and conditions upon which it is granted;
- (c) specify the services to be provided by the operator;
- (d) where applicable, specify the network to be operated.

41. Terms and conditions of a licence.

(1) The Authority shall prescribe the terms and conditions of all operators licensed under this Act.

(2) A licence may include the provision of services to rural or sparsely populated areas or other specified areas and other conditions specified in Schedule 6.

(3) An operator shall provide the service for which that operator has obtained a licence.

(4) For the purposes of this section, the conditions may include—

- (a) in the case of a licence to establish a radio communication station, the specifications as to the positions and nature of the station, the purpose for and circumstances in which and the persons by whom the station may be installed or used;
- (b) in the case of any other telecommunication licence, specifications as to the apparatus which may be installed or used, the places where, the purposes for, the circumstances in which and the persons by whom an apparatus may be used; and
- (c) in the case of a postal services licence, specifications as to the services to be performed, the place of postal services and the geographical spread of the services and places.

42. Modification of licence.

(1) The Authority may, upon reasonable grounds, modify the conditions of any licence if the Authority considers it necessary to achieve the objectives of this Act, or is in the public interest, taking into account the justified interests of operators and the principles of fair competition and equality of treatment.

(2) Before modifying any condition of a licence, the Authority shall give the operator notice of not less than sixty days, stating the reasons for the intended modifications and giving the operator an opportunity to make any representation.

(3) The Authority shall give an operator reasonable time within which to comply with the modification of the licence.

(4) A person aggrieved by a decision of the Authority may appeal to the Minister.

43. Suspension and revocation of licence.

(1) The Authority may suspend or revoke a licence issued under this Act, on the following grounds—

- (a) serious and repeated breach of the licence conditions;

(b) any fraud or intentional misrepresentation by the operator applying for the licence;

(c) where the operator is engaged in or is supporting activities amounting to a treasonable offence under the Penal Code Act; or

(d) where the operator has ceased to be an eligible person.

(2) After consideration of any representations by the operator, the Authority may—

(a) prescribe time during which the operator is required to remedy the offending act or conduct;

(b) require the operator to pay a fine not exceeding the equivalent of ten percent of its gross annual revenue.

(3) The Authority shall give the operator written notice of not less than sixty days specifying the reasons for the intended suspension or revocation, during which the operator may make representations to the Authority.

(5) Where the Authority is of the opinion that the measures under subsection (3) are not sufficient, the Authority may—

(a) suspend the licence for a specified period; or

(b) revoke the licence.

44. Transfer of licence.

(1) A licence issued by the Authority shall not be transferred without the written consent of the Authority.

(2) An operator may apply to the Authority in the prescribed manner for consent to transfer a licence.

(3) An application under subsection (2) shall be accompanied by an application for grant of a licence by the person to whom the operator intends to transfer the licence.

(4) The Authority shall in considering an application for the transfer of a licence have regard to the same terms and conditions as those that apply to the grant of a new licence, but the Authority may in its discretion refuse to grant the application under this section.

(5) For the purposes of this section—

(a) "transfer of licence" includes the acquisition of control of the licence holder;

(b) "control" as used with respect to any person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management of that person, whether through the ownership of shares, voting, securities, partnership or other ownership interests, agreement or otherwise.

45. Lapse and renewal of a licence.

(1) An application for the renewal of a licence shall be made at least two months before the expiration of the licence.

(2) In considering an application for a renewal of a licence, the Authority shall have regard to the performance of the operator during the duration of the licence.

46. Annual report on operations of licensee.

Every licensee shall, at the end of each year of business, prepare and submit to the Authority in the prescribed form, a report on the operations and services of the licensee and the extent to which the conditions of the licence are followed.

PART VIII—PUBLIC OPERATOR AND USE OF LAND FOR TELECOMMUNICATIONS SERVICES.

47. Designation of public operator.

The Authority may designate a person licensed under this Act to be a public operator whose licence shall be subject to the following conditions—

(a) to provide communications services specified in the licence to the public, including other operators;

(b) to connect to any telecommunication system or to permit the connection of any other system as may be specified in the licence;

(c) not to show undue preference to or exercise undue discrimination against any person in respect of any service provided, connection made or permission given in its operation; and

(d) other terms and conditions that the Authority may specify in the licence or by regulations.

48. Use of land.

(1) Subject to article 26 of the Constitution, an operator authorized by the Authority, in writing, generally or on a particular occasion may, with the consent of the owner, place and maintain infrastructure for telecommunications services in, over or upon any land.

(2) For the avoidance of doubt, an operator entering land for the purposes of sub section (1) shall not acquire any right other than that of user of the land, without the consent of the owner.

49. Procedure for using public land.

(1) Where an operator authorised by the Authority intends to enter any land under the management or control of an urban council or other public authority, the operator shall give notice to the urban council or other public authority, of not less than thirty days, stating the nature and extent of the acts intended to be done.

(2) The urban council or other public authority may within thirty days after receipt of the notice under subsection (1) permit the operator to use the specified land, subject to conditions, including—

(a) the payment of any fee for the use of the property;

(b) the time or mode of execution of any works;

(c) any other related activity undertaken by the operator.

(3) An operator shall do as little damage as possible to the land and to the environment and shall pay fair and adequate compensation to all interested persons for any damage or loss sustained by the exercise of the powers under this section.

50. Compensation.

(1) Any question as to a person's entitlement to compensation for right of use or as to the sufficiency of the amount of compensation, shall in default of agreement be determined as if the land had been acquired under the Land Acquisition Act.

(2) A claim for compensation under this section shall be lodged with the Authority within three years from the date of the act of the operator giving rise to the claim.

(3) Any person aggrieved by the decision of the Authority may within thirty days appeal to the Minister.

