

SPECIAL ISSUE

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REPUBLIC OF KENYA

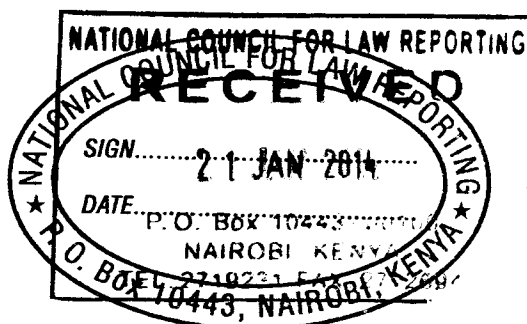
KENYA GAZETTE SUPPLEMENT

ACTS, 2013

NAIROBI, 18th December, 2013

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**THE KENYA INFORMATION AND
COMMUNICATIONS (AMENDMENT) ACT, 2013**

(No. 41A of 2013)

Date of Assent: 11th December, 2013

Date of Commencement: 2nd January, 2014

**AN ACT of Parliament to amend the Kenya
Information and Communications Act, 1998 and for
connected purposes**

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Kenya Information and Communications (Amendment) Act, 2013.

Amendment to
section 2 of No. 2 of
1998.

2. (1) The Kenya Information and Communications Act, 1998, in this Act referred to as “the principal Act”, is amended in section 2—

(a) by deleting the definition of “Commission” and inserting in its proper alphabetical sequence, the following new definition—

“Authority” means the Communications Authority of Kenya established under section 3;

(b) by deleting the words “the Minister for the time being responsible for communications” in the definition of “Minister” and inserting the words “Cabinet Secretary”;

(c) by inserting in proper alphabetical sequence the following new definitions –

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for information, communication and technology”

“Commission” means the Communications Authority of Kenya

“cyber security” means the collection of

tools, policies, security concepts, security safeguards, guidelines, risk management approaches, actions, training, best practices, assurance and technologies that can be used to protect the cyber environment;

“former Commission” means the Communications Commission of Kenya immediately existing before the commencement of this Act;

“market” means a market in Kenya or a substantial part of Kenya and refers to the range of reasonable possibilities for substitution in supply or demand between particular kinds of goods or services and between suppliers or acquirers, or potential suppliers or acquirers, of those goods or services;

“media” means broadcast, electronic and other types of media but does not include print and book publishing;

“Media Council” means the Media Council of Kenya established under the Media Council Act;

“registration agent” means a person contracted or otherwise engaged by a telecommunications operator to carry out registration of SIM-cards;

“significant market power” means a position of economic strength enjoyed by a licensee which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave independently of its competitors, customers and consumers;

“SIM-card” means the Subscriber Identity Module which is an independent electronically-activated device designed for use in conjunction with a telecommunication apparatus to enable the user of the

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telecommunication apparatus to transmit and receive indirect communications by providing access to telecommunication systems and enabling such telecommunication systems to identify the particular Subscriber Identity Module and its installed information.

(2) The principal Act is amended by deleting the word “chairman” wherever it appears and substituting therefor the word “chairperson”.

Amendment to section 2 of No. 2 of 1998.

3. Part II of the principal Act is amended by deleting the words “Communications Commission of Kenya” wherever they appear and substituting therefor the words “Communications Authority of Kenya”.

Repeal and replacement of section 5A of No. 2 of 1998.

4. The principal Act is amended by repealing section 5A and replacing it with the following new section —

Independence of the Authority.

5A. (1) The Authority shall be independent and free of control by government, political or commercial interests in the exercise of its powers and in the performance of its functions.

(2) In fulfilling its mandate, the Authority shall be guided by the national values and principles of governance in Article 10 and the values and principles of public service in Article 232 (1) of the Constitution.

Repeal and replacement of section 5 of No. 2 of 1998.

5. The principal Act is amended by repealing section 5B and replacing it with the following new sections —

Freedom of the media.

5B. (1) The Authority shall, in undertaking its functions under this Act comply with the provisions of Article 34 (1) and (2) of the Constitution.

(2) Subject to Article 24 of the Constitution, the right to freedom of the media and freedom of expression may be limited for the purposes, in the manner and to the extent set

out in this Act and any other written law.

(3) A limitation of a freedom under subsection (2) shall be limited only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

(4) The right to freedom of expression shall not extend to-

- (a) the spread of propaganda for war;
- (b) incitement to violence;
- (c) the spread of hate speech; or
- (d) advocacy of hatred that-
 - (i) constitutes ethnic incitement, vilification of others persons or community or incitement to cause harm; or
 - (ii) is based on any ground of discrimination specified or contemplated in Article 27(4).

(5) The Authority may make regulations for the better carrying out of the provisions of this section.

Policy
guidelines by
the Cabinet
Secretary.

5C. (1) The Cabinet Secretary may issue to the Authority, policy guidelines of a general nature relating to the provisions of this Act.

(2) The guidelines referred to under subsection (1) shall be in writing and shall be published in the Gazette.

6. The principal Act is amended by repealing section 6 and replacing it with the following new section--

Board of the
Authority.

