

# **Ghana Broadcasting Study**

**A Report for the Government of  
Ghana and the World Bank**

**November 17, 2005**



# Ghana Broadcasting Study

## CONTENTS

<a href="#">Glossary.....</a>	<a href="#">iv</a>
<a href="#">Foreword.....</a>	<a href="#">v</a>
<a href="#">Acknowledgements.....</a>	<a href="#">vi</a>
<a href="#">Executive Summary.....</a>	<a href="#">1</a>
<a href="#">1. An overview of broadcasting in Ghana.....</a>	<a href="#">5</a>
<a href="#">1.1 Background.....</a>	<a href="#">5</a>
<a href="#">1.1.1 Introduction.....</a>	<a href="#">5</a>
<a href="#">1.1.2 Early political context.....</a>	<a href="#">5</a>
<a href="#">1.1.3 The 1992 Constitution.....</a>	<a href="#">6</a>
<a href="#">1.1.4 Ghana in the information age.....</a>	<a href="#">7</a>
<a href="#">1.2 Policy framework.....</a>	<a href="#">7</a>
<a href="#">1.2.1 The Ghana ICT for Accelerated Development Policy.....</a>	<a href="#">7</a>
<a href="#">1.2.2 National Telecommunications Policy.....</a>	<a href="#">8</a>
<a href="#">1.2.3 National Media Policy.....</a>	<a href="#">9</a>
<a href="#">1.2.4 Digital Switchover.....</a>	<a href="#">10</a>
<a href="#">1.3 Broadcasting landscape.....</a>	<a href="#">10</a>
<a href="#">1.3.1 Ghana Broadcasting Corporation.....</a>	<a href="#">10</a>
<a href="#">1.3.2 Commercial broadcasting.....</a>	<a href="#">11</a>
<a href="#">1.3.3 Community broadcasting.....</a>	<a href="#">11</a>
<a href="#">1.3.4 Institutional radio.....</a>	<a href="#">12</a>
<a href="#">1.4 Legal framework.....</a>	<a href="#">12</a>
<a href="#">1.4.1 Constitution.....</a>	<a href="#">12</a>
<a href="#">1.4.2 National Media Commission Act 1993.....</a>	<a href="#">13</a>
<a href="#">1.4.3 National Communications Authority Act 1996.....</a>	<a href="#">13</a>
<a href="#">1.4.4 International law and standards.....</a>	<a href="#">14</a>
<a href="#">1.5 Best practice assessment.....</a>	<a href="#">14</a>
<a href="#">1.5.1 Introduction.....</a>	<a href="#">14</a>
<a href="#">1.5.2 Guarantees of Freedom of Expression .....</a>	<a href="#">15</a>
<a href="#">1.5.3 Broadcast Content.....</a>	<a href="#">18</a>
<a href="#">1.5.4 Broadcast Regulation.....</a>	<a href="#">21</a>
<a href="#">1.5.5 Public Service Broadcasting.....</a>	<a href="#">24</a>
<a href="#">1.5.6 Community Broadcasting.....</a>	<a href="#">26</a>
<a href="#">1.5.7 Commercial Broadcasting.....</a>	<a href="#">28</a>
<a href="#">1.5.8 Radio Frequency Spectrum.....</a>	<a href="#">30</a>
<a href="#">2. Institutional analysis of NMC and NCA.....</a>	<a href="#">32</a>

<b>2.1 National Media Commission.....</b>	<b>32</b>
2.1.1 Introduction.....	32
2.1.2 Governance.....	33
2.1.3 Regulatory and other operations.....	34
2.1.4 Funding and human resources.....	34
2.1.5 External relations and accountability.....	35
<b>2.2 National Communications Authority.....</b>	<b>35</b>
2.2.1 Introduction.....	35
2.2.2 Governance.....	36
2.2.3 Regulatory and other operations.....	37
2.2.4 Funding and human resources.....	38
2.2.5 External relations and accountability.....	38
<b>2.3 Comparative Assessment of NMC and NCA.....</b>	<b>40</b>
2.3.1 Legal and Constitutional framework.....	40
2.3.1 Legal and Constitutional framework (continued).....	41
2.3.2 Governing Body.....	41
2.3.3 Licensing framework.....	42
2.3.4 Content Regulation.....	42
2.3.5 Other regulatory powers.....	42
2.3.5 Other regulatory powers (continued).....	43
2.3.6 Radio frequency spectrum.....	43
2.3.7 Public consultative procedures.....	43
2.3.8 Financial arrangements.....	43
2.3.9 Operational arrangements.....	44
2.3.10 Other matters.....	44
<b>3. Recommendations.....</b>	<b>45</b>
<b>3.1 The Constitution and broadcasting policy.....</b>	<b>45</b>
3.1.1 Introduction.....	45
3.1.2 Constitutional framework.....	45
3.1.3 National Media Policy.....	46
<b>3.2 Towards a new legal framework.....</b>	<b>47</b>
3.2.1 Constitutional basis for broadcasting regulation.....	47
3.2.2 Broadcasting service authorisation.....	47
<b>3.3 Regulatory powers and responsibilities.....</b>	<b>48</b>
3.3.1 Additional regulatory powers of the NMC.....	48
3.3.2 Additional NMC powers of sanction.....	49
3.3.3 Maintaining effective spectrum management.....	49
3.3.4 Studio technical requirements.....	50
3.3.5 Future spectrum planning.....	50
<b>3.4 Governance of the regulatory bodies.....</b>	<b>51</b>
3.4.1 Governance of the NMC.....	51
3.4.2 Governance of the NCA.....	52
<b>3.5 Planning for future broadcasting development.....</b>	<b>52</b>
3.5.1 Development of sound broadcasting.....	52
3.5.2 Planning for digital broadcasting.....	53
3.5.3 Future of public service broadcasting.....	54

<b>3.6 Resource requirements</b>	<b>54</b>
3.6.1 Building NMC capacity	54
3.6.2 Building NCA capacity	55
3.6.3 Funding of the NMC	55
3.6.4 Funding of GBC	56
3.6.5 NMC and GBC staff remuneration	56
<b>4. Implementation</b>	<b>57</b>
<b>4.1 Implementation strategy</b>	<b>57</b>
4.1.1 Ensuring engagement of all stakeholders	57
4.1.2 Working with the e-legislation process	57
4.1.3 Building human and institutional capacity	58
4.1.4 Financing arrangements	59
<b>4.2 Indicative Timetable</b>	<b>60</b>
4.2.1 Preparatory phase	60
4.2.2 First-year implementation	60
4.2.3 Future considerations	61
<b>4.3 Risks</b>	<b>61</b>
4.3.1 Political factors	61
4.3.2 Operational factors	61
<b>4.4 Conclusions</b>	<b>62</b>
4.4.1 Summary and next steps	62
4.4.2 Concluding remarks	62
<b>Annexes</b>	<b>63</b>
Annex 1. Proposed Content for Broadcasting Legislation	64
Annex 2. Comparative Analysis of Broadcast Regulation in Africa	70
<b>Comparative Analysis of Broadcast Regulation in the Africa Region</b>	
<b>Annex 2</b>	<b>71</b>
.....	<b>71</b>
Annex 3. Persons and Organisations Consulted	90
Annex 4. References	91

## Glossary

ACRAN / RIARC	African Communication Regulatory Authorities Network
ACHPR	African Commission on Human and Peoples' Rights
AU	African Union
BBC	British Broadcasting Corporation
CSI	Conseil Supérieur de l'Information (Burkina Faso)
CSC	Conseil Supérieur de la Communication (Mali)
CNEAME	Comité National de l'Egal Accès aux Médias d'Etat (Mali)
HAAC	Haute Autorité de l'Audiovisuel et de la Communication (Benin)
FM	Frequency Modulation
GBC	Ghana Broadcasting Corporation
GCRN	Ghana Community Radio Network
GIBA	Ghana Independent Broadcasters' Association
GFRCB	Ghana Frequency Registration and Control Board
GIFTEL	Ghana Investment Fund for Telecommunications
IBA	Independent Broadcasting Authority
ICASA	Independent Communications Authority of South Africa
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and communication technology
ICT4AD	Information and Communication Technology for Accelerated Development Policy
IGF	Internally Generated Funding
ITU	International Telecommunications Union
MCTs	Multi-purpose Community Telecentres
NCA	National Communications Authority
NMC	National Media Commission
NTP	National Telecommunications Policy
ORTM	Office de Radio Television du Mali
RFI	Radio France Internationale
RRC	Radio Communications Conference
RNB	Radio National du Burkina
SABC	South African Broadcasting Corporation (PTY) Limited
TCRA	Tanzania Communications Regulatory Authority
UDHR	Universal Declaration of Human Rights
UNECA	United Nations Economic Commission for Africa
VoA	Voice of America

## Foreword

The National Telecommunications Policy adopted by the Cabinet and published in January, 2005 points out the Government intent to develop an appropriate legal and regulatory framework for broadcasting, in particular, for a three-tier system of public service, community and commercial radio and television stations. The Policy also expresses the Government's intention to undertake a comprehensive review of current broadcasting policy and legislation in Ghana, with the objective of further expanding access to broadcast radio and television media for all citizens, providing for the greatest diversity of voice and languages and for the preservation and ongoing creation of indigenous content. It describes community broadcasting as a priority which should become a new area for development. This priority is also reflected in the Ghana Poverty Reduction Strategy II.