51. Compulsory purchase of land.

(1) Where an operator considers that the acquisition of land, or an interest in land greater than the right of use, is necessary for the purpose of providing communications services to the public, the operator may, with the approval of the Authority, request action by the Minister responsible for lands.

(2) The Authority shall provide a copy of its approval to the Minister responsible for lands and to the owner of or person having interest in the land.

(3) Where the Minister responsible for lands is satisfied that the land or interest in the land is required for the purpose of providing telecommunications services to the public, and it is in the public interest, the Minister shall pursue the acquisition of the land on behalf of the operator in accordance with the Constitution, the Land Act and the Land Acquisition Act.

(4) The operator shall, bear all the costs involved, where the Minister acquires land under this section on behalf of that operator.

PART IX—INVESTIGATION AND INSPECTIONS.

52. Investigation of complaints.

The Authority may investigate any matter within its functions under this Act which relates to—

- (a) communications services or apparatus provided or supplied in Uganda; and
- (b) any representation made to the Authority by or on behalf of a person whom the Authority considers to have an interest in the matter which is the subject of the representation.

53. Power to institute inquiries.

(1) The Authority may appoint any person or committee to inquire into and report to the Authority on any matter pending before the Authority.

(2) The Authority shall institute an inquiry where the Authority is directed to do so by the Minister.

(3) The Authority may give to a person or committee appointed under this section, directions regarding the procedures for conducting the inquiry.

54. Report on investigations.

(1) A person or committee appointed to carry out inquiries under section 64 shall submit a report to the Authority in a form and manner that the Authority may direct.

(2) Where an inquiry is instituted in accordance with the direction of the Minister, the Authority shall submit a copy of the report to the Minister.

55. Directions to remedy breach.

Where as a result of an investigation the Authority is satisfied that an operator has breached a condition of a licence or an obligation under this Act, it may direct the operator in writing to remedy the breach or to do such act or acts as the Authority may specify in the direction, in accordance with the procedures specified in section 43.

56. Appointment of inspectors.

(1) The Authority may appoint inspectors for the purposes of verifying compliance with this Act and the decisions of the Authority.

(2) An inspector shall, when exercising powers under this Act, produce the instrument of appointment and identification when required to do so by any person.

57. Powers of an inspector.

(1) Subject to subsection (3), an inspector may—

(a) enter and inspect at any reasonable time any place owned by or under the control of an operator in which the inspector believes on reasonable grounds to be any document, information or apparatus relevant to the enforcement of this Act and examine the document, information or apparatus or remove it for examination or reproduction;

(b) enter any place in which the inspector believes that there is radio apparatus or interference-causing apparatus, and examine any radio apparatus, logs, books, reports, data, records, documents or other information, and remove the information, document, apparatus or equipment for examination or reproduction;

(c) make reasonable use of any copying equipment or means of communication located at the place.

(2) The inspector shall sign for any information, document, article, apparatus or equipment removed by the inspector under this section and shall leave a copy of the signed record with the operator.

(3) Where a place referred to under subsection (1) is a dwelling house, an inspector shall not enter that dwelling house without the consent of the occupant, unless—

(a) under the authority of a warrant issued under section 58; or

(b) where by reason of exigent circumstances, it would not be practical for the inspector to obtain a warrant.

(4) For the purposes of subsection (3) (b), "exigent circumstances" include circumstances in which the delay arising from obtaining a warrant would result in danger to human life or safety, loss or destruction of evidence.

(5) The owner or person in charge of a place entered by an inspector shall give the inspector all reasonable assistance to enable the inspector to carry out the inspector's duties under this Act.

58. Search warrant.

(1) Where on application a Magistrate is satisfied by information on oath that—

- (a) entry to a dwelling house is necessary for the purpose of performing any duty of an inspector under this Act; and
- (b) entry to a dwelling house has been refused or is likely to be refused, the magistrate may issue a warrant authorising the inspector named in the warrant to enter that dwelling house, subject to conditions specified in the warrant.

(2) In executing a warrant issued under this section, an inspector shall not use force unless accompanied by a police officer, and unless the use of force is specifically authorised in the warrant.

(3) For the purposes of this section, "magistrate" means a Magistrate not below a Magistrate Grade I.

PART X—FAIR COMPETITION AND EQUALITY OF TREATMENT.

59. Authority to promote fair competition.

The Authority shall, in the performance of its functions under this Act, promote, develop and enforce fair competition and equality of treatment among all operators in any business or service relating to communication.

60. Unfair competition prohibited.

(1) An operator shall not engage in any activities, which have, or are intended or are likely to have, the effect of unfairly preventing, restricting or distorting competition in relation to any business activity relating to communications services.

(2) For the purposes of subsection (1) the acts or omissions include—

- (a) any abuse by an operator, independently or with others, of a dominant position which unfairly excludes or limits competition between the operator and any other party;
- (b) entering into an agreement or engaging in any concerted practice with any other party, which unfairly prevents, restricts or distorts competition; or
- (c) effecting anticompetitive changes in the market structure and, in particular, anticompetitive mergers and acquisitions in the communications sector.

61. Exceptions to fair competition.

The Authority may, in writing, allow an operator to carry on any act or omission prohibited under section 61 where the Authority is satisfied that, the act or omission—

- (a) contributes to—
 - (i) the improvement of any goods or services;
 - (ii) the promotion of communications services in Uganda in accordance with this Act; and
- (b) does not—
 - (i) impose on the parties restrictions which are not indispensable to attaining the objective specified under paragraph (a); and
 - (ii) give the parties the ability to substantially reduce competition in respect of the goods or services in question.

62. Breach of fair competition.

(1) The Authority may, by its own motion, investigate any operator who commits any act or omission in breach of fair competition.

(2) A person may complain to the Authority against a breach of fair competition by an operator.