6. (1) The management of the Authority

Repeal and
replacement of
section 6 of No.2 of
1998.

shall vest on the Board which shall consist of—

- (a) a chairperson appointed by the President in accordance with section 6B;
- (b) the Principal Secretary for the time being responsible for matters relating to broadcast, electronic, print and all other types of media;
- (c) the Principal Secretary for the time being responsible for matters relating to finance;
- (d) the Principal Secretary for the time being responsible for matters relating to internal security; and
- (e) seven persons appointed by the Cabinet Secretary in accordance with section 6B.

7. The principal Act is amended by inserting the following new sections immediately after sections 6—

Qualifications for appointment of chairperson and members of the Board. **6A.** (1) A person shall be qualified for appointment as a chairperson or member of the Board under subsection (1) (a) and (e), if that person is—

- (a) a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya, in any of the following fields—
 - (i) law;
 - (ii) telecommunications, information and communication technology;
 - (iii) broadcasting;

- (iv) postal regulation;
 - (v) humanities and social sciences; or
 - (vi) any other relevant field.
- (c) has experience in the relevant sector for a period of at least ten years in the case of the chairperson and five years in the case of any other member; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(2) Despite subsection (1)(b) and (c), a person may be qualified for appointment as a chairperson or member of the Board, if such person, not being a degree holder, demonstrates that he or she has a distinguished career of not less than twenty years in the information, communication and technology sector.

(3) A person shall not be qualified for appointment as a chairperson or member of the Board under section 6(1)(a) and (e) if that person—

- (a) in the last six months immediately preceding the appointment, had personal direct or indirect commercial interest in the sector regulated under this Act;
- (b) is an office-bearer or employee of any political party;
- (c) is a public officer;
- (d) is an un-discharged bankrupt;
- (e) suffers from physical or mental infirmity that would render him or

her incapable of discharging the functions of the Board;

- (f) has been convicted of a felony and sentenced to a term of imprisonment;
- (g) has been convicted of an offence under this Act; or
- (h) has been compelled to resign or been removed from office, on account of abuse of office.

Appointment procedures.

6B. (1) Within fourteen days of the occurrence of a vacancy in the office of chairperson or member, the President or the Cabinet Secretary, as the case may be, shall—

- (a) by notice in the Gazette and on the official website of the Ministry, declare a vacancy in the Board, and invite applications from qualified persons; and
- (b) convene a selection panel for the purpose of selecting suitable candidates for appointment as the chairperson or member of the Board.

(2) The selection panel referred to under subsection (1) shall comprise of persons drawn from the following organisations—

- (a) Media Council of Kenya;
- (b) Kenya Private Sector Alliance;
- (c) Law Society of Kenya;
- (d) Institute of Engineers of Kenya;
- (e) Public Relations Society of Kenya;
- (f) Kenya National Union of Teachers;
- (g) Consumers Federation of Kenya; and

(h) the Ministry responsible for matters relating to media.

(3) At their first meeting, the panel shall appoint a chairperson and a vice-chairperson who shall be of opposite gender.

(4) An application in respect of a vacancy declared under subsection (1) shall be forwarded to the selection panel within seven days of the publication of the notice, and may be made by—

- (a) any qualified person; or
- (b) any person, organisation or group of persons proposing the nomination of any qualified person.

(5) The selection panel shall, subject to this section, determine its own procedure and the Cabinet Secretary shall provide it with such facilities and other support as it may require for the discharge of its functions under this section.

(6) The selection panel shall consider the applications, shortlist and publish the names and qualifications of all the applicants and those shortlisted by the panel in the Gazette and on the official website of the Ministry, within seven days from the expiry of the deadline of receipt of applications under subsection (4).

(7) The selection panel shall interview the shortlisted applicants within fourteen days from the date of publication of the list of shortlisted applicants under subsection (6).

(8) Upon carrying out the interviews, the selection panel shall select—

- (a) three persons qualified to be appointed as chairperson; and

- (b) two persons, in relation to each vacancy, qualified to be appointed as members of the Board,

and shall forward the names to the President or the Cabinet Secretary, as the case may be.

(9) The President or the Cabinet Secretary shall, within fourteen days of receipt of the names under subsection (8), appoint the chairperson and the members, respectively.

(10) In selecting, shortlisting and appointing the chairperson and members of the Board, the President and the Cabinet Secretary shall—

- (a) ensure that the appointees to the Board reflect the interests of all sections of society;
- (b) ensure equal opportunities for persons with disabilities and other marginalised groups; and
- (c) ensure that not more than two-thirds of the members are of the same gender.

(11) Every appointment made under this section shall be published in the Kenya Gazette.

Term of office.

6C. The chairperson and members of the Board shall hold office for a period of three years renewable once.

Vacation from office.

6D. (1) The office of the chairperson or member shall become vacant if the holder—

- (a) resign from office by notice in writing to the Cabinet Secretary;
- (b) dies;
- (c) is removed from office for—

- (i) gross misconduct, whether in the performance of the chairperson or member's functions or otherwise;
or
- (ii) is absent from three consecutive meetings of the Authority without permission of the Board, except for good cause shown.

