



## Communications Regulatory Authority Bill 2012

### Memorandum and Recommendations

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Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international NGO, mandated to ensure the practical realisation of human rights across the Commonwealth. CHRI's objectives are to promote awareness of and adherence to the Harare Commonwealth Declaration, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as in-country laws and policies that support human rights in member states.

The *Communications Regulatory Authority Bill 2012* (the Bill) has been tabled before the Information Communication Technology (ICT) Parliamentary Committee by ICT Minister, Hon. Nyombi Thembo. The Bill consolidates two existing laws, the Uganda Communications Act and the Electronic Media Act, and establishes a single regulatory body whose mandate includes broadcasting, communication and postal services.

CHRI commends the proposal to introduce a structured legislative framework for communication services. However, CHRI are concerned about key areas of the draft Bill that diverge from international and regional standards and best practice. These provisions are set out below, along with recommended amendments to the Bill.

#### **Mandate of the Communications Regulatory Authority**

The Bill establishes the Communications Regulatory Authority (the Authority). The mandate of the Authority is to monitor, licence and regulate the communications sector. Clause 4(1) provides an extensive list of the functions of the Authority. This clause should also clearly direct the Authority to promote diversity in ownership and programming to cater to different groups.

#### Recommendation

1. Clause 4(1) should be amended to expressly include that a function of the Authority is to promote diversity in ownership and programming to reflect different groups and their interests.

#### **Reporting on activities**

The Bill requires the Authority to prepare and submit an annual report on its activities to the Minister (Clauses 4(2) and 4(3)). To ensure oversight, reports should instead be submitted directly to Parliament to be debated. The public should also be able to access the annual reports of such a public regulatory authority.

#### Recommendation

2. Clauses 4(2) and 4(3) be amended so that the annual report of the Authority is submitted directly to Parliament for debate, and also published publicly.



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### **Independence of the Authority**

As currently recognised in Clause 7 of the Bill, the Authority must exercise its functions independently of any person or body. The independence of the Authority is central to its functioning, and it must be empowered to carry out its tasks free of interference. However, although Clause 7 states that the Authority must carry out its functions independently; other clauses of the Bill significantly limit the Authority's independence. In particular, the Bill fails to safeguard the Authority's independence from political or commercial interests by giving the ICT Minister broad powers to appoint and dismiss members of the board, approve the budget of the Authority and issue binding policy guidelines on the Authority.

These powers mean that the Minister will effectively control the Authority. This is contrary to international and regional standards, and Principle VII(1) of the Declaration of Principles on Freedom of Expression in Africa, which states that:

*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.<sup>1</sup>*

Furthermore, allowing the Minister and the Cabinet to appoint members of the board is contrary to Principle VII(2) of the Declaration of Principles on Freedom of Expression in Africa, which states that:

*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.<sup>2</sup>*

Rather, the Bill should state that a public service commission and Parliament should appoint members of the board. A suggested process is included in our recommendation below. Following on from this point, the public service commission and Parliament should have the power to dismiss members on the board based on relevant grounds, not the Minister as currently stated in Clause 10(2).

As well as operating independently from external influences, it is important that the Authority is also *viewed* as independent by the public, to encourage support for the Authority. In this regard, it is important that the members of the board are appointed and dismissed in a transparent manner, and that the members are not employed by the public service or affiliated with a political party.

### Recommendations

To ensure that the Authority is able to independently carry out its functions in accordance with the current Clause 7, the Bill must be amended as follows:

1. The Bill should specifically express in Clause 7 that the Authority's board members and staff should act impartially as they carry out their functions and this clause should be expanded to embed the independence of the Authority.

<sup>1</sup> 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.