(3) The Authority shall, if it appears that a breach of competition has been committed, investigate the act or omission and give written notice to the operator stating—

- (a) that the Authority is investigating a possible breach of fair competition;
- (b) the reasons for the suspicion of a contravention or breach, including any matter of facts or law which are relevant to the investigation;
- (c) further information required from the operator in order to complete the investigation; and

(d) where appropriate, the steps to be taken in order to remedy the breach.

(4) The operator may, within thirty days from the date of the notice, make representations in response to the notice.

(5) Any person affected by the contravention or breach of fair competition may make a representation to the Authority in relation to the contravention or breach.

(6) The Authority shall, after considering any representations of the operator or any other person, fix a date on which to make a decision on the matter.

(7) The Authority may, upon satisfaction that an operator is competing unfairly—

- (a) order the operator to stop the unfair competition;
 - (b) require the operator to pay a fine not exceeding ten percent of the annual turnover of the operator;
 - (c) declare any anticompetitive agreements or contracts null and void.
- (8) Subsection (6) shall not affect in any way the right of a person to take any other action against the operator under this Act or any other law.
- (9) Any person aggrieved by the decision of the Authority under this section may appeal to the tribunal.

(10) This section shall not limit or in any way affect the obligations of an operator under any condition of a licence.

63. Denial of access or service.

An operator shall not deny access or service to a customer except for nonpayment of dues or for any other just cause.

64. Equality of treatment.

An operator shall provide equal opportunity for access to the same type and quality of service to all customers in a given area at substantially the same rates, limiting variations to available or appropriate technologies required to serve specific subscribers.

65. Interconnection of network facilities.

(1) A telecommunications operator may, with the approval of the Authority, enter into an agreement with any other operator for the purpose of connecting its network facilities with the network facilities of that other operator on terms and conditions that the operators may agree.

(2) The operators referred to in subsection (1) shall submit to the Authority an application for approval of an interconnection agreement accompanied by a copy of the proposed interconnection agreement.

(3) Upon receipt of the application and proposed interconnection agreement, the Authority shall within thirty days respond to the application in writing.

(4) Where the Authority does not respond to the application in the time specified in subsection (3), the Authority shall be taken to have approved the application.

(5) The Authority—

- (a) shall, within ninety days from the receipt of an application of an operator or within such other reasonable period in the circumstances; or
- (b) may, on its own motion, impose an interconnection agreement on two operators if a negotiated

agreement is not possible or if the Authority determines that such agreement promotes fair competition.

(6) Before imposing an interconnection agreement between two or more operators, the Authority shall give each operator thirty days' notice stating the reasons for the intended imposition, and giving the operators opportunity to make representations.

(7) The Authority shall issue minimum guidelines in accordance with which telecommunications operators shall negotiate interconnection agreements.

66. Maximum interconnection rates.

(1) Notwithstanding section 65, the Authority may fix maximum interconnection rates.

(2) For the purposes of determining the rate under subsection

(1), the Authority shall take into account—

(a) accessibility and affordability of the communications services to all parts of the society;

(b) fair treatment and competition among the operators.

PART XI—UGANDA COMMUNICATIONS TRIBUNAL.

67. Establishment of Uganda Communications Tribunal.

(1) There is established a tribunal known as the Uganda Communications Tribunal.

(2) The tribunal shall consist of a judge and two other persons appointed by the President on the recommendation of the Judicial Service Commission.

(3) The judge shall be the chairperson of the tribunal.

(4) The chairperson or a member of the tribunal shall hold office for four years, and shall be eligible for reappointment.

(5) The tribunal may, in the discharge of its functions, be assisted by not more than four technical advisers appointed by the tribunal from technical persons identified by the Minister.

(7) A technical adviser shall be appointed for a specific assignment after which the appointment shall lapse.

68. Funds of the tribunal.

The funds of the tribunal shall consist of—

(a) money appropriated by Parliament from time to time for enabling the tribunal to perform its functions;

(b) grants, gifts or donations from the Government or other sources acceptable to the Minister and the Minister responsible for finance; or

(c) funds provided to the tribunal by the Authority under section 78.

69. Disqualification from appointment to the tribunal

A person shall not be appointed to the tribunal or as a technical adviser who—

(a) is engaged in a communications company or organisation which operates communications systems or provides services or is engaged in the manufacture or distribution of communications equipment in Uganda, as an owner, shareholder, partner or otherwise, whether directly or indirectly;

(b) has a financial or proprietary interest in an organisation referred to in paragraph (a) or in the manufacture or distribution of communications apparatus anywhere in Uganda;

(c) is an undischarged bankrupt or has made any arrangement with creditors;

(d) is incapacitated by mental or physical illness; or

(e) is otherwise unable or unfit to discharge the functions of office of a member of the tribunal or technical adviser.

70. Vacating office of member of the tribunal.

(1) The office of a member of the tribunal shall fall vacant if—

(a) the member is continuously and persistently unable to perform the functions of the office;

(b) the member engages in misbehaviour or abuse of office;

- (c) the member is subsequently disqualified from membership in accordance with section 69;
- (d) the member fails to disclose to the tribunal any interest in a contract or proposed contract or any other matter before the Authority.
- (2) A vacancy under subsection (1) (a) shall be determined by the President on the recommendation of the Minister.
- (3) A member of the tribunal may resign office by notification in writing to the President.
- (4) A technical adviser shall cease to be a technical adviser if he or she—
 - (a) is subsequently disqualified from appointment in accordance with this section;
 - (b) fails to disclose to the tribunal any interest in the communications sector or in a contract or other matter before the Authority or the tribunal;
 - (c) subsequently acquires any material interest in the communications sector.