(2) A person desiring the removal of a member of the Board of the Authority on the grounds specified in subsection (1)(c) may present a complaint under oath to the Cabinet Secretary, setting out the alleged facts constituting that ground.

(3) The Cabinet Secretary shall consider the complaint and, if satisfied that it discloses a ground under subsection (1)(c), shall send the complaint to the President.

(4) On considering a complaint under subsection (1), or on receiving a complaint under subsection (3), the President—

- (a) may suspend the chairperson or member pending the outcome of the complaint;
and
- (b) shall appoint a tribunal in accordance with subsection (5).

(5) The tribunal appointed under subsection (4)(b) shall consist of—

- (a) a person who holds or has held office as a Judge of a superior court, who shall be the chairperson;
- (b) at least two persons who are qualified to be appointed as Judges of the High Court; and

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(c) one other member who is qualified to assess the facts in respect of the particular ground for removal.

(6) The tribunal shall investigate the matter expeditiously, report on the facts and make a recommendation to the President, who shall act in accordance with the recommendation within thirty days.

(7) The procedure for removal of the chairperson or a member under section 6D shall be carried out in accordance with Article 47 of the Constitution on fair administrative justice.

8. Section 7 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (e) –

Amendment of section 7 of No. 2 of 1998

“(f) establish a broadcasting standards committee and such other committees as may be necessary to carry out its functions; and

(g) co-opt persons whose skills and expertise may be necessary for the functions of the Authority:

Provided that any person co-opted in the Authority may attend the meetings of the Authority and participate in its deliberations, but shall have no power to vote”.

9. Section 11 of the principal Act is amended by —

Amendment of section 11 of No. 2 of 1998.

(a) deleting subsection (1) and substituting therefor with the following new subsection-

“(1) The Director-General shall be the chief executive officer of the Authority and shall be responsible for the day to the day management of the Authority”;

(b) inserting the following new subsections immediately after subsection (2) —

“(3) The Director-General shall be recruited and appointed by the Board through a competitive process.

(4) The Board shall determine the terms and conditions of service of the Director-General, in consultation with the Public Service Commission.

(6) The Director-General shall be appointed for a term of four years renewable once”.

Repeal of section 12 of No. 2 of 1998.

10. The Principal Act is amended by repealing section 12.

Amendment of section 23 of No. 2 of 1998.

11. Section 23 of the principal Act is amended by—

- (a) deleting paragraph (d);
- (b) renumbering paragraph (e) as paragraph (d);
- (c) inserting a new paragraph immediately after paragraph (d) as follows—

“(e) have regard to the values and principles of the Constitution”.

Insertion of new sub-Part in No. 2 of 1998.

12. The principal Act is amended by inserting the following new sub-Part immediately after section 27—

Registration of SIM-Cards

Duties of telecommunications operators.

27A. (1) Before a telecommunications operator sells a SIM-card or otherwise provides telecommunication services to a person, it shall obtain—

- (a) from natural persons, the person’s full name, identity card number, date of birth, gender, physical and postal address;
- (b) from corporate persons or statutory bodies, official name, postal and physical address, particulars of

registration, incorporation, enabling legislation or gazette notice, as the case may be; and

- (c) such other information as may be prescribed from time to time.

(2) A telecommunication operator shall ensure that—

- (a) existing subscribers register their SIM-cards within such time period as may be prescribed;
- (b) proper physical or electronic records are kept of the information referred to in subsection (1) and any change in such information;
- (c) the registration details of a subscriber are kept in a secure and confidential manner, and shall not be disclosed without the written consent of the subscriber.

(3) Notwithstanding the provisions of subsection (2)(c), a telecommunications operator may disclose the registration particulars of a subscriber—

- (a) for the purpose of facilitating the performance of any statutory functions of the Authority;
- (b) in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings; or
- (c) for the purpose of any civil proceedings under the Act.

(4) Any telecommunications operator who

contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding five million shillings.

Registration
by agents.

27B. (1) A telecommunications operator may contract or otherwise engage a registration agent for purposes of registering existing or new subscribers.

(2) A registration agent shall—

- (a) ensure that proper registration of the subscriber is conducted prior to the selling of a SIM-card;
- (b) provide all records of registration to the telecommunications operator within such time after registration as may be prescribed;
- (c) ensure that the registration details of a subscriber are kept in a secure and confidential manner and are not disclosed to any other person;

(2) A telecommunications operator shall keep a record of its registration agents and such record shall be made available to the Authority at such time and in such manner as may be prescribed.

(3) A registration agent shall not hawk SIM-cards and shall ensure that they are sold and registered in a formal retail outlet.

(4) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding twelve months, or both.

Duties of
telecommuni-
cations
subscribers.