In August 2005, with the assistance of the World Bank, I commissioned a mission of experts to analyze the policy, legal and regulatory environment for broadcasting in Ghana and to produce recommendations for us to consider and move forward. At the end of October, the main findings and recommendations of the mission were discussed and confirmed at a workshop with diverse stakeholders, including representatives from interested ministries, from GBC, commercial broadcasters, community broadcasters, and civil society organizations, development partners and others.

The preparation of the e-Ghana Project presents an opportunity to gain ground in developing much needed broadcasting legislation to complement our planned telecommunications legislation. Rationalisation of the regulatory systems for both telecommunications and broadcasting and strengthening of the institutional capacities needed to expand the accessibility and diversification of broadcasting can assist the airwaves to become a vibrant vehicle for development, for civic participation and voice and for production and dissemination of news, informative programs, and entertainment.

If we grasp the opportunity, and work concertedly and consultatively, we can take great strides in the next few months to put the much-needed enabling framework in place.

The Honorable Kan-Dapaah  
Minister of Communications  
November 21, 2005

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\*\*The findings and recommendations in this report are those of the authors in consultation with the World Bank and Ghanaian stakeholders, for the consideration of the government.

## **Acknowledgements**

This report has been prepared for the Government of Ghana and the World Bank by a team of experts consisting of Steve Buckley (team leader), Berifi Apenteng, Aly Bathily and Lumko Mtimde. The team has been supported by staff of the World Bank and, in particular, Kofi Tsikata at the World Bank Ghana office and Tia Duer, Carmen Monico and Craig Hammer in Washington. The study benefited greatly from the assistance of the Ghana Advocacy Steering Committee for a New Broadcasting Law and, in particular, Wilna Quarmyne and Ruby Amable. The work would not have been possible without the willingness of many other people to give of their time at short notice and to share their knowledge and insights. We are especially grateful to the staff of the National Communications Authority, staff and commissioners of the National Media Commission, the Ministers and staff of both the Ministry of Information and the Ministry of Communications, members of Ghana Independent Broadcasters Association and Ghana Community Radio Network, and staff of Ghana Broadcasting Corporation. In addition we have had the benefit of input from a number of prominent scholars and experts together with the stimulation and feedback of the participants in the Stakeholders Workshop on a New Broadcasting Law. We hope that this report can make a positive contribution to the collective efforts of many people to bring about new developments in broadcasting for the benefit of Ghana.



# **Executive Summary**

## **Introduction**

There is a recognised and pressing need to update and rationalize the legal and regulatory environment for broadcasting in Ghana. Development of the community radio sub-sector is considered a high priority, as well as development of a coherent legal and regulatory framework for broadcasting as a whole. The purpose of this Study is to provide a framework to guide in the drafting of new broadcasting legislation together with associated regulations and institutional arrangements for oversight of the broadcasting sector. The Study builds on and integrates an ongoing consultative process facilitated by the Ghana Advocacy Steering Committee for a National Broadcasting Law, and draws on international experience and standards.

The Study consists of four sections. The first provides an introduction, overview and analysis of the historical and present context of broadcasting in Ghana. The second provides an assessment of the two regulatory bodies with responsibilities for broadcasting, the National Media Commission (NMC) and National Communications Authority (NCA). The third sets out conclusions and recommendations for the future regulation of broadcasting in Ghana. The fourth proposes a plan for implementation. As a supplemental Annex, the Study provides comparative analysis of four African countries, three from West Africa - Benin, Burkina Faso and Mali - plus South Africa.

The initial findings and recommendations of the Study were presented to a workshop of diverse stakeholders which gave broad validation and constructive feedback, on the basis of which the recommendations have been refined and completed.

## **Analysis**

The analysis of the enabling environment for broadcasting in Ghana demonstrates that the country has the fundamentals in place. It has Constitutional guarantees of freedom of expression and pluralism in the media since 1995, including a public broadcaster, commercial radio and television and the beginnings of community radio. However, the regulatory framework for broadcasting is only partially in place and responsibilities are divided across two regulatory bodies. The relationship between Constitutional provisions and guarantees and actual regulatory practice is not obvious. There is a need to rationalise present arrangements and to introduce new regulatory functions not currently provided for or not adequately provided. There is no doubt that Ghana has made considerable progress in enabling development of broadcasting but there are also clear signs that the present system is reaching its limits and that the public interest in broadcasting requires an updated regulatory framework. The Study maps out the strengths and weaknesses of the present system including the capacities and functioning of the two regulatory bodies.

The main conclusion of the analysis and of the institutional assessment is that primary responsibility for broadcasting regulation should be vested in the NMC, the regulatory body with a Constitutional mandate to guarantee the freedom and independence of the media and to assure high quality media content. The respective future roles of NMC and the NCA would need to be clearly articulated; and in its recommendations, the Study strives to do so, and provides a guide to changes that would improve the enabling environment for broadcasting in Ghana.

## Recommendations

1. No Constitutional change is necessary in the short to medium term, and the existing Constitutional framework should be assumed to be the basis for broadcasting policy and new broadcasting legislation.
2. It is appropriate for the National Media Policy to be used by all stakeholders as a key policy reference document for the future development and the regulation of broadcasting in Ghana.
3. The National Media Commission (NMC) should be empowered through appropriate legislation to assume its Constitutional mandate as the primary body with responsibility for the regulation of broadcasting.
4. The current procedures of the National Communications Authority (NCA) for “frequency authorisation” (set out in the National Communications Regulations 2003) should be replaced by a new procedure for “broadcasting service authorisation” under the regulatory responsibility of the NMC. This new procedure should provide for the inclusion of content in the criteria for decision.
5. Provision should be made in law for the National Media Commission to carry out the following additional regulatory functions:
  - authorisation of broadcasting services, including setting of terms and conditions for such services and ensuring compliance;
  - regulation of ownership and control of broadcasting services; and
  - regulation of “promises of performance.”
6. Amendments should be made to the National Media Commission Act to strengthen its powers of sanction and to provide for a formal appeals process in relation to NMC rulings on complaints.
7. The NCA should continue to hold responsibility for setting the technical parameters for broadcast frequency assignment to ensure that broadcast signals do not interfere with one another or with other users.
8. The NCA should continue to hold responsibility for the negotiation of international frequency clearance for broadcast frequency assignments, as with other radio frequency assignments.
9. The NCA should continue to hold the responsibility for monitoring technical infringements with respect to the technical parameters of frequency assignments for broadcasting services.
10. Sanctions with respect to technical infringements of a broadcasting service authorisation should be implemented only with the prior authorisation of the NMC except in the case of serious interference causing immediate harm to other users, in which case the NCA should be able to act to suspend the service pending a decision of the NMC.
11. Technical standards for broadcasters that are not connected to the use of radio frequencies, including standards for studio and other recording equipment, should cease, with immediate effect, from being part of the regulatory requirements for broadcasting services.

12. The NMC should develop, through a public participatory process and in consultation with the NCA, a plan for the use and development of that part of the radio frequency spectrum that is assigned to broadcasting in the Ghana National Frequency Plan, including a future plan for digital broadcasting.
13. Consultation on broadcast spectrum planning and assignment should be institutionalised in the form of a Joint Frequency Planning Group consisting of representatives from both agencies.
14. The NMC should undertake a joint review with its constituencies into the criteria and procedures for recruitment of Commissioners with a view to establishing a common set of guidelines for selection to improve transparency and to better ensure a Commission that is broad-based and includes relevant legal, media, regulatory and other expertise.
15. The existing NMC Act should be amended to bring greater clarity to the committee structure and to strengthen NMC governance including an Executive Board to drive policy and performance.
16. The NMC should conduct a review of internal policies and procedures with respect to roles, responsibilities and code of conduct of Commissioners, including handling of conflicts of interest.
17. The NCA Act should be reformed including changes to the governance of the NCA to guarantee its independence from government and to establish a principal purpose of serving the public interest.
18. The NMC should commence a public consultation process on the development of sound broadcasting services leading to a plan for the future development of public, commercial and community services.
19. Pending legislative change and a future plan for sound broadcasting services, the NCA should give an immediate priority to the authorisation of new community radio services based on and guided by the criteria developed by the Ghana Community Radio Network.
20. The development of community radio should permit transmission coverage appropriate to the community intended to be served and taking account of the different needs of urban and rural services.
21. The NMC should review existing studies and commission additional social and economic research into digital terrestrial television broadcasting, including feasibility assessment and cost benefit analysis of introducing the switchover from analogue to digital distribution. This should be carried out in consultation with broadcasters and the NCA.
22. For the purpose of medium-term planning of the development of FM sound broadcasting, the impact of new digital distribution systems should be discounted and, instead, a “wait and see” approach should be taken to the emergence of digital sound broadcasting.
23. The NMC should commence a public consultation into the future of the Ghana Broadcasting Corporation (GBC) with the aim of developing a new statute for GBC with a clear and more detailed public service broadcasting mandate. The

consultation should have particular regard to consulting on GBC's public service responsibilities and performance, its commercial activities, the development of GBC online and digital services, and its future funding.