71. Jurisdiction of the tribunal.

- (1) The tribunal shall have jurisdiction to hear and determine all matters relating to communications services arising from decisions made by the Authority or the Minister under this Act.
- (2) For the avoidance of doubt, the jurisdiction of the tribunal does not include the trial of any criminal offence.

72. Powers of the tribunal.

- (1) The tribunal shall in the exercise of its jurisdiction under this Act have all powers of the High Court.
- (2) For the purposes of this section the law applicable to a civil action in the High Court shall, with the necessary modifications, apply to proceedings before the tribunal.
- (3) Judgments and orders of the tribunal shall be executed and enforced in the same manner as judgments and orders of the High Court.
- (4) Any person aggrieved by a decision of the tribunal may within thirty days from the date of the decision or order appeal to the Court of Appeal.
- (5) The law applicable to appeals from the High Court in civil matters shall, with the necessary modifications or the written adjustments as the Chief Justice may direct, apply to appeals from the Authority to the tribunal and from the tribunal to the Court of Appeal.

PART XII—UGANDA POST LIMITED

73. Uganda Post Limited.

- (1) Uganda Post Limited shall provide reserved postal services, exclusively and the postal services that the company is required to provide, as mandatory postal services, at uniform prices and conditions.
- (2) The Uganda Post Limited shall, exclusively, be responsible for producing and issuing postage stamps, prestamped envelopes, aerograms and international reply coupons bearing the official national coat of arms or the words "Republic of Uganda", "Uganda" or "Uganda Post".
- (3) The Uganda Post Limited may, subject to such conditions as it may determine and without prejudice to the provisions of this Act or any regulations made under this Act, license the use by any person of franking machines.
- (4) The Uganda Post Limited may subject to this Act enter into a commercial agreement with Post Bank Limited for use of Uganda Post Limited facilities throughout the country.

PART XIII—FINANCIAL PROVISIONS

74. Funds of the Authority.

- (1) The funds of the Authority shall consist of—
 - (a) money appropriated by Parliament for the purposes of the Authority;
 - (b) licence fees and money paid to the Authority for services rendered;

(c) money collected from the levy on the gross annual revenue of operators charged in accordance with section 75;

(d) revenue collected from license in respects of international incoming telecommunications traffic;

(e) money borrowed by the Authority;

(f) loans, grants, gifts or donations from Government and other sources made with the approval of the Minister, the Minister responsible for finance and Parliament.

(2) The Minister shall by statutory instruments determine the percentage of revenue received by operators from international incoming telecommunications traffic to be collected by the Authority.

75. Levy on gross annual revenue of operators

(1) The Authority may levy a charge on the gross annual revenue of operators licensed under this Act.

(2) The levy shall be approved by the Minister after consulting the Minister responsible for finance.

(3) The levy shall not exceed the percentage specified in Schedule 5.

76. Power to open and operate bank accounts

(1) The Authority shall open and maintain bank accounts as are necessary for the performance of the functions of the Authority.

(2) The bank accounts shall be operated in a manner determined by the Board.

77. Estimates of income and expenditure

(1) The Board shall, not less than two months before the beginning of each financial year, prepare and submit to the Minister for approval, a budget containing the estimates of income and expenditure of the Authority for the next financial year.

(2) The Authority shall not incur any expenditure exceeding the budget without the approval of the Minister.

78. Application of Authority funds

The funds of the Authority may be applied to the payment—

(a) or discharge of expenses, obligations, including international obligations, or liabilities incurred in connection with the performance of the functions or exercise of the powers of the Authority;

(b) of any remuneration or allowances payable under this Act.

79. Investment of surplus funds

(1) The Board shall declare to the Minister any surplus funds that the Authority may have at the end of the financial year.

(2) Any funds of the Authority not immediately required for any purpose under this Act, may be invested—

(a) on a fixed deposit account with a bank approved by the Board;

(b) in treasury bills and securities of the Government;

(c) in any other manner determined by the Board with the approval of the Minister, other than in the business licensed under this Act.

80. Financial year of Authority

The financial year of the Authority is the period of twelve months beginning on the 1st day of July in each year, and ending on the 30th day of June in the next calendar year.

81. Accounts

The Authority shall—

(a) keep proper books of accounts and all records relating to the transactions and affairs of the Authority;

(b) within three months after the end of the financial year, prepare annual financial statements for the preceding financial year; and

(c) within three months after the end of each financial year, submit the annual accounts to the Auditor General.

82. Audit

(1) The Auditor General or an auditor appointed by the Auditor General shall, in each financial year, audit the accounts of the Authority.

(2) The Auditor General or an auditor appointed by the Auditor General shall within three months after receipt of the accounts submit to the Minister and Parliament a report on the audited accounts of the Authority.

PART XIV—OFFENCES AND PENALTIES.

83. Unlawful opening of postal article.

A person who—

- (a) opens or permits to be opened any postal article otherwise than in accordance with this Act;
- (b) knowingly reveals, discloses or in any way makes known the content of information in relation to a postal article opened under this Act or otherwise than in accordance with this Act;
- (c) knowingly destroys, detains or secrets any mail bag or postal article otherwise than in accordance with this Act;
- (d) knowingly permits any unauthorised person to interfere with any mail bag or postal article;
- (e) fraudulently or with intent to deceive, prepares, alters, secrets or destroys any document used for the purposes of postal services, commits an offence and is liable to a fine not exceeding twelve currency points or imprisonment not exceeding six months or both.

84. Issuing money order with fraudulent intent.

A person who with intent to defraud or without a licence under this Act issues any money order or valuable security commits an offence and is liable on conviction to a fine not exceeding twelve currency points or to imprisonment not exceeding six months or both.