27C. (1) A subscriber of telecommunications services shall—

- (a) provide the registration details required under section 27A;
- (b) report to a telecommunications operator or a police station when his or her SIM-card is lost or stolen, within forty-eight hours of being lost or stolen or such other period as may be prescribed;
- (c) report any change in any identification details to a telecommunications operator within thirty days of the change taking place;

(2) A subscriber shall be *prima facie* liable for activities or transactions carried out using a SIM-card registered under the subscriber's name.

(3) Notwithstanding subsection (2), a subscriber shall not be held liable if the subscriber can prove that he or she was not in control of the SIM-card at the time a particular activity or transaction was carried out.

(4) A person who contravenes this section, or knowingly provides false information to a telecommunications operator or registration agent commits an offence and shall be liable on conviction a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or both.

Regulations
on SIM-card
registration.

27D. The Authority may make regulations with respect to—

- (a) procedure for SIM-card registration;
- (b) timelines for SIM-card registration, storage and retention of subscriber records;

- (c) confidentiality and disclosure of subscriber information
- (d) registration of minors;
- (e) transfer of SIM-cards;
- (f) registration particulars;
- (g) suspension and deactivation of SIM-cards; and
- (h) any other matter that may be prescribed under this sub-Part.

Amendment to the heading of Part V of No.2 of 1998.

13. The heading to Part V of the principal Act is amended by inserting the words “and courier” immediately after the word “postal”.

Amendment of section 46D of No. 2 of 1998

14.Section 46A of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (h)—

- “(i) administering the broadcasting content aspect of this Act;
- (j) developing media standards; and
- (k) regulating and monitoring compliance with those standards”.

Amendment of section 46D of No. 2 of 1998

15. Section 46D of the principal Act is amended in subsection (1) by—

- (a) inserting the following new paragraph immediately after paragraph (c) —
 - “(d) a public officer or a state officer”
- (b) renumbering paragraph (d) as paragraph (e).

Amendment of section 46H of No. 2 of 1998

16. Section 46H of the principal Act is amended in subsection (2) (c) by inserting the words “or listening to”

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immediately after the word “watching”.

17. Section 46I of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 46I of No. 2 of 1998.

“(3) A broadcaster licensed to distribute radio or television programme shall broadcast on radio or television such percentage of Kenyan programmes as shall be prescribed by the Authority”.

18. Section 46J of the principal Act is amended by deleting paragraph (c) and substituting therefor the following new paragraph—

Amendment of section 46J of No. 2 of 1998

“(c) fails to utilize the assigned broadcasting frequencies within such period as the Authority shall stipulate in the licence”.

19. The principal Act is amended by repealing section 46S.

Repeal and replacement of section 46S of No. 2 of 1998.

20. Section 48 of the principal Act is amended in subsection (1) by deleting the word “shall” and substituting thereof the word “may”.

Amendment to section 48 of No. 2 of 1998

21. The Principal Act is amended by repealing section 50 and replacing with the following new section—

Repeal and replacement to section 50 of No. 2 of 1998.

Designation of public postal licensee.

50. The Authority may, by notice in the Gazette, designate a postal licensee to be the public postal licensee.

22. Section 83A of the principal Act is amended in subsection (1) by inserting the words “up to a maximum of zero decimal two per centum of the annual gross turnover of the offending licensee in the preceding year for every year or part thereof in which the offence is continuing” immediately after the word “shilling”.

Amendment of section 83A of No. 2 of 1998.

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Amendment to the heading of Part VIA of No. 2 of 1998.

23. The principal Act is amended by inserting the words “and cyber security” in the heading to Part IVA immediately after the word “Services”.

Amendment of section 83C of No. 2 of 1998.

24. Section 83C of the principal Act is amended—

(a) renumbering section 83C as section 83C(1);

(b) in subsection (1) –

(i) by inserting the words “and cyber security” after the word “electronic transaction”;

(ii) by inserting the following new paragraphs immediately after paragraph (f)—

“(g) promote and facilitate the efficient management of critical internet resources; and

(h) develop a framework for facilitating the investigation and prosecution of cybercrime offences”;

(c) by inserting the following new subsection immediately after subsection (1)-

“(2) The Authority may make regulations with respect to cyber security”.

Amendment of section 83Q of No.2 of 1998.

25. Section 83Q of the principal Act is amended by inserting the following new subsection immediately after subsection (2) -

“(3) Any person who secures unauthorized access or attempts to secure unauthorized access to a protected system commits an offence and is liable on conviction, to a fine not exceeding ten million shillings or to imprisonment for a term of ten years or to both”.

Repeal of section 83U of No.2 of 1998.

26. The principal Act is amended by repealing section 83U and replacing therefor the following new

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section –

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Alteration,
deletion,
suppression etc
of
telecommunicat
ion system.

83U. Any person who intentionally and without authorization, engages in the input, acquisition, alteration, deletion or suppression of a telecommunication system or otherwise alters the authenticity or integrity of such a system, with the intent that it be considered or acted upon for legal purposes as though it were authentic or with integrity, regardless of whether or not the system is directly readable or intelligible, for any unlawful purpose, commits an offence and shall be liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term of not exceeding five years or to both.