24. The NMC will need to recruit a Technical Director with know-how in the area of radio frequency engineering, a Legal Advisor with know-how in the media industry and additional professional and administrative staff sufficient to operate an increased regulatory workload.
25. Options should be explored for recruiting and funding the short term secondment to the NMC of a high level professional with experience in regulatory systems and institutional development
26. NCA staff working on broadcast frequency assignment should receive orientation and training to better understand the policy goals and functions of public interest broadcasting regulation.
27. There should be an increase in government funding to the NMC, to be matched by internally generated funding through service authorisation fees paid by broadcasters (currently paid to the NCA for frequency authorisation), and by additional donor support for short-term projects, including development of the NMC's institutional capacity.
28. Parliament should take immediate steps to update the licence fee to a viable level with a built-in protection against inflation.
29. There should be a review of terms of remuneration of senior staff in NMC and GBC to ensure they are competitive with industry standards and sufficient to recruit qualified professionals.

## **Implementation**

In the final section of the Study a plan for implementation is provided. It stresses the importance of engagement of all stakeholders and assumes that further detailed consultation will be required in the process of preparing draft legislation. It sets out a timetable for implementation based on bringing new broadcasting legislation into Ghana's broader e-legislation strategy and it provides outline financial costs and an assessment of the capacity building and other measures that will be required.

The study concludes that, with the commitment of all stakeholders and with clear political and institutional leadership, legislative change and institutional reform can contribute to supporting the growth of a diverse broadcasting landscape that will sustain Ghana's cultural heritage and contribute to its future development priorities.

# **1. An overview of broadcasting in Ghana**

## **1.1 Background**

### **1.1.1 Introduction**

Ghana is a country of rich ethnic and linguistic diversity among its population of 19 million inhabitants. It has over fifty languages, hundreds of dialects and a cultural heritage that dates back hundreds of years. Ghana's economic potential and its strong social capital base have set it apart from many other countries in the sub-region. In recent years it has experienced accelerated economic expansion and it is one of the few countries in sub-Saharan Africa that is expected to achieve some, if not all, of the Millennium Development Goals. Information and communication technology (ICT) has been identified as one of the key drivers for further growth and development in Ghana.

In common with most African countries, Ghana has a long-established publicly-owned and financed broadcaster, Ghana Broadcasting Corporation (GBC) which provides national and regional radio services and a national television service. GBC has played a major role in engendering national identity and national development throughout the country's late colonial and post-colonial history.

Over the last ten years Ghana's cultural heritage has begun to find new forms of expression in the media through the growth of private commercial and community radio broadcasting. The liberalisation of broadcasting has brought a new pluralism in the media enabling different voices to be heard and opinions to be aired however it has not produced a corresponding diversity or quality of service. However, the potential for community broadcasting, in particular, a sector that can play a crucial role in giving voice to poor and marginalised groups, is far from realised with still only a handful of services on the air.

The policy context for broadcasting in Ghana, since the dawn of independent broadcasting, has been rather unclear and this has contributed to the weaknesses currently seen in the provision of broadcasting services. There has been no explicit legislative and regulatory framework for the development of broadcasting and tensions among different public agencies on their perceived role have led to an obvious gap in policy making. There are widespread concerns that the present regulatory arrangements are not a sufficient guarantee of Constitutional commitments to freedom of expression and to the independence of the media, nor do they enable the effective development of broadcasting in the public interest.

### **1.1.2 Early political context**

Broadcasting and broadcast regulation in Ghana must first be understood in the context of the colonial and post-colonial political history of the country. Until the 1992 Constitution, the mass media, broadcast and print, were dominated by the State. Broadcasting, controlled through the Ghana Broadcasting Corporation (GBC), operated as a state monopoly. State broadcasting commenced in Ghana in 1935, with Radio ZOY, and later Gold Coast Broadcasting Service, under the political control of the colonial regime and as an instrument of colonial policy. After independence, in 1957, the

service was renamed GBC, but remained under government control and its programming policies continued to be closely linked to the priorities of the State. During its long history GBC has been a tool of nation building and education but it has also served as an instrument of propaganda and control.

In 1957, under the leadership of Kwame Nkrumah, Ghana became the first modern African country to achieve independence from colonial rule. By 1964, however, Ghana was legally a one-party state. Public gatherings were strictly controlled, press censorship was extensive and the state broadcaster was reduced to little more than a government mouthpiece. The 1966 coup, that overthrew Nkrumah's post-independence government, placed the country under military rule until 1969. It was during this first period of military rule, in 1968, that the Ghana Broadcasting Corporation Decree was adopted. The Decree provided GBC with some independence but affirmed government powers to appoint and to remove the Board. The Decree still provides, today, the statutory basis for the governance of GBC although the powers to appoint and remove the Board now reside with the National Media Commission.

Although there were further short episodes of post-independence democracy, from 1969 to 1972, and again from 1979 to 1981, for the remainder of the period between 1966 and 1993, Ghana was under military rule.

### **1.1.3 The 1992 Constitution**

Following multi-party elections in 1992 a democratic government was inaugurated in January 1993 under the 1992 Constitution. The Constitution provides the present day guarantee of the right to freedom of speech, including freedom of the press and other media. The Constitution sets out a substantive framework for the freedom and independence of the media with important protections against state interference. It includes the establishment of a National Media Commission with responsibility to promote and ensure the independence of the media for mass communication and information.

At the time the Constitution was written, the emergence and growth of independent radio and television, and the need for radio spectrum, a scarce public resource, to be regulated in the public interest, appears not to have been fully considered as an essential aspect for a free and independent media. It was only after a test case by Radio Eye, which took to the airwaves without authorisation in 1994, that the need was accepted for radio frequencies to be assigned for independent use. This responsibility was assumed not by the newly established National Media Commission but by the Ghana Frequency Registration and Control Board, a government institution established in 1977 when Ghana was under military rule.

In 1995 the Ghana Frequency Registration and Control Board (GFRCB) put out the first call for applicants to operate broadcasting services independent of GBC. The first frequencies were assigned in July 1995 for ten commercial radio services to operate in Accra, Kumasi and Sekondi-Takoradi, though no community radio applications were accepted at that time. A further ten frequencies were assigned in May 1996 for rural areas including three community radio services. The GFRCB was superseded, in 1996, by the National Communications Authority, which has continued to assign frequencies to private commercial broadcasting services. There are now four commercial television stations and over 100 private commercial radio services despite a freeze in frequency assignments that lasted from 1999 until

2001. There have been no new community radio frequency assignments since 1996 although proposals have been submitted and the Government's own National Telecommunications Policy describes community broadcasting as a priority which should become a new area for development.

The National Communications Authority was established by Act of Parliament with the mandate to manage the radio frequency spectrum including that for broadcasting. The allocation of broadcasting frequencies as well as the associated regulatory functions and responsibilities for broadcasting have since been the subject of contention, particularly with respect to the different roles and responsibilities of the National Media Commission and the National Communications Authority. The National Media Commission has argued that frequency allocation criteria should include comprehensive guidelines on programming and that consequently the Commission should have primary or at least co-decision making responsibility in broadcast frequency allocation.

#### **1.1.4 Ghana in the information age**

In recent years Ghana has experienced accelerated economic expansion. The increasing use of information and communication technologies (ICT) has been identified as a key driver for growth. In response to the growing social and economic importance of information and communication technologies, and in common with many governments worldwide, Ghana has engaged in comprehensive policy review of the information and communications sector. The scope for new approaches to harnessing communications for development has also been highlighted in work on the Ghana Poverty Reduction Strategy. The challenges arising from convergence of telecommunications and broadcasting technologies has brought a new urgency to address the need for a legislative framework for broadcasting. Today this imperative needs to be considered within the framework of wider commitments to investment in ICT and reform of the enabling environment for telecommunications. Complementary and concurrent attention to the enabling environment for both broadcasting and telecommunications is now both feasible and advantageous, to facilitate policy and regulatory coherence.