85. Offences and penalties for unlicensed persons.

Any person who establishes, installs, maintains, provides or operates—

- (a) a radio communication station;
- (b) a telecommunications system or service; or
- (c) a postal service, without a licence issued under this Act, commits an offence and is liable on conviction to a fine not exceeding ninety six currency points and in the case of a continuing offence, to a further fine not exceeding fifteen currency points for each day or part of a day during which the offence continues after conviction.

86. Interception and disclosure of communication.

Any operator of a communications service or system, or employee of an operator of a communications service or system who—

- (a) unlawfully intercepts any communication between other persons sent by means of that system or service;
- (b) without lawful excuse, interferes with or obstructs any radio communication, or
- (b) unlawfully discloses any information in relation to a communication of which that operator or employee is aware, commits an offence, and is liable on conviction to a fine not exceeding ninety six currency points or to imprisonment not exceeding forty eight months or both.

87. Interception of Government communication.

An operator of communications services or employee of an operator who intentionally intercepts, disrupts, denies accessibility to or diverts government communication commits an offence and is liable on conviction to a fine not exceeding ninety six currency points or imprisonment not exceeding forty eight months or both.

88. Sending false distress signals.

(1) Any person who knowingly sends, transmits or causes to be sent or transmitted any false or fraudulent distress signal, message, call or radiogram of any kind commits an offence and is liable on

conviction to a fine not exceeding thirty currency points and in the case of a second conviction to a fine not exceeding ninety six currency points, or to imprisonment not exceeding forty eight months or both.

(2) Any person who without lawful excuse—

(a) intercepts;

(b) intercepts and makes use of; or

(c) intercepts and divulges, any communication except where permitted by the originator of the

communication, commits an offence and is liable on conviction to a fine not exceeding thirty currency points.

(3) For the purposes of subsection (2) where the conviction is a subsequent conviction the person is liable to a fine not exceeding forty eight currency points, or imprisonment not exceeding twelve months or both.

89. Offences in respect of radio communications.

A person who—

(a) installs, operates or possesses a radio communications apparatus except in accordance with this Act; or

(b) without lawful excuse manufactures, imports, distributes, leases, offers for sale, sells, installs, modifies, operates or possesses any apparatus or device or its component under circumstances that give rise to a reasonable interference to another apparatus, device or component or if that apparatus

device or component has been used, or is or was intended to be used, for the purposes of contravening this Act, commits an offence and is liable on conviction to a fine not exceeding ninety six currency points and on a second conviction to a fine not exceeding forty eight currency points.

90. Protection of telecommunication installations.

(1) A person who—

(a) prevents or obstructs the transmission or delivery of any message; or

(b) damages, removes or tampers with any installation or plant or any part of it belonging to an operator,

commits an offence and is liable on conviction to a fine not exceeding ninety six currency points and on a second conviction to a fine not exceeding forty eight currency points.

(2) In addition to the penalty under subsection (1), the court may order the person convicted to make good any damage occasioned.

91. False advertisement.

A person who, without a licence, advertises or places a notice, mark or word at any place which notice, advertisement, mark or word signifies, implies or may reasonably lead the public to believe that the advertiser or other person is a holder of a licence under this Act commits an offence and is liable on conviction to a fine not exceeding ninety six currency points and in case of a continuing offence, to a further fine not exceeding forty eight currency points for each day during which the offence continues after conviction.

92. General penalty.

Any person convicted of an offence under this Act for which no penalty is expressly provided is liable to a fine not exceeding ninety six currency points.

PART XV—MISCELLANEOUS.

93. Powers of the Authority in a state of emergency.

(1) The Authority may, during a state of emergency in the interest of public safety—

(a) direct any operator to operate a network in a specified manner in order to alleviate the state of emergency;

(b) take temporary possession of any communication station within Uganda, and any apparatus which may be installed and used in the station, for a specified period not exceeding six months;

(c) in writing direct a licensed person, to intercept or detain a postal article, class or description of postal articles in the course of transmission within Uganda and deliver it to an officer specified in the order.

(2) The officer to whom the article is delivered under subsection (1)(c) shall dispose of the article in the manner specified by the Authority.

(3) A proclamation by the President under article 110 of the Constitution is conclusive proof of the existence of a state of emergency.

94. Transfer of assets and liabilities.

All assets, rights and liabilities relating to communications services to which Uganda Communications Commission or Broadcasting Council were entitled or subject, before the commencement of this Act, shall vest in the Authority.

95. Transfer of service contracts.

Employees of Uganda Communications Commission and Broadcasting Council immediately before the commencement of this Act whose services are transferred to the Authority shall transfer to the Authority on similar or better terms than those enjoyed by those employees before the transfer.

96. Pension fund and retired and redundant employees.

(1) All former employees of the Uganda Communications Commission or Broadcasting Council who at the commencement of this Act are receiving retirement benefits and pensions from the Uganda Communications Commission or Broadcasting Council shall continue to be paid by the Authority.

(2) All employees of Uganda Communications Commission or Broadcasting Council who become redundant as a result of the implementation of section 96 shall be paid the calculated and ascertained retirement benefits and pension due to them under the Uganda Communications Act or the Electronic Media Act respectively.

(3) The contributory pension fund established under the Uganda Communications Act shall continue in force in accordance with this Act.

97. Agreements and licences by the Commission or Broadcasting Council.

All valid—

(a) licences issued by Uganda Communications Commission or Broadcasting Council before the commencement of this Act; and

(b) any other agreements entered into by Uganda Communications Commission or Broadcasting Council

before the commencement of this Act, shall remain valid and only be modified by the Authority within one year from the time the Authority commences operations to the extent that any provisions of the agreements or licences are inconsistent with this Act.

98. Pending court proceedings or orders of court.

(1) Any pending court proceedings, court actions, judgments or court orders which were enforceable by or against Uganda Communications Commission immediately before the commencement of this Act, and are connected with the assets vested in the Authority or the functions of the Authority, shall be enforceable by or against the Authority as they would have been enforced by or against the Uganda Communications Commission, immediately before the commencement of this Act.