27. The principal Act is amended by repealing section 83V and replacing it with the following new section –

Repeal of section:
83V of No.2 of 1998.

Regulations. **83V.** The Authority may make regulations under this Part.

28. Section 84K of the principal Act is amended in subsection (1) by—

Amendment of
section 84K of No.2
of 1998.

(a) deleting paragraph (c);

(b) deleting the word “Commission” and substituting therefore the word “Fund” appearing in paragraph (d).

29. The principal Act is amended by repealing sections 84L to 84N, both sections inclusive.

Repeal of sections
84L to 84N of No.2
of 1998.

30. Section 84P of the principal Act is amended by deleting paragraphs (b) and (c) and substituting therefor the following new paragraphs—

Amendment of
section 84P of No.2
of 1998.

“(b) operations of the Fund;

(c) mechanisms for accessing the Fund”.

31. Section 84 S (2) of the principal Act is amended—

Amendment of

section 84S of No.2
of 1998.

- (a) in paragraph (a), by deleting the words “which unfairly excludes or limits competition between such operators and any other party”;
- (b) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) the effectuation of any anti-competitive conduct in the communications sector”.

Amendment of
section 84T of No.2
of 1998.

32. Section 84T (6) of the principal Act is amended by—

- (a) deleting the words “is competing unfairly” and substituting therefor the words “has engaged in anti-competitive conduct”;
- (b) deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) require the licensee to pay a fine not exceeding the equivalent of ten percent of the annual gross turnover of the preceding year, for each financial year that the breach persists”;

- (c) inserting the word “or” immediately after the word “void”;

- (d) inserting the following new paragraph immediately after paragraph (c) as follows—

“(d) impose any other lawful remedial measure to redress this offence”.

Amendment of
section 84W of No.2
of 1998.

33. Section 84W of the principal Act is amended—

- (a) in the first subsection (2) by deleting paragraph (g) and substituting therefor the following new paragraph—

“(g) account separation”;

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(b) in subsection (4) by—

(i) deleting the words “twenty five percent of the gross turnover of the entire telecommunications market” appearing in paragraph (a) and substituting therefor the words “fifty percentum of the relevant gross market segment”;

(ii) deleting paragraphs (b), (c) and (d) and substituting therefor the following new paragraphs—

“(b) significant market power enjoyed by the telecommunications service provider; and

(c) any other consideration the Authority may determine”.

34. Section 85A of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 85A of No.2 of 1998.

“(3) The Authority may make regulations with respect to infrastructure sharing”.

35. Section 90 of the principal Act is amended in subsection (4) by deleting the words “subsection (3) and substituting therefor the words “subsection (2).

Amendment of section 90 of No.2 of 1998.

36. The principal Act is amended by repealing section 93 and replacing it with the following new section—

Repeal and replacement of section 93 of No.2 of 1998.

Access to information.

93. Access to information and restrictions on disclosure of information held by the Authority shall be implemented pursuant to Article 35 of the Constitution.

37. The principal Act is amended by deleting section 102 and substituting therefor following new section—

Repeal and replacement of section 102 of No. 2 of 1998.

Establishment
of the
Communication
s and
Multimedia
Appeals
Tribunal.

102. (1) There is established a Tribunal to be known as the Communications and Multimedia Appeals Tribunal (hereinafter referred to as “the Tribunal”) which shall consist of not more than seven members, as follows—

- (a) a chairperson nominated by the Judicial Service Commission, who shall be a person qualified for appointment as a judge of the High Court of Kenya and who shall also possess experience in communication policy and law;
- (b) at least four persons possessing knowledge and experience in media, telecommunication, postal, courier systems, radio communications, information technology or business practice and finance, and who are not in the employment of the Government, the Media Council or the Authority.

(2) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office of a member of the Tribunal, the Cabinet Secretary shall—

- (a) by notice in the Gazette and in at least two newspapers of national circulation, declare vacancies in the Tribunal, and invite applications from qualified persons; and
- (b) convene a selection panel for the purpose of selecting suitable candidates for appointment as members of the Tribunal.

(3) The selection panel referred to under subsection (2) shall comprise of persons drawn from the following organisations—

- (a) Media Council of Kenya;
- (b) Kenya Private Sector Alliance;
- (c) Law Society of Kenya;
- (d) Institute of Engineers of Kenya;
- (e) Public Relations Society of Kenya;
- (f) Kenya National Union of Teachers;
- (g) Consumers Federation of Kenya; and
- (h) The Ministry responsible for matters relating to media.

(4) At its first meeting, the selection panel shall appoint a chairperson and a vice-chairperson who shall be of opposite gender.

(5) An application in respect of a vacancy declared under subsection (2) shall be forwarded to the selection panel within seven days of the publication of the notice.

(6) The selection panel shall, subject to this section, determine its own procedure and the Cabinet Secretary shall provide it with such facilities and other support as it may require for the discharge of its functions under this section.

(7) The selection panel shall consider the applications, shortlist and publish the names and qualifications of all the applicants and those shortlisted by the panel in the Gazette and in at least two daily newspapers of national circulation, within seven days from the expiry of the deadline of receipt of applications under subsection (5).