### **1.2 Policy framework**

#### **1.2.1 The Ghana ICT for Accelerated Development Policy**

The National ICT Policy and Plan Development Committee was set up by Government in 2002, with Professor Clement Dzidonu as Chair, and tasked with the preparation of an ICT led socio-economic development policy. The work included extensive nation-wide consultation and was supported by an in depth study commissioned by UNECA<sup>1</sup>. President John Kufuor has described the policy in the following terms: "Government has developed the 'Ghana ICT for Accelerated Development Policy' to serve as a roadmap for the development of Ghana's information society and economy. The policy is to be integrated within government's three-pronged development strategy for its second term, which revolves around the development and enhancement of the nation's human resource base, the continued rejuvenation of the Private Sector, and the entrenchment of Good Governance."<sup>2</sup>

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<sup>1</sup> UNECA (2003)

<sup>2</sup> Rt Hon President John Kufuor (2005)

The ICT for Accelerated Development Policy (ICT4AD)<sup>3</sup> sets out proposals for the development, deployment and exploitation of ICTs to address Ghana's development challenges, to accelerate socio-economic development and to improve the well-being of the people. The policy is premised on the assessment that Ghana's development can be accelerated through the development and deployment of ICTs and responds to international calls to harness ICTs in the service of development for all. It sets the overall objective for Ghana to become a middle income, information-rich, knowledge-based and technology driven economy and society. The ICT4AD provides a key focal point for policy reform, planning and investment in information and communications capacity and is directly linked to the Government's core second term objectives and the pillars of the Ghana Poverty Reduction Strategy.

In the era of convergence of broadcasting and telecommunications the ICT4AD also forms a strategic policy framework within which the future development of broadcasting in Ghana must be addressed. Among its specific objectives the ICT4AD calls for the creation of the necessary enabling environment, the development of the national human resource capacity and the development and implementation of the necessary legal, institutional and regulatory framework and structure. The ICT4AD is to be implemented through a number of four year rolling plans and, as a working framework it is envisaged to have an operational life of fifteen to twenty years.

### 1.2.2 National Telecommunications Policy

Following the development of ICT4AD, the Government of Ghana, through the Ministry of Communications prepared the National Telecommunications Policy<sup>4</sup> in 2004, which was adopted by the Cabinet and published in January 2005. The Policy has been developed in consultation with industry and civil society stakeholders and includes proposals for further policy and legislative review including legislation on broadcasting. The basic objective set out is that every citizen and resident of the Republic should have available, high quality, and affordable access to information and communication services, in order to help transform Ghana into a knowledge-based society and technology-driven economy.

Amongst the specific objectives of the National Telecommunications Policy, is the promotion of universal access for all communities and population groups in Ghana to telephone, internet, and multimedia services by the year 2010. With respect to broadcasting the National Telecommunications Policy, echoing the National Media Policy of 2000, provides for a three-tier system of public, community and commercial radio and television stations:

**Public Radio and Television Stations**, i.e. those operated by a publicly-owned statutory body, which may be wholly or partially state-funded, and which are in all cases accountable to all strata of the people as represented by an independent board, and that serve the overall public interest, avoiding one-sided reporting and programming in regard to religion, political belief, culture, race and gender.

**Community Radio and Television Stations**, i.e. those that are about, for, by and of a specific marginalized community, whose

<sup>3</sup> Republic of Ghana (2004)

<sup>4</sup> Ministry of Communications (2005)



ownership and management is representative of the community, which pursues a participatory social development agenda, and which is non-profit, non-sectarian and non-partisan.

**Commercial Radio and Television Stations**, i.e. those that are privately owned and operated for profit and controlled privately by independent commercial groups or individuals.

The National Telecommunications Policy further expressly provides the Government intention to undertake a comprehensive review of current broadcasting policy and legislation in Ghana, with the objective of further expanding access to broadcast radio and television media for all citizens, providing for the greatest diversity of voices, languages and promoting the preservation and ongoing creation of indigenous content. It commits the NCA, within six months of the adoption of the policy, to speedily review all outstanding applications for community radio station frequency authorisations, with a presumption that such applications be granted in the public interest.

In addition to proposing policy and legislative reviews, the National Telecommunications Policy notes the establishment of the Ghana Investment Fund for Telecommunications (GITFEL) as an investment fund for collecting financial contributions from telecommunications sector licensees, and distributing resources to promote universal service and access. The Policy states that the fund can be used to develop local content, establish Multi-purpose Community Telecentres (MCTs), and as a matter of particular priority, to establish Community Media Centres combining community broadcasting with internet services in under-served areas.

### **1.2.3 National Media Policy**

In 1999 the National Media Commission developed a National Media Policy with a group of media operators and experts. The policy provides a guide for the operation and development of all the various mass media as well as film and the wire service. The primary objective of the policy is to set standards and provide benchmarks for measuring media performance. Apart from a vision and a mission, the policy sets out issues and principles that should guide the development of the media in the country. It also provides guidelines for programme content and for the operations of the media.

A fundamental goal of the policy is that the media “shall serve the well-being of all Ghanaians, especially the disadvantaged.” It regards all media and media services as a public trust and therefore holds that the public interest shall be paramount in the operation of all media. It also aims at promoting and ensuring a free, independent, dynamic and public spirited media that will provide access for all, and not only some, of our people to participate freely, fully and creatively at the community, national and global levels....”

The policy places all media - print, broadcasting, film and wire service - into three working categories; public, commercial and community with similar definitions as in the National Telecommunication Policy.

The policy sets out general guidelines for all the media as well as media specific guides. The general guidelines states among others that a range of media representing a diverse plurality of social, cultural, and economic interest and perspectives shall be encouraged and promoted. And that these interests shall be carefully balanced to preclude dominance by, or neglect of,

any one sector. Also the media shall proactively promote the growth of local culture and provide support for the national education effort.

The media specific provisions on broadcasting call for transparent processes for the registration of ownership and for frequency allocation. The criteria for frequency allocation should be unambiguous and include comprehensive guidelines on programming. The guidelines on programme content should set clear targets for local content and for public affairs programmes for all radio and television stations. In addition programme content should reflect and advance Ghanaian cultural aspirations and values.

#### **1.2.4 Digital Switchover**

On 5 September 2005 the National Communications Authority placed a newspaper advertisement announcing that: “the issuance of frequencies to operate Private Commercial TV and FM Radio Broadcasting Services has been suspended. The above action has become necessary as a result of the current exercise on the switch over from analogue to digital systems as directed by the ITU to all member states. The NCA would however consider applications for frequencies to operate community FM broadcasting services.”

While there are valid reasons for suspension of television licensing in the context of a viable switchover plan for digital television, it is not apparent that such plans are in place in Ghana. There is no international directive from the ITU to switch off analogue FM radio stations and future provision for digital sound broadcasting is uncertain in the face of competing technical systems.

Whereas countries are expected to develop their national strategy and policy for digital broadcasting, decisions are still to be taken within the ITU at the Radiocommunications Conference 2006 which aims to harmonise the approach that all countries in the region take regarding digital broadcasting.

### **1.3 *Broadcasting landscape***

#### **1.3.1 Ghana Broadcasting Corporation**

The national broadcasting service commenced in 1935 as a radio relay service under the name Radio ZOY, later Gold Coast Broadcasting Service. Through telegraphic connections and local relay transmitters it sought to provide a single national radio service covering the whole of Ghana. With independence the national broadcaster was renamed Ghana Broadcasting Corporation (GBC). Television was introduced later by GBC in 1965. Today GBC wholly owns, controls and operates three national radio services, ten regional radio services, and the national television channel, GTV. The national radio services consist of two short wave services, Radio 1 and Radio 2 (at the time of the study only Radio 1 was operational) plus Accra-based, Uniiq FM, which covers a large part of the country with a primarily English language service. Radio 1 broadcasts in six languages - Akan, Ga, Ewe, Nzema, Dagbani, and Hausa. The regional radio services cover each of the administrative regions. They have their own programmes and an emphasis on local languages but all carry GBC national news.

The present mandate for GBC is derived from the Ghana Broadcasting Corporation Decree 1968. It includes to broadcast programmes in the field of culture, education, information and entertainment, to reflect national progress and aspirations, and to broadcast in the main Ghanaian languages and in

English. GBC held a broadcasting monopoly until 1994 and is still a dominant force in radio and television broadcasting.