(2) Any pending court proceedings, judgment or order against the Attorney General arising out of matters connected with the Broadcasting Council, shall continue against the Attorney General until they are disposed of or satisfied.

99. Service of notices on the Authority.

Any notice or other document required to be served on the Authority may be served by—

(a) delivery to the Director General or any authorized employee;

(b) delivery at the office of the Director General and obtaining evidence of receipt; or

(c) courier delivery to the Director General.

100. Regulations.

(1) The Minister may, after consultation with the Authority by statutory instrument, make regulations for better carrying into effect the provisions of this Act.

(2) Without prejudice to subsection (1) the Minister may make regulations relating to—

- (a) fees payable upon the grant or renewal of a licence;
- (b) the classification or categories of licences;
- (c) the use of any communications station, apparatus or licence;
- (d) obligations for permitting and facilitating the inspection of any communications station, apparatus or licence;
- (e) anti competitive practices;
- (f) energy regulation requirements to be complied with by any person who uses, sells, other than for export, or lets on hire any apparatus generating, designed to generate or liable to generate, fortuitous electromagnetic energy at frequencies that may be specified;
- (g) the exhibition at any communications station of notices that may be specified in the regulations;
- (h) the use on board any vessel or aircraft other than a vessel or aircraft registered or licensed in Uganda, within the limits of Uganda and the territorial waters adjacent to Uganda, of communications apparatus on that vessel or aircraft, and the importation, acquisition, manufacture, sale, letting on hire or other disposition of communications apparatus of any kind, or the use or installation of that apparatus;
- (i) the requirements of the communications services to be provided by a licensee, in terms of quantitative and quality criteria;
- (j) the specifications of reserved and mandatory services to be provided for by an operator under this Act;
- (k) the way the consumer will be informed about the range of commercial services and the conditions under which they are provided;
- (l) prescribing conditions to be observed in the erection, alteration or equipment of cinematograph theatres;
- (m) prescribing conditions to be observed in relation to safety from fire or otherwise of any cinematograph theatre or the control of person attending the theatre;
- (n) the conditions under which a licensee can apply for compensation for loss-incurring operations as the result of the operator's obligation imposed on the operator by the Authority regarding the provision of uneconomic services in pursuance of the objectives of this Act;
- (o) the retention of records relating to programmes or broadcasts;
- (p) the obligations of proprietors, producers or broadcaster in respect of public broadcasts;
- (q) the licensinf and management of telecommunication numbering and orbital slots;
- (r) the regulation of community broadcasting.

(3) The regulations made under this section shall not require any person to concede right of entry into a private dwelling house for the purpose of permitting or facilitating the inspection of any communications apparatus not designed or adapted for permission under this Act.

(4) Regulations made under this section may provide in respect of any contravention of the regulations for the imposition of a fine not exceeding forty eight currency points or imprisonment not exceeding twenty four months or both.

(5) The Director General may by notice require anybody who, in his or her opinion is not complying with the regulations made under this section, to discontinue use, sale or let on hire, as the case may be, the apparatus in question, or to use, sell or let on hire the apparatus subject to conditions that may be specified in the notice.

101. Amendment of Cap. 49

The Stage Plays and Public Entertainments Act is amended—

(a) in section 1 by substituting for paragraph (a) the following—

“(a) “Authority” means the Uganda Communications Regulatory Authority established by the Uganda

Communications Regulatory Authority Act, 2012.”;

(b) by substituting for any reference to “council” in that Act, a reference to “Authority”.

102. Amendment of Schedules.

The Minister may, with the approval of Cabinet, by statutory instrument amend the Schedules to this Act.

103. Repeal and saving.

(1) The Electronic Media Act and the Uganda Communications Act are repealed.

(2) Notwithstanding subsection (1), any statutory instrument made under the Electronic Media Act or the Uganda Communications Act which is in force immediately before the commencement of this Act, shall remain in force until revoked under this Act.

SCHEDULES

SCHEDULE 1.

Section 1

Currency point

One currency point is equivalent to twenty thousand shillings

SCHEDULE 2

Section 3

Seal of the Authority.

1. The common seal of the Authority shall be determined by the Authority and shall be kept in the custody of the Director General.

2. The common seal shall, when affixed to any document, be authenticated by the signatures of the chairperson and the Director General.

3. In the absence of the chairperson or when the chairperson is unable to perform this function, two other members of the Authority appointed for that purpose shall sign in the place of the chairperson.

4. A person performing the functions of Director General shall sign in the absence of the Director General.

5. A contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be under seal may be entered into or executed without seal on behalf of the Authority by the Director General or any other person authorised in that behalf by the Authority.

6. Every document purporting to be—

(a) an instrument issued by the Authority and sealed with the common seal of the Authority and authenticated in the manner prescribed in paragraphs 2 to 4; or

(b) a contract or instrument entered into or executed under paragraph 5, shall be received in evidence as such an instrument without further proof unless the contrary is proved.

SCHEDULE 3

Section 11

Meetings of the Board.

1. Meetings of the Board.

(1) Meetings of the Board shall be convened by the chairperson, and the Authority shall meet for the transaction of business at such places and times as may be decided upon by the Board but in any case shall meet at least once every three months.

(2) The chairperson or, in the absence of the chairperson, a member appointed by the Board to act in the chairperson's place may at any time call a special meeting of the Board and shall call a special meeting upon a written request by a majority of the members of the Board.

(3) The chairperson shall preside at every meeting of the Board.

(4) In the absence of the chairperson, the members present may appoint a member from among themselves to preside at that meeting.

2. Quorum.

The quorum at a meeting of the Board shall be four members.