(8) The selection panel shall interview the shortlisted applicants within fourteen days from the date of publication of the list of short listed applicants under subsection (7).

(9) After carrying out the interviews, the selection panel shall select three persons qualified to be appointed as members of the Tribunal, for each vacant position, and forward the names to the Cabinet Secretary.

(10) The Cabinet Secretary, shall, within seven days of receipt of the names, by notice in the Gazette, appoint a member or members to the Tribunal.

(11) Upon receipt of the notice of rejection under subsection (11), the selection panel shall submit fresh nominations and the procedure set out under this section shall, with necessary modifications, apply.

(12) Despite the foregoing provisions of this section, the Cabinet Secretary may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding fourteen days.

(13) In selecting, nominating, approving or appointing the members of the Tribunal, the selection panel and the Cabinet Secretary shall—

- (a) ensure that the nominees to the Tribunal reflect the interests of all sections of the society;
- (b) ensure equal opportunities for persons with disabilities and other marginalized groups; and
- (c) ensure that not more than two-thirds of the members shall be of the same gender.

(14) The selection panel shall stand dissolved upon the appointment of the members of the Tribunal.

(15) The members of the Tribunal shall hold office for a period of three years, but shall be eligible for reappointment for one further term for a period not exceeding three years.

(16) The office of a member of the Tribunal shall become vacant—

- (a) at the expiration of three years from the date of appointment;
- (b) if the member accepts any office the holding of which, if he or she were not a member of the Tribunal, would make him or her ineligible for appointment to the office of a member of the Tribunal;
- (c) if he or she is removed from the membership of the Tribunal by the Cabinet Secretary on the recommendation of a tribunal set up for that purpose under subsection (17); and
- (d) if he or she resigns the office of member of the Tribunal.

(17) A person desiring the removal of a member of the Tribunal on the ground specified in subsection (16)(c) may present a complaint under oath to the Cabinet Secretary setting out the alleged facts constituting that ground.

(18) The Cabinet Secretary shall consider the complaint and, if satisfied that it discloses a ground under subsection (16)(c)—

- (a) may suspend the member pending the outcome of the complaint; and
- (b) shall appoint a tribunal in accordance with subsection (19).

(19) The tribunal appointed under subsection (18) shall consist of—

- (a) a person who holds or has held office as a Judge of a superior court, who shall be the chairperson;
- (b) at least two persons who are qualified to be appointed as Judge of the High Court; and
- (c) one other member who is qualified to assess the facts in respect of the particular ground for removal.

(20) The tribunal shall investigate the matter expeditiously, report on the facts and make a recommendation to the Cabinet Secretary, who shall act in accordance with the recommendation within thirty days.

Complaints.

102A. (1) A person aggrieved by—

- (a) any publication by or conduct of a journalist or media enterprise;
- (b) anything done against a journalist or media enterprise that limits or interferes with the constitutional freedom of expression of such journalist or media enterprise; or
- (c) any action taken, any omission made or any decision made by any person under this Act,

may make a written complaint to the Tribunal setting out the grounds for the complaint, nature of the injury or damage suffered and the remedy sought.

(2) A complaint under this section may be made—

- (a) orally, either in person or by any form of electronic communication; or
- (b) in writing, setting out the grounds for the complaint, nature of the injury or damage suffered and the remedy sought.

(3) Where complaints are oral, the Tribunal may require them to be reduced in writing within seven days, unless it is satisfied there are good reasons for not doing so.

(4) A complainant shall disclose to the Tribunal—

- (a) the complainant's name and address; and
- (b) other information relating to the complainant's identity that the Tribunal may reasonably require.

(5) Despite subsection (4), the Tribunal may—

- (a) keep information provided by a complainant confidential if there are special circumstances to do so, or the Tribunal considers it is in the complainant's interests to do so; or
- (b) accept an anonymous complaint concerning an issue of public interest or where no clearly identifiable person or group is affected.

(6) The Tribunal may require a complainant to provide more information about the complaint within such reasonable time as the Tribunal may determine.

(7) The Tribunal may, at any time, require a complaint or information provided by a complainant to be verified by the complainant by oath or statutory declaration,

(8) Without prejudice to the functions of the Authority or the Media Council, the Authority or the Council may take up a complaint on its own initiative, and forward the same to the Tribunal for determination where in its opinion the complaint has public interest implications.

Procedure upon
complaint.

102B. (1) Upon receipt of a complaint, the Tribunal shall notify, in writing, the party against whom the complaint has been made, within fourteen-days of receipt of the complaint, stating the nature of the complaint, the breach, act or omission complained of and the date on which the matter shall be considered by the Tribunal.

(2) The notice referred to in subsection (1) shall require the person against whom the complaint is made to respond to the complaint in writing or appear before it at the hearing of the complaint.

(3) After considering each party's submissions, the Tribunal shall then conduct a preliminary assessment to determine the admissibility or otherwise of the complaint lodged within fourteen days.