When the National Communications Authority was established GBC was obliged to relinquish part of its control over the broadcast radio and television spectrum. However, GBC retained control over other frequencies which have been used later for expansion or to assist the establishment of commercial broadcasting services. In addition to the services that it wholly owns and operates, GBC holds 50 per cent of the shares and appoints the Chair of the Board of Metro TV, the first commercial television service. It also has minority shareholdings in the Multimedia Broadcasting Company which owns at two local commercial radio services - Joy FM (Accra) and Adom FM (Tema). In practical terms though GBC plays no role in the operations of the private companies in which it has shares and is yet to receive any income from them.

Funding for GBC is partly provided through direct government support for salaries and partly internally generated through commercial activities. Internally Generated Funding (IGF) accounts for around 50 per cent of the total revenues of GBC. IGF is generated through adverts and from selling airtime to private production companies. In 2004 the annual government support was 42 billion Cedi (about US \$4.5 million), which contributed towards the costs of a staff base of around 1500 employees. This government funding is negotiated annually with the Ministry of Finance and Planning and administered through the Ministry of Information. Although there is a licence fee collectable from all television viewers, it has not increased for many years and is set at just 3,000 Cedi per year (US \$0.30). As a result of inflation, the television licence fee is now worth less than the costs of collection.

### **1.3.2 Commercial broadcasting**

There are over 100 commercial radio stations and four commercial television stations. Commercial radio stations are concentrated in the major urban areas. There are around 25 in Accra and a further 26 in Kumasi. Although there are large numbers of stations in the major urban areas there is not a great deal of diversity in programming. The majority of the services are music based with a popular music and easy listening format and a predominance of western, mainly US, artists. Among the "independent" services on air in the capital are the BBC World Service, Radio France International and Voice of America, which have also been granted frequency authorisation by the NCA.

In addition to Metro TV, a national commercial television service partially owned by GBC, there are three other private television services - TV3, which is a national commercial service under 70 per cent Malaysian ownership, TV Africa, which covers the greater Accra region and provides a distinct pan-Africanist perspective and cultural format, and Skyy TV, a recently opened service in Takoradi. Skyy TV also owns commercial radio stations in Kumasi and Takoradi.

### **1.3.3 Community broadcasting**

The first three community radio stations to be assigned frequencies were Radio Ada, Radio Peace and Radio Progress, in May 1996. Radio Progress was the first to take to the air, in February 1997. All are on the air today. However, since 1996 no new frequencies have been assigned for community radio services, nor has a rationale for stoppage been given. A fourth radio service, Royals FM in Wenchi, converted from a commercial radio

assignment to a community radio category. The on-air community radio services are grouped together in the Ghana Community Radio Network which is advocating for additional frequency assignment and regulatory reform.

#### **1.3.4 Institutional radio**

Most of Ghana's public universities and some technical colleges have their own radio station serving the campus or wider community. The universities have been assigned FM frequencies by the NCA as Non-Commercial, Institutional Services. These services are operated by, among others, the University of Ghana (Legon) University, the Kwame Nkrumah University of Science and Technology (Kumasi – 2 stations), University of Cape Coast, University of Education (Winneba), University College of Mining (Tarkwa), University of Development Studies (Wa campus), Cape Coast Polytechnic and Ho Polytechnic.

### **1.4 Legal framework**

#### **1.4.1 Constitution**

The 1992 Constitution provides the fundamental basis for the legal framework for broadcasting in the country. The Constitution asserts in Article 21(1)(a) that all persons shall have the right to “freedom of speech and expression, which shall include freedom of the press and other media”. Article 21(1)(e) additionally asserts the right to “information, subject to such qualifications and laws as are necessary in a democratic society”. Chapter 12 of the Constitution makes detailed provisions for the freedom and independence of the media and must form the basis for any broadcasting law in Ghana. Chapter 12 Article 162 provides, inter alia, that “freedom and independence of the media are guaranteed”, that “subject to this Constitution and any other law not inconsistent with this Constitution, there shall be no censorship in Ghana”, and that “there shall be no impediments to the establishment of private press or media”.

Article 162(3) states that, in particular, “there shall be no law requiring any person to obtain a license as a prerequisite to the establishment or operation of a newspaper, journal or other media for communication or information”.

Article 164 of the Constitution, provides for limited restrictions to the provisions of sections 162 and 163 “that are reasonably required in the interest of national security, public order, public scrutiny and for the purpose of protecting the reputations, rights and freedoms of other persons”.

It has been argued, in the case of Republic of Ghana v Independent Media Corporation of Ghana and others, that Article 162(3) precludes the licensing of broadcasters however the Supreme Court ruled, in 1996, that “it was a restriction reasonably required for the protection of ‘national security, public order, public morality’ and the ‘reputation, rights and freedom of others’” within the meaning of Article 164. The Supreme Court declined to rule on whether or not the Ghana Frequency Registration and Control Board was the proper institution to be designated to regulate frequencies for broadcasting as it considered that was not an issue in this case.

Article 166 of the Constitution further provides for the establishment of a National Media Commission through an Act of Parliament.

### **1.4.2 National Media Commission Act 1993**

The National Media Commission Act 1993 (Act No. 449) establishes the National Media Commission (NMC) provided for in the 1992 Constitution Act.

The functions of the National Media Commission, which are set out both in Article 166 of the Constitution and in the NMC Act, include “to promote and ensure the freedom and independence of the media for mass communication or information”, and “to take all appropriate measures to ensure the establishment and maintenance of the highest journalistic standards in the mass media, including the investigation, mediation and settlement of complaints made against or by the press or other mass media”.

The Constitution, and the NMC Act, provides for the NMC “to make regulations by Constitutional instrument for the registration of newspapers and other publications, except in terms of any direction and control over the professional functions of a person engaged in the production of newspapers or other means of mass communication”. It makes no specific provision for the making of regulations for broadcasting although this may be inferred from the general functions set out in Article 166 of the Constitution. At the time of the establishment of the NMC there were no independent broadcast media.

The Constitution provides for NMC to be composed of eighteen commissioners. Of these, thirteen are nominated from named constituencies (Ghana Journalists Associates nominates two) two are appointed directly by the President and three are nominated by Parliament.

### **1.4.3 National Communications Authority Act 1996**

The National Communications Authority Act 1996 (Act No. 524) is established “to regulate communications by wire, cable, radio, television, satellite and similar means of technology for the orderly development and operation of efficient communications services in Ghana and to provide for related purposes”. In the absence of any other provision for broadcasting service authorisation this Act has been used to regulate establishment of broadcasting services.

The Act establishes the National Communications Authority which replaces the previous Ghana Frequency Registration and Control Board. The objects of the NCA, set out in Section 2 of the NCA Act include “to ensure that throughout the country, as far as practicable, there are such communication services as are reasonably necessary to satisfy demand for the services”, and “to ensure that communications system operators achieve the highest level of efficiency in the provision of communication services and are responsive to customer and community needs”. Communications services and communication systems are very broadly defined to include wired and wireless transmission and the conveyance of sounds, visual images and data.

The NCA Act provides for the Board of the NCA to be appointed by the President and to consist of a Chairman, the Director General, one representative of the National Security Council and four other persons “with knowledge in matters relevant to the functions of the Authority”.

#### **1.4.4 International law and standards**

In the development of broadcasting law for Ghana account should be taken of international legal norms and standards in order to inform the defining principles. In particular this should include the provisions, particularly those with respect to freedom of information and expression, in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), even though Ghana is not a signatory to the ICCPR. In addition account should be taken of the Charter of African Union and the Declaration of Principles of Freedom of Expression in Africa, produced by the African Commission on Human and People's Rights (ACHPR). Ghana is a signatory to the protocol establishing the ACHPR.

The Declaration of Principles on Freedom of Expression in Africa of the ACHPR sets out, in Principal V, an optimal approach to the regulation of private and community broadcasting:

The broadcast regulatory system shall encourage private and community broadcasting in accordance with the following principles:

- there shall be equitable allocation of frequencies between private broadcasting uses, both commercial and community;
- an independent regulatory body shall be responsible for issuing broadcasting service authorisations and for observance of service authorisation conditions;
- licensing process shall be fair and transparent, and shall seek to promote diversity in broadcasting; and
- community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves

### **1.5 Best practice assessment**

#### **1.5.1 Introduction**

It is useful to assess the policy, legal and regulatory framework for broadcasting in Ghana against good practices drawn from around the world. The World Bank's draft *Guide to Good Practices in the Enabling Environment for Voice and Media* provides a comprehensive map of the topics that should be addressed when considering the enabling environments for voice and media. Within each topic, the *Guide* distils the attributes of good practices from diverse countries and illustrates them with country examples. The current section of this study compares relevant attributes of good practice, as highlighted in the *Guide*, with the current practice in Ghana. For the sake of conciseness, this comparison is presented in the form of tables that showcase each topic. On the left are short descriptions of good practices in the enabling environment that are relevant for broadcasting, taken from the *Guide*. These are distillations of good examples from several countries, including the UK, Canada, USA, France, Australia, South Africa, and Benin among others. On the right are brief statements of Ghana's practice.