<sup>2</sup> Ibid



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2. The appointment process for the Authority's board members should be transparent, open and participatory. Clause 8(3) should be amended to delete the power of the ICT Minister to appoint members, with Cabinet's approval. Instead a clause should be included in the Bill that establishes an independent selection process, such as:
  - a) A relevant public service body advertise widely, interview and short-list board members for appointment to the Authority. Nominations should be sought from across the public, including civil society groups and specialised/professional bodies. The Board should compose, as far as possible, membership of various sectors of society.
  - b) These nominations are provided to the Parliament, who accept or reject the nominations.
  - c) If a particular nomination is not accepted by Parliament, the public service body will put forward another name from those short-listed.
3. Members of the government, political parties or the civil service should not be allowed to serve as board members on the Authority. Clause 9 should therefore be amended to include these as categories of persons that are disqualified from appointment.
4. The Minister should not be able to dismiss members of the board. Rather, the relevant public service commission should investigate claims that a member of the board should be dismissed on the basis of relevant grounds, and submit a report to Parliament, who will make the decision. Clause 10(2) should be amended accordingly.
5. The Minister should not be able to issue binding guidelines to the Authority; therefore clause 6 should be removed from the Bill.
6. Clause 77 should be amended to ensure that the Authority's budget is considered and approved by Parliament, not the ICT Minister.
7. The Minister should not be able to order the Authority to conduct investigations, as contained in Clauses 53(2) and 54(2). These clauses should be deleted.

### **The Communications Tribunal**

The Bill establishes a Communications Tribunal (Clause 67) headed by a High Court judge and two other people appointed by the President. The Tribunal is intended to deal with cases based on decisions taken by the ICT Minister or the Authority. The Tribunal is unnecessary and this clause should be removed from the Bill. Cases can be dealt with by existing courts, which could have a specialised unit or handled by judges with the requisite expertise.

### Recommendation

1. Remove Clause 67 from the Bill.

### **Licensing and Registration**

The Bill introduces a mandatory requirement for every person with a television set to register with the Authority (Clause 33). CHRI believe that this provision may impede access to



televisions, contrary to the stated goal of increasing affordability and access to communication services.

The Bill also contains a requirement to licence cinema/video/film libraries for health and safety reasons. It is unclear how licensing a cinema/video or film library relates to health and safety of the public. This clause is unnecessary and should be removed.

The creation of “reasonable offences” (Clause 43(1)(c)) as grounds on which a licence may be suspended or revoked is vague and should be deleted from the Bill.

### Recommendations

1. The requirement at Clause 33 to register a television set may impede access to this form of media by the public. CHRI suggests that this clause is deleted.
2. The requirement at Clause 39 to licence a cinema/video/film library for health and safety reasons is inappropriate and should be removed.
3. The concept of “reasonable offences” in Clause 43(1)(c) should be deleted from the Bill.

### **Broadcast content**

CHRI recommends that the provisions requiring broadcasters to respect “public morality” and “ethical broadcasting standards” (Clause 29(a) and Clause 32) should be deleted. The terms are ambiguous and open to misinterpretation. Furthermore Clause 31 already establishes “minimum broadcasting standards”, which will ensure that the content broadcast meets basic requires. Further regulation of content is unnecessary.

The Bill prohibits broadcasting that contains false information (Clause 28(1)(b)). This provision reintroduces the crime of false news, which has been struck out by the Ugandan Supreme Court in 2004. In this case, the crime of ‘publishing false news’ found in Clause 50 of the Uganda Penal Code was declared unconstitutional. The Chief Justice noted that this crime was archaic, vague and susceptible to misinterpretation and abuse. Instructed by this decision, this clause should be deleted from the Bill.

### Recommendations

1. Public morality and ethical broadcasting standards (Clauses 29(a) and Clause 32) should be deleted.
2. The clause that prohibits broadcasting false information (Clause 28(1)(b)) should be deleted from the Bill.

### **Conclusion**

In conclusion, CHRI, in solidarity with civil society actors including Article 19 and the Human Rights Network of Uganda, that have expressed concern about several provisions in the Communications Regulatory Authority Bill (2012), strongly urges the ICT Parliamentary Committee to redress the gaps in the proposed legislation before it is passed into law.