(4) The Tribunal or any of its panels may, after conducting a preliminary assessment of a complaint, and being of the opinion that the complaint is devoid of merit or substance, dismiss such complaint and give reasons thereto.

(5) A party may, within fourteen days from the date of dismissal, apply for review or variation of the Tribunal's decision under subsection (4).

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Proceedings by
the Tribunal.

102C. (1) The Tribunal shall sit at such times and in such places as it may appoint.

(2) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(3) For purposes of hearing and determining any cause or matter under this Act or the Media Council Act, the chairperson and four members of the Tribunal shall form a quorum.

(4) A member of the Tribunal who has a direct interest in any matter which is the subject of the proceedings before the Tribunal shall not take part in those proceedings.

(5) Any person who is a party to proceedings before the Tribunal may appear in person or be represented by an Advocate before the Tribunal.

(6) Except as expressly provided in this Act, the Media Council Act, or any regulations made thereunder, the Tribunal shall regulate its own procedure.

Attendance
before the
Tribunal.

102D. (1) The Tribunal may—

- (a) make such orders for the purposes of securing the attendance of any person at any place where the Tribunal is sitting, discovery or production of any document concerning a matter before the Tribunal or the investigation of any contravention of this Act or the Media Council Act, as it deems necessary or expedient;
- (b) take evidence on oath and may for that purpose administer oaths; or

(c) on its own motion summon and hear any person as witness.

(2) Any person who—

(a) fails to attend the Tribunal after having been required to do so under subsection (1)(a);

(b) refuses to take oath or affirmation before the Tribunal or, being a public officer refuses to produce any article or document when lawfully required to do so by the Tribunal;

(c) knowingly gives false evidence or information which he knows to be misleading before the Tribunal; or

(d) at any sitting of the Tribunal—

(i) wilfully insults any member or officer of the Tribunal;

(ii) wilfully interrupts the proceedings or commits any contempt of the Tribunal;

(iii) fails or neglects to comply with an award, decision, order, direction or notice confirmed by the Tribunal commits an offence under this Act;

(e) fails or neglects to comply with an award, decision, order, direction or notice confirmed by the Tribunal commits an offence under this Act.

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Decisions of the
Tribunal.**102E.** (l) The Tribunal may, after hearing the parties to a complaint—

- (a) order the offending party to publish an apology and correction in such manner as the Tribunal may specify;
- (b) order the return, repair, or replacement of any equipment or material confiscated or destroyed;
- (c) make any directive and declaration on freedom of expression;
- (d) issue a public reprimand of the journalist or media enterprise involved;
- (e) order the offending editor of the broadcast, print or on-line material to publish the Tribunal's decision in such manner as the Tribunal may specify;
- (f) impose a fine of not more than twenty million shillings on any respondent media enterprise and a fine of not more than five hundred thousand shillings on any journalist adjudged to have violated this Act;
- (g) in its reasons for its findings, record a criticism of the conduct of the complainant in relation of the complaint, where such criticism, is in its view, warranted;
- (h) recommend the suspension or removal from the register of the journalist involved;

- (i) make any supplementary or ancillary orders or directions that it may consider necessary for carrying into effect orders or directives made.

(2) The Tribunal may make any or a combination of the orders set out in subsection (1).

Appeals to the Tribunal.

102F. (1) Unless otherwise expressly provided in this Act, the Media Council Act or any other law, where this Act or the Media Council Act, empowers the Media Council or the Authority to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(2) Any person who is aggrieved by an action or decision of the Media Council, the Authority or a person licensed under this Act, may within sixty days after the occurrence of the event or the making of the decision, against which he is dissatisfied, make a claim or appeal to the Tribunal.

(3) Upon any appeal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Media Council or the Authority in the proceedings in connection with which the appeal is brought; or
- (c) make such other order, including an order for costs, as it may consider necessary.

Appeals from decision of the Tribunal.

102G. (1) Any person aggrieved by a decision or order of the Tribunal may, within

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thirty days of such decision or order, appeal against such decision or order to the High Court.

(2) No decision or order of the Tribunal shall be enforced until the time for lodging an appeal has expired or, where the appeal has been commenced until the appeal has been determined.

(3) The decision of the High Court on any appeal under this section shall be final.

Assessors.

102H. The chairperson of the Tribunal may appoint any persons with special skills or expert knowledge on any issues which are the subject matter of any proceedings or inquiry before the Tribunal to act as assessors in an advisory capacity, in any case where it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.

Remuneration of members of the Tribunal.

102I. The chairperson and members of the Tribunal shall be paid such allowances as the Salaries and Remuneration Commission may determine.

Liability of Tribunal members.

102J. The chairperson or other members of the Tribunal shall not be liable to be sued in a civil court for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction, provided they, at the time, in good faith, believed themselves to have jurisdiction to do or order the act complained of, and no officer of the Tribunal or other person bound to execute the lawful warrants, orders or other process of the Tribunal shall be liable to be sued in any court for the execution of a warrant, order or process which he would have been bound to execute if within the jurisdiction of the Tribunal

38. The principal Act is amended by renumbering section 102A as section 102K.

Renumbering of section 102A of No. 2 of 1998.