3. Decisions of the Board.

(1) All questions proposed at a meeting of the Board shall be decided by a simple majority of the votes of the members present and voting; and in case of an equality of votes, the person presiding shall have a casting vote in addition to that person's deliberative vote.

(2) A decision may be made by the Board without meetings but by circulation of the relevant papers among the members and by the expression of the views of the majority of the members in writing; however, any member shall be entitled to require that the decision be deferred and the matter on which a decision is sought be considered at a meeting of the Board.

4. Board may co-opt members.

The Board may invite any person to attend any of its meetings as a consultant and may co-opt any person to the Board but that person shall not vote on any matter before the Board.

5. Declaration of interest.

(1) Any member of the Board having pecuniary or other interest, directly or indirectly in any contract or proposed contract or other matter before the Board shall, at that meeting, declare the nature of such interest and shall not take part in any discussion or vote on that matter; and if the chairperson directs, the person shall withdraw from that meeting.

(2) The failure of any member of the Board to disclose an interest in any contract or proposed contract or any other matter before the Board will cause the decision of the Board to be voidable at the instance of the other members of the Board, and that member shall be liable to be relieved of his or her duties.

(3) For purposes of determining whether there is a quorum, a member withdrawing from a meeting or who is not taking part under subparagraph

(1) shall be treated as being present.

6. Board may regulate its procedure.

Subject to this Act, the Board may regulate its own procedure and may make rules regarding the holding of meetings, notice to be given, the keeping of minutes or any other matter relating to its meetings.

SCHEDULE 4

Section 31

Minimum broadcasting standards.

A broadcaster or video operator shall ensure that—

(a) any programme which is broadcast—

(i) is not contrary to public morality;

(ii) does not promote the culture of violence or ethnical prejudice among the public, especially the children and the youth;

(iii) in the case of a news broadcast, is free from distortion of facts;

(iv) is not likely to create public insecurity or violence;

(v) is in compliance with the existing law;

(b) programmes that are broadcast are balanced to ensure harmony in such programmes;

(c) adult-oriented programmes are appropriately scheduled;

(d) where a programme that is broadcast is in respect to a contender for a public office, that each contender is given equal opportunity on such a programme;

(e) where a broadcast relates to national security, the contents of the broadcast are verified before broadcasting.

SCHEDULE 5

Section 75

Rate of percentage of gross annual revenue payable by operators

The rate of gross annual revenue payable by an operator to the Authority under section 21 shall not exceed 2.5 percent.

SCHEDULE 6

Section 41

Conditions of a licence.

1. A licence issued under this Act may include the following conditions—

- (a) the payment of sums of money calculated as a proportion of the rate of the annual turnover of the operator's licensed system or otherwise;
- (b) the payment by the operator of a contribution toward any loss incurred by another operator as a result of such other operator's obligation imposed on the operator by the Authority regarding the provision of uneconomic service in pursuance of the objectives of this Act;
- (c) the provision of services to disadvantaged persons;
- (d) interconnection of an operator's telecommunications system with any other system and permitting the connection of telecommunications apparatus to an operator's system;
- (e) prohibiting an operator from giving undue preference to or from exercising undue discrimination against any particular person or class of persons, including any operator;
- (f) furnishing the Authority with such documents, accounts, returns or such other information as the Authority may require for the performance of its functions under this Act;
- (g) requiring an operator to publish in such manner as may be specified in the licence a notice stating the charges and terms and conditions that are to be applicable to facilities and services provided;
- (h) provision of service on priority service to the Government or specified organisations;
- (i) requiring an operator to ensure that an adequate and satisfactory information system, including billing, tariff, directory information and directory inquiry services, is provided to customers;
- (j) conditions specifying the criteria for setting tariffs;
- (k) requiring an operator to comply with such technical standards or requirements, including service performance standards, as may be specified in the licence;
- (l) any other condition as the Authority may consider appropriate or expedient.

2. It is a condition of every licence issued under this Act that the licensee shall—

- (a) comply with all relevant international conventions or instruments to which Uganda is a Party;
- (b) in the case of a broadcaster, allocate time for the coverage of national events and functions.

3. A licence shall not be used for a purpose other than that for which it is issued.

Cross References

Electronic Media Act, Cap. 104.

Uganda Communications Commission Act, Cap 106

Land Acquisition Act, Cap. 226.

The Land Act, Cap. 227

The Stage Plays and Public Entertainments Act, Cap 49.

Press and Journalist Act, Cap. 105

BILLS

SUPPLEMENT No. 4 24th February, 2012.

BILLS SUPPLEMENT

to the Uganda Gazette No. 11 Volume CV dated 24th February, 2012.

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THE UGANDA COMMUNICATIONS REGULATORY AUTHORITY BILL, 2012.

MEMORANDUM.

1. The object of this Bill is to consolidate and harmonise the Uganda Communications Act, Cap 106 and the Electronic Media Act, Cap 104 to dissolve the Uganda Communications Commission and the Broadcasting Council and reconstitute them together as one body to be known as the Uganda Communications Regulatory Authority and to provide for related matters.
2. At present, the law regulating communications is contained in the Uganda Communications Act Cap.106 and the Electronic Media Act, Cap.104. The two laws provide for different structures and separate legal regimes for the telecommunications and broadcasting subsectors yet both laws provide for licensing of radio and television stations, creating duplicity in the licensing regime.
3. The two laws were enacted when there were clear functional differences between the telecommunications and the broadcasting services and infrastructure. However due to the developments in communications the previously separate and distinct subsectors of broadcasting, information technology and telecommunications have integrated. Convergence is also accelerating as existing service providers upgrade or modify the services they offer to the public. Yet the laws cannot adequately deal with the convergence and advances in information and communications technology.
4. The Bill therefore seeks to rationalize the law and merge the two laws into one Act applicable to communications.
5. The Bill has fifteen parts and 6 schedules.
6. PART I - PRELIMINARY
This Part, comprising clauses 1 and 2 deals with preliminary matters of interpretation and the objectives of the Bill.
7. PART II - UGANDA COMMUNICATIONS REGULATORY AUTHORITY.
Clauses 3-13 deal with the establishment of the Uganda Communications Regulatory Authority, its functions, powers, the powers of the Minister responsible for ICT in relation to the Authority, the board as governing body of the Authority, appointment, remuneration and disqualification of members of the board, meetings and committees of the board.
8. PART- III - DIRECTORATE AND STAFF OF THE AUTHORITY.
The Bill seeks to provide for a secretariat to the Authority, headed by a Director General which shall be responsible for the day to day operations of the Authority.
The Authority shall also have other officers and employees necessary for the discharge of the functions of the Authority.
(Clauses 14 to 19)
9. PART IV- RADIO, BROADCASTING AND COMMUNICATIONS LICENCE.
This part deals with licensing of radio and telecommunications licence, management and use of frequency spectrum, registration of television and radio stations and the minimum broadcasting standards and ethics. Clauses 20 to 22 provide for the radio, broadcasting and telecommunications activities that require licensing before operation and those that are exempt. Clause 23 and 24 provide for the power of the Authority to allocate and manage the use of the frequency spectrum in order to ensure the widest variety of programming and optimal utilization of the spectrum. Clause 25

and 26 provide for the installation of television and radio stations and for their registration. Clauses 27 to 30 provide for broadcasting licence and rights which accrue upon grant, the functions of a proprietor (holder of a licence) or a producer of a station and what can lead to a producer's disqualification. Clauses 31 and 32 provide for the Authority to issue minimum broadcasting standards and ethical broadcasting standards taking into account the existing standards under the Press and Journalist Act.

10. PART V-POSTAL SERVICES.

Clauses 34 to 38 deal with licensing of postal services, subcontracting by a licensee, protection of postal articles, investigation of postal articles and the liability of a licensee providing postal services.

11. PART VI- VIDEO AND CINEMA OPERATORS.

This Part deals with licensing of cinematograph theatre or library and television sets. It provides for licensing of cinematograph theatres or libraries and registration of video and cinematograph operators.

12. PART VII-GENERAL PROVISIONS RELATING TO BROADCASTING AND COMMUNICATIONS LICENCES.

This Part deals with the common provisions relating to the licensing of both broadcasting and communication operators. Clauses 40 to 46 provide for applications for a licence, terms and conditions to be incorporated in every licence, how and when a licence may be modified, suspended or revoked or transferred. This Part also deals with duration, renewal and the conditions for the use of a licence.

13. PART - VIII - PUBLIC OPERATOR AND USE OF LAND FOR TELECOMMUNICATIONS SERVICES.

This Part deals with use of land by operators for the purposes of placing or maintaining telecommunications lines. Clauses 47 to 50 deal with designation of a public operator, powers and the procedure for acquisition of land both private and public and the procedure for compensation of a person whose land is acquired for the purposes of placing or maintain infrastructure for telecommunications services.

14. PART IX - INVESTIGATION AND INSPECTIONS.

Clauses 51 to 57 provide for every licensee to make an annual report to the Authority on the operations of the licensee, give the Authority power to institute inquiries and investigations and the procedure for appointment of the inspectors and issuing a search warrant by a magistrate to allow an inspector to enter a dwelling house where necessary for the purposes of inspection or investigation.

15. PART X- FAIR COMPETITION AND EQUALITY OF TREATMENT.

This Part deals with promotion of competition and equality among operators in any business or service relating to communication. Clauses 58 to 63 make it the responsibility of the Authority to promote competition with certain exceptions and the procedure where there is breach of fair competition. The Part also deals with a customer's right to access a service provided by an operator and equal and uniform treatment by the operator. Clauses 64 to 65 deal with the right of operators to enter into agreements with each other in the provision of communications services as long as the agreements are approved by the Authority in order to ensure fair competition and equality.

16. PART XI - UGANDA COMMUNICATIONS TRIBUNAL.

Clauses 66 to 71 deal with establishment of the Uganda Communications Tribunal, funds of the tribunal, appointment to and disqualification from

the same, vacation of office, its jurisdiction, procedure and powers of review and appeals to the tribunal.

17. PART XII - UGANDA POST LIMITED.

Clause 72 provides that Uganda Post Limited may enter into arrangements with Post Bank for the Bank to use the facilities and premises of Uganda Post Limited throughout the country.

18. PART XIII - FINANCIAL PROVISIONS.

This Part deals with finances of the authority. Clauses 73 to 80 provide for how the Authority shall generate funds, how the funds shall be kept, the requirements for the Authority to keep proper of books of account and for auditing of the books.

19. PART XIV - OFFENCES AND PENALTIES.

Clauses 81 to 91 provide for the offences under the Bill and the penalties in respect of the offences.

20. PART XV - MISCELLANEOUS.

Clauses 92 to 103 provide for matters related to or incidental to the operation of the Bill once it is passed into law, including the powers of the Authority in state of emergency, transitional provisions like agreements entered into by the Uganda Communications Commission and the Broadcasting Council, or the court proceedings pending against the two bodies. Clause 100 empowers the Minister to make regulations in certain cases to give effect to the Bill once it is enacted. Clause 101 amends the Stage Plays and Public Entertainments Act under which the Broadcasting Council is required to permit certain public entertainment and replace the council with the Authority established under the Bill. Clause 103 repeals the Uganda Communications Act and the Electronic Media Act.

RUHAKANA RUGUNDA (DR.),

Minister of Information and Communications Technology.