These comparisons can prove useful to the stakeholders in Ghana, to help them to identify improvements in the enabling environment that would encourage the growth of pluralistic, diverse broadcasting services and encourage good quality journalism, freedom of expression and participatory communication.

## 1.5.2 Guarantees of Freedom of Expression

Attributes of best practice	Commentary
<p><b>Freedom of Expression is Explicitly Guaranteed</b> Freedom of expression is a fundamental human right, guaranteed in international law and practically all national Constitutions.</p> <p>* See Good Practices Guide at <a href="#">page 13</a>, referencing Article 10 of the European Convention of Human Rights; <a href="#">page 24</a>, referencing the United Nations Charter; <a href="#">page 26</a>, referencing Article 19 of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples’ Rights, the American Convention on Human Rights, the First Amendment to the United States’ Constitution, and the Constitution of Thailand; and <a href="#">page 27</a>, referencing the Constitutions of Colombia, France, Australia, and Nigeria.</p>	<p>Freedom of expression is guaranteed by Article 21(1)(a) of the 1992 Constitution</p>
<p><b>Freedom of Information is Explicitly Guaranteed</b> The right to access information held by public authorities is a key aspect of the right to seek, receive and impart information and ideas; although this right is implicit in the guarantee of freedom of expression, explicit protection removes any doubt as to this.</p> <p>* See Good Practices Guide at <a href="#">page 28</a>, referencing the Constitutions of Poland, South Africa, the Philippines, and Colombia.</p>	<p>The right to information is guaranteed under the Constitution Art. 21 (1)(f). However there is no legislation in place yet to enable its implementation. A civil society sponsored bill on the Right to Information is currently under discussion.</p>
<p><b>Freedom of the Press/Media is Explicitly Guaranteed</b> As with freedom of information, freedom of the media is implicitly included in the right to freedom of expression. At the same time, it is desirable for Constitutions to provide explicit guarantees for freedom of the media, in recognition of the crucial role of the media in giving practical effect to the free flow of information and ideas in society.</p> <p>* See Good Practices Guide at pages 28 and 29, referencing Sweden’s Freedom of the Press Act, a part of Sweden’s Constitution; and the Constitutions of Thailand, Argentina, and South Africa.</p>	<p>The freedom of the media is explicitly guaranteed by Art 162 in the Constitution.</p>

## 1.5.2 Guarantees of Freedom of Expression (continued)

Attributes of best practice	Summary of Practice in Ghana
<p><b>Certain Specific Protections for Journalists are Explicitly Guaranteed</b>            The right to freedom of expression implicitly provides certain special protections for journalists. While these protections flow from the right to freedom of expression, it is useful for them to be explicitly guaranteed in the Constitution.</p> <p>* See Good Practices Guide at <a href="#">page 30</a>, referencing Sweden’s Freedom of the Press Act, a part of Sweden’s Constitution; and Colombia’s Constitution.</p>	<p>Art 162 (4) of the Constitution specifically protects editors and publishers of newspapers and other institutions of the mass media from control and interference by the Government and from harassment or being penalized for their editorial opinions and views, or the content of their publications.</p>
<p><b>Constitutionally Authorized Limitations on the Right to Freedom of Expression</b>            Every system of law, international and national, recognizes certain restrictions on the right to freedom of expression to protect overriding public and private interests. Such restrictions, however, must be subject to certain limits if the guarantee of freedom of expression is to be effective. Under international law, restrictions must meet a stringent 3-part test which requires them to be explicitly provided by law, to pursue a legitimate aim and to be no more restrictive than necessary to protect that aim.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 31</a>, referencing Article 19(3) of the International Covenant on Civil and Political Rights, and the Constitutions of South Africa and Thailand; and <a href="#">page 32</a>, referencing Canada’s Charter of Rights and Freedoms, Canadian Supreme Court jurisprudence, and India’s Constitution.</p>	<p>Art. 21 (4) of the Constitution imposes limitations on the right of freedom of expression and Art 164 provides for limitations on the freedom of the media where it is necessary for national security, public order, public morality and for protecting the reputations, rights and freedoms of other persons.</p>



## 1.5.2 Guarantees of Freedom of Expression (continued)

Attributes of best practice	Summary of Practice in Ghana
<p><b>International Law is Directly Applicable</b>            International law provides for strong guarantees of freedom of expression and these have been subject to extensive and positive elaboration by various authoritative international bodies. If the national legal system directly incorporates these guarantees, that can help provide a strong minimum basis of protection for this right.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 33</a>, referencing the Constitutions of Argentina, France, and Japan, and the United Kingdom’s Human Rights Act.</p>	<p>The Constitution does not explicitly incorporate International Law.</p>
<p><b>Judicial or Other Mechanisms Exist to Invoke and Apply Constitutional Guarantees</b>            To be effective, there must be ways in which Constitutional guarantees can be applied directly since otherwise they remain statements of principle. In most countries, anyone claiming a breach of his or her rights is able to approach a court with the power to rule on this.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 34</a>, referencing the Constitutions of the Unites States, South Africa, and France.</p>	<p>Article 33 of the Constitution provides for persons who allege that their rights and freedoms under the Constitution have been infringed to apply to the High Court for redress.</p>
<p><b>Legislation Exists Setting out General Guarantees for Freedom of Expression</b>            Constitutional guarantees are, almost by definition, relatively brief. Although they can be elaborated more fully through judicial interpretation, it can also help if their implications are spelt out in more detail in an ordinary statute.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 35</a>, referencing Georgia’s Law on Freedom of Speech and Expression).</p>	<p>No such legislation exists.</p>

### 1.5.3 Broadcast Content

Attributes of best practice	Summary of Practice in Ghana
<p><b>Codes of Conduct</b> Broadcasting laws should not impose content restrictions of a civil or criminal nature on broadcasters, over and above, or duplicating, those that apply to all forms of expression. Any administrative content rules should be developed in close consultation with broadcasters and should be applied either on a self-regulatory basis or by a body which is fully independent of government.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 94</a>, referencing the United Kingdom’s Communications Act, Indonesia’s Broadcasting Act, Australia’s Broadcasting Services Act, and jurisprudence from Latvia’s Constitutional Court; and <a href="#">page 95</a> (referencing South Africa’s Independent Broadcasting Authority Act and jurisprudence of South Africa’s Constitutional Court).</p>	<p>No legislation exists specifically to regulate or guide broadcasting content. A document titled Broadcasting Standards, which gives a guide on programme content and advertising, prepared by the National Media Commission in close consultation with the broadcasters is not legally binding. The Ghana Journalist Association has a Code of Ethics which provides for its members including those in broadcasting.</p>
<p><b>Sanctions</b> A range of sanctions should be available for breach of any administrative system of content regulation so that any sanctions imposed may be proportionate to the harm done.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 96</a>, referencing the United Kingdom’s Office of Communication (“Ofcom”) and Content Sanctions Committee, Indonesia’s Broadcasting Commission (“KPI”), and Australia’s Broadcasting Services Act.</p>	<p>The Complaints Settlement Committee of the National Media Commission can order the publication of a retraction, apology or a rejoinder to an earlier publication or can “direct disciplinary action”. No other sanctions exist for content regulation.</p>
<p><b>Positive Content Rules</b> General positive content obligations, requiring them to carry certain material or types of material, may be placed on commercial and community broadcasters but only where their purpose and effect is to promote broadcast diversity by enhancing the range of material available to the public. More onerous obligations may be placed on public broadcasters, given their primary obligation to promote the public’s right to know through a diversity of voices and perspectives in broadcasting. Many countries impose special positive content rules in the context of elections.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 98</a>, referencing the United Kingdom’s Office of Communication (“Ofcom”), Indonesia’s broadcasting law, and jurisprudence of Italy’s Constitutional Court.</p>	<p>There are no enforceable positive content rules. The law setting up GBC, the national broadcasting organisation (GBC), NLC Decree 1978 (NLCD 226) only gives the Corporation a general guide under the objects chapter of the law.</p>

### 1.5.3 Broadcast Content (continued)

Attributes of best practice	Summary of Practice in Ghana
<p><b>National Security/Public Order</b>  Restrictions may be imposed on freedom of expression to protect national security/public order, but these should be carefully and narrowly drawn so that they only prohibit expression that poses a serious risk of imminent and serious harm to a legitimate national security/public order interest. In particular, a close nexus should be required between the expression and the risk of harm before the expression may be sanctioned.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 70</a>, referencing the United Nations Human Rights Committee; <a href="#">page 71</a>, referencing the European Court of Human Rights, the Declaration of Principles on Freedom of Expression in Africa, the Inter-American Declaration of Principles on Freedom of Expression, and jurisprudence of the United States’ Supreme Court; and <a href="#">page 72</a>, referencing jurisprudence from South African courts and Israel’s Supreme Court, as well as South Korea’s National Security Act.</p>	<p>The restrictive provisions in the Constitution have not really been tested except in one case, the right to go on public demonstration. A decision of the Supreme Court affirmed that one did not need permission from the police or any authority to go on demonstration but that the police need to be informed in advance so they could provide protection and ensure public order. This led to the Public Order Act.</p>
<p><b>Hate Speech</b>  International law requires States to prohibit advocacy of hatred that constitutes incitement to discrimination, hostility or violence (see ICCPR, Article 20). However, such laws should be clearly and narrowly drafted, and should never be used to penalize the dissemination of true statements or statements which, while offensive, do not constitute incitement.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">pages 73 and 74</a>, referencing jurisprudence of Canada’s Supreme Court; and <a href="#">page 74</a>, referencing jurisprudence from France’s Cour de Cassation and South Africa’s Constitutional Court.</p>	<p>No specific laws or sanctions exist on hate speech.</p>

### 1.5.3 Broadcast Content (continued)

Attributes of best practice	Summary of Practice in Ghana
<p><b>Obscenity</b> Restrictions on obscene materials should be defined clearly in law and apply only to material which either depicts a criminal act or which poses a serious and direct risk of harm, for example to children.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">pages 75 and 76</a>, referencing jurisprudence of Canada’s Supreme Court, South Korea’s Constitutional Court, and India’s Supreme Court.</p>	<p>Obscenity is treated generally under the Criminal Code Act 1960. It has hardly been used against any media house for several decades.</p>
<p><b>Protection of the Administration of Justice</b> Restrictions on freedom of expression to protect the impartiality and fairness of the system of justice should be limited to those measures which are strictly necessary to achieve these ends. They should not provide protection for judges against legitimate criticism or prevent open public discussion about the administration of justice.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">pages 78 and 79</a>, referencing jurisprudence of Kenya’s High Court, the United Kingdom’s Contempt of Court Act and related jurisprudence, and jurisprudence of South Africa’s Constitutional Court.</p>	<p>The administration of justice is protected by the Common Law rules of contempt of court, so is mainly left to the discretion of the judges. The Supreme Court rules have an added provision of actions that could Scandalise the Court. This has been used once to jail a writer who pointed out in an article in a newspaper that a member of the panel had wrongly quoted a statement by a personality in order to buttress his argument to reach a decision in the court.</p>
<p><b>False News</b> Blanket bans on the publication of false material, simply because it is inaccurate, are illegitimate.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 79-81</a>, referencing Principle 7 of the Inter-American Declaration of Principles on Freedom of Expression; jurisprudence of Canada’s Supreme Court, Peru’s Constitutional Tribunal, Antigua and Barbuda’s Judicial Committee of the Privy Council; and jurisprudence of Uganda’s Supreme Court.</p>	<p>There is a provision for False News in the Criminal Code</p>

### 1.5.3 Broadcast Content (continued)

Attributes of best practice	Summary of Practice in Ghana
<p><b>Political Expression/Elections</b>            Political expression is at the heart of the guarantee of freedom of expression and should receive particular protection. This is especially true during elections and effective measures should be taken to ensure that the electorate is informed both about the technical aspects of voting and the various issues at stake in the election.</p> <p>* See GOOD PRACTICES GUIDE at page 82, referencing jurisprudence of Malawi’s High Court, Italy’s Constitutional Court, and the Philippines’ Supreme Court.</p>	<p>Article 55 (11) and (12) of the Constitution requires that all political parties be given fair opportunity to present their programmes to the public by ensuring equal access to the state-owned media. Article 55 (12) requires that “all presidential candidates are given the same amount of time and space in the state-owned media to present their programmes to the people”. The Supreme court affirmed these provisions in a decision in 1994. The National Media Commission has also developed Guidelines on Political Reporting for all the media.</p>
<p><b>Others</b>            Any other restrictions on content should be precisely and narrowly drawn and limited to what is necessary to protect a legitimate interest.</p> <p>* See GOOD PRACTICES GUIDE at pages 83 and 84, referencing jurisprudence of the European Court of Human Rights and Ireland’s Supreme Court; a number of cases in France; and the jurisprudence of South Korea’s Constitutional Court.</p>	<p>There are no other restrictions on content.</p>

### 1.5.4 Broadcast Regulation

Attributes of best practice	Commentary
<p><b>Independent Regulatory Body</b>            The regulation of broadcasting should be the responsibility of an independent regulatory body established on a statutory basis with powers and duties set out explicitly in law and with formal accountability to the public. The independence and institutional autonomy of the regulatory body should be adequately and explicitly protected from interference, particularly of a political or economic nature.</p> <p>* See GOOD PRACTICES GUIDE at page 86, referencing South Africa’s Constitution, France’s Law on Freedom of Communication, and the United Kingdom’s Communications Act.</p>	<p>The legal and administrative independence of the National Media Commission is assured by the Constitution and the NMC Act 1993 (Act 449) however dependence on the Ministry of Finance for its budget has hampered its development and effectiveness. The NCA which currently authorises the use of broadcast frequency is a government agency directly under the control of the Minister of Communications</p>

#### 1.5.4 Broadcast Regulation (continued)

<p><b>Powers and Duties</b> Any independent body that exercises regulatory powers in broadcasting should have a principal duty to further the public interest in relation to broadcasting and should have particular regard to the right to freedom of opinion and expression and to the desirability of fostering a plurality and diversity of services.</p> <p>* See GOOD PRACTICES GUIDE at pages 87 and 88, referencing South Africa’s Independent Communications Authority (ICASA), France’s Conseil Supérieur de l’Audiovisuel (CSA), and the United Kingdom’s Ofcom).</p>	<p>The National Media Commission is accepted by all as the body to oversee content. Its principal function is to promote and ensure the freedom and independence of the media for mass communication or information but it has no powers under the NMC Act to enforce the Broadcast Standards or to implement the National Media Policy.</p>
<p><b>Appointment of Members</b> The appointments process for members of a regulatory body with responsibility for broadcasting should be fair, open, transparent and set out in law. It should be designed to ensure that members have relevant expertise or experience and carry a diversity of interests and opinions representative of society as a whole. The appointments process should not be dominated by any particular political party or commercial interest and the members appointed should be required to serve in an individual capacity and to exercise their functions in the public interest at all times.</p> <p>* See Good Practices Guide at pages 88 and 89, referencing South Africa’s ICASA, France’s CSA, Canada’s Radio-television and Telecommunications Commission (CRTC), and Benin’s Higher Authority for <b>Audiovisual and Communications (HACA)</b>.</p>	<p>Appointment to the NCA Board is entirely by government, with no published criteria, a closed shortlist and decision of the President. For appointment to the NMC, the Constitution lists diverse groups in society to be represented (including broadcasters and journalists) plus representatives of the President and Parliament, for a total of 18 members. Members function in their individual capacity and elect their own Chair. Groups named in the Constitution however determine their own system of selection of their representatives and this is not transparent. Although the groups are diverse they obviously do not represent all sections of society. There is no specific provision for representation of women, youth, marginalized communities etc.</p>

#### 1.5.4 Broadcast Regulation (continued)

Attributes of best practice	Summary of Practice in Ghana
<p><b>Transparency and Consultation</b>            In exercising regulatory powers over broadcasting, regulatory bodies should be required by law to operate openly and transparently and to facilitate public participation in their affairs, including through public consultation on their policies, regulations and procedures. All decisions of regulatory bodies should be accompanied by written reasons.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 90</a>, referencing South Africa’s ICASA and the United Kingdom’s Communications Act.</p>	<p>Neither the NMC nor NCA are required by law to operate publicly. The NMC has involved practitioners in developing its policies and guidelines but is not required by law to do so. The NCA has no obligation to do public consultations in granting or refusing broadcasting frequencies. Where they refuse to assign a frequency to an applicant the NCA is required, by section 27 (2) of the NCA Act, to communicate the reasons for their decision to the applicant. In practice, applications to the NCA may also remain in a pending state without written decision.</p>
<p><b>Public Accountability</b>            Any public body that exercises regulatory powers in broadcasting should be subject to judicial oversight and should be formally accountable to the public through a multi-party body such as the parliament or a parliamentary committee in which all major parties are represented. The regulatory body should be required by law to publish an annual plan of activities and an annual report.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">pages 90 and 91</a>, referencing South Africa’s ICASA and the United Kingdom’s Office of Communications Act.</p>	<p>Decisions of the NMC Complaints Settlement Committee are subject to judicial review. The NMC also submits an annual report on its operations to Parliament and this is made public. The NCA is required to report to the Minister of Communications who in turn submits a report to Parliament. Its decisions are ultimately subject to judicial review.</p>
<p><b>Funding Arrangements</b>            Regulatory bodies responsible for broadcasting should be ensured a reliable and recurrent income sufficient to carry out their activities effectively and without interference. The funding framework should be set out in law.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 91</a>, referencing South Africa’s ICASA and the United Kingdom’s Office of Communications Act.</p>	<p>The NMC depends almost entirely on direct central government subvention and this is provided for in the Constitution. It sometimes receives minor support from donors. The NCA is funded by the fees it charges from lease of spectrum and frequency authorisation.</p>

## 1.5.5 Public Service Broadcasting

Attributes of best practice	Summary of Practice in Ghana
<p><b>Status and Independence</b> National broadcasting services that are in public ownership and control should be prescribed in law as bodies that are editorially independent of government, serve the public interest and are protected against political and commercial interference</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 100</a>, referencing South Africa’s Broadcasting Corporation (SABC) and Australia’s Broadcasting Corporation (ABC).</p>	<p>The national broadcaster, Ghana Broadcasting Corporation (GBC), is protected from governmental control and interference by the Constitution. The Constitution under Art. 168 and 169 gives the National Media Commission, an independent Constitutional body, power to appoint the Board and Director General. However GBC relies on direct government support through the Ministry of Information for about 50 per cent of its recurrent budget and 100 per cent of its capital budget.</p>
<p><b>Duties and Responsibilities</b> The duty of a national public service broadcaster should be to serve the public interest in broadcasting throughout the territory and for the whole of the population of the country in which they are established. In particular, the public service broadcaster should provide a wide range of innovative and high quality programs designed to educate, inform and entertain the general public taking account of ethnic, cultural, religious and regional diversity.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">pages 100 and 101</a>, referencing South Africa’s Broadcasting Act and Australia’s Charter of the ABC.</p>	<p>Chapter 12 of the Constitution and the objects set for the corporation in its establishment statute provide a framework for GBC to operate as a true public service broadcaster. A more detailed mandate spelling out its role would however help to clarify its current status. The bigger problem making it difficult for the corporation to work effectively appears to be due to managerial, financial and professional shortcomings and pressure to generate revenue from commercial self-financing. There also no mechanisms to ensure GBC meets its public service obligations.</p>
<p><b>Governance</b> The public service broadcaster should be governed by an independent governing board with powers and duties set out in law including to monitor and ensure compliance with public service duties and responsibilities, to ensure highest standards of probity and value for money and to provide formal accountability to the general public.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">pages 101 and 102</a>, referencing South Africa’s SABC and ICASA, and Australia’s ABC and the Australian Broadcasting Corporation Act.</p>	<p>The law establishing GBC, Ghana Broadcasting Corporation Decree 1968 (NLCD 226) has been amended by Art. 168 of the Constitution regarding appointment of the Board. The board is now appointed by the National Media Commission in consultation with the President. Neither the Constitution nor the Decree set out in detail monitoring mechanisms to ensure compliance of the public service mandate. There are also no specific rules for public accountability.</p>



### 1.5.5 Public Service Broadcasting (continued)

<p><b>Membership of the Governing Board</b> The appointments process for the governing board should be fair, open, transparent and set out in law. It should be designed to ensure the members have relevant expertise or experience and carry a diversity of interests and opinions representative of society as a whole. The appointments process should not be dominated by any particular political party or commercial interest and the members appointed should be required to serve in an individual capacity and to exercise their functions in the public interest at all times.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">pages 103 and 104</a>, referencing South Africa's SABC Board and Australia's ABC Board.</p>	<p>There are no laid down criteria for the appointment of the governing Board. It is done by the National Media Commission in consultation with the President.</p>
<p><b>Director General</b> Day-to-day management of the public service broadcaster should be the responsibility of a Director General appointed by the governing board for a fixed term, whose tenure may be renewed. The Director General, along with his or her editorial staff, should have responsibility for setting editorial policy and taking editorial decisions.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 104</a>, referencing the Director of Australia's ABC.</p>	<p>The day to day management of GBC is by the Director General who is appointed by the National Media Commission in consultation with the President. He/she is appointed for a fixed term of five years which may be renewed based on performance. The Board and the Director General set policy. Editorial staff implement policy and take day-to-day decisions.</p>
<p><b>Funding</b> The public service broadcaster should be predominantly funded from public funding through a funding mechanism designed to protect its independence. It may raise additional revenues from direct subsidies, commercial activities and donations.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 105</a>, referencing licensing fees in France and in the United Kingdom.</p>	<p>GBC is funded through sale of commercial air time on its services and direct government subvention through the Ministry of Information. The sale of air time has impacted negatively on GBC's public service operations as commercial interests in programming has grown over the years against other programmes. TV licence fees collected by GBC and meant to cushion the Corporation from direct government funding has not been successful as the fee is rather low, the equivalent of US \$0.30 per year and Parliament has been reluctant to have it increased.</p>

## 1.5.6 Community Broadcasting

Attributes of best practice	Summary of Practice in Ghana
<p><b>Recognition and Differentiation</b> Community broadcasting should be recognized in law as a distinct type of broadcasting to be supported and encouraged through specific and explicit licensing arrangements that guarantee fair and equitable access to radio spectrum and to economic resources.</p> <p>* See GOOD PRACTICES GUIDE at pages 107 and 108, referencing South Africa’s Independent Broadcasting Authority Act and Broadcasting Act; and recognition of community broadcasting in Colombia, Venezuela, Australia, Canada, and the United Kingdom).</p>	<p>Community radio is not yet recognised in law as a distinct type of broadcasting although the NCA does so in practice. However NCA has no clear criteria and has been arbitrary in decisions on community radio. Both the NMC National Media Policy and National Telecommunications Policy recognise community radio as a distinct type of broadcasting</p>
<p><b>Definition and Characteristics</b> Community broadcasting can be defined as independent broadcasting that is provided for the good of members of the public in a specific location or for a particular community of interest, that involves the community in the operation of the service, and whose primary purpose is to deliver social gain rather than to operate on a commercial basis or for the private financial gain of individuals linked to the service.</p> <p>* See GOOD PRACTICES GUIDE at pages 110 and 111, referencing South Africa’s Independent Broadcasting Authority Act and Broadcasting Act, as well as Australia’s Broadcasting Services Act; Canada’s Radio-Television and Telecommunications Commission; and the United Kingdom’s Community Radio Order.</p>	<p>The policy statements described above are consistent with this definition but no definition is provided for in law or regulation.</p>
<p><b>Licensing Process</b> Licensing processes for community broadcasting should be fair, open, transparent and set out in law, and should be the responsibility of an independent licensing body.</p> <p>* See GOOD PRACTICES GUIDE at pages 113 and 114, referencing South Africa’s ICASA and Australia’s Broadcasting Authority).</p>	<p>Community radio is not recognised in the NCA Act and its frequency authorisation process is not essentially different from that of private commercial radio. Rules appear to be largely at the discretion of the NCA and some applications have been kept pending since 1999 despite commitments in the National Telecommunications Policy to eliminate the backlog within six months of the adoption of the policy in January 2005.</p>

### 1.5.6 Community Broadcasting (continued)

<p><b>License Terms and Conditions</b> License terms and conditions for community broadcasting should be consistent with the objectives of broadcast regulation and be designed to ensure that the community broadcasting service characteristics are maintained for the duration of the license period.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 115</a>, referencing South Africa's Community Broadcasting License and licensing in Australia.</p>	<p>NCA proposed terms and conditions for community radio in April 2005 which are not consistent with the circumstances and needs of community radio in Ghana including, among other constraints, a proposed maximum 5km radius for transmission. The Ghana Community Radio Network has objected to this restriction.</p>
<p><b>Funding Arrangements</b> Community broadcasting services may draw on a diversity of funding sources according to local circumstances. There should be no restrictions on funding sources other than what is necessary to maintain the character of the service and to avoid unfair competition.</p> <p>* See GOOD PRACTICES GUIDE at page 116, referencing funding arrangements in South Africa, Canada, and the Netherlands.</p>	<p>The NCA guidelines mentioned above restrict areas of funding, in particular they are not to take income from advertising or programme sponsorship of any kind. The Ghana Community Radio Network has also objected to this restriction.</p>
<p><b>Public Funding</b> Community broadcasting may be supported by public funding, including direct public subsidies. Where there is a regular and guaranteed system of public funding this should be administered through an independent public body established for this purpose.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">pages 117 and 118</a>, referencing Australia's Community Broadcasting