Amendment of
Section 102 A in No.
2 of 1998

39. Section 102A of the principal Act is amended—

- (a) by deleting subsection (2);
- (b) in subsection 4(a) by inserting the words “or any other relevant field” after the word “finance”;
- (c) inserting the following new subsections immediately after subsection (4)—

“(5) The Universal Service Advisory Council shall—

- (a) advise the Authority and provide strategic policy guidance for the administration and implementation of the Universal Service Fund; and
- (b) perform any other functions as the Board, may from time to time assign.

(6) The Council shall consist of a chairperson and eight other members appointed by the Cabinet Secretary in accordance with this section.

(7) Within fourteen days of the occurrence of a vacancy in the office of chairperson or member, the Public Service Commission shall, by notice in the Gazette and on the official website of the Public Service Commission, declare vacancies in the Council, and invite applications from qualified persons.

(8) An application in respect of a vacancy declared under subsection (7) shall be forwarded to the Public Service Commission within seven days of the publication of the notice and may be made by—

- (a) any qualified person; or

- (b) any person, organisation or group of persons proposing the nomination of any qualified person.

(9) The Public Service Commission shall consider the applications, shortlist and publish the names and qualifications of all the applicants and shortlisted applicants in the Gazette and on the official website of the Commission, within seven days from the expiry of the deadline of receipt of applications under subsection (8).

(10) The Public Service Commission shall interview the shortlisted applicants within fourteen days from the date of publication of the list of shortlisted applicants under subsection (9).

(11) Upon carrying out the interviews, the Public Service Commission shall select three persons qualified to be appointed as chairperson and sixteen persons qualified to be appointed as members of the Council, and shall forward the names to the Cabinet Secretary.

(12) The Cabinet Secretary shall, within fourteen days of receipt of the names under subsection (11), appoint the chairperson and the members of the Council.

(13) In selecting, shortlisting and appointing the chairperson and members of the Council, the Cabinet Secretary shall—

- (a) ensure that the appointees to the Council reflect the interests of all sections of the society;
- (b) ensure equal opportunities for persons with disabilities and other marginalised groups; and
- (c) ensure that not more than two-thirds of the members are of the same gender.

(14) Every appointment made under this section shall be published in the Kenya Gazette.

Amendment of No. 2
of 1998 by insertion
of new sections 104
and 105.

40. The principal Act is amended by inserting the following new sections immediately after section 103—

Prosecutio
n of
offences.

104. (1) The Authority shall, pursuant to Article 157(12) of the Constitution, have the power to undertake prosecution of any offence under this Act.

(2) An officer duly authorised in writing by the Authority may conduct a prosecution for any offence under this Act.

Transition.

105. The transition provisions set out in the Sixth Schedule to this Act shall have effect with respect to the staff, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act.

Transitional
provisions.

41. (1) A person who was a member of the Board of the former body shall continue to hold office for a period not exceeding ninety days or until the appointment of the members of the Authority or Tribunal, whichever comes first.

(2) On the commencement of this Act—

- (a) any person who was an employee of the former body immediately before the commencement of this Act shall be deemed to be an employee of the Authority or Tribunal on the same terms and conditions of service;
- (b) all property, assets, rights, liabilities, obligations, agreements, licences and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the former body, shall be deemed to have vested in or to have *been acquired, incurred or entered into by or on behalf of the Authority or Tribunal to the same extent as they were enforceable by or against the former body before the commencement of the Act;*

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- (c) where the transfer of any property transferred to or vested in the Authority or the Tribunal under subsection (1) is required by any written law to be registered, the Authority or the Tribunal shall, within six months from the date of commencement of this Act and amendments thereto or within such other period as any relevant law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Authority or the Tribunal or any person by way of registration fees, stamp or other duties—
- (i) make such entries in the appropriate register as shall give effect to the transfer;
 - (ii) where appropriate, issue to the Authority or the Tribunal a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and
 - (iii) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

(3) In this section—

“former body means the Commission and the Appeals Tribunal.

42. The First Schedule to the Principal Act is amended by deleting subsection 1(1).

Amendment of the First Schedule to No. 2 of 1998.

43. The Second Schedule to the principal Act is amended by deleting paragraph 1.

Amendment of the Second Schedule to No.2 of 1998.

Amendment of the
Fourth Schedule to
No.2 of 1998.

44. The Fourth Schedule to the principal Act is amended—

- (a) by deleting paragraph 6;
- (b) in paragraph 9, by deleting the words “one half of the” and substituting therefor the word “six”;
- (c) inserting a new paragraph immediately after paragraph 11 as follows—

“12. The Council shall submit to the Board a report on the discharge of its functions on a quarterly basis”.

Amendment of the
Fifth Schedule to
No.2 of 1998.

45. The Fifth Schedule to the principal Act is amended in—

- (a) paragraph 3(a) by deleting the words “six months” and substituting therefor the words “twelve months”;
- (b) paragraph 3(b) by deleting the words “six months” and substituting therefor the words “one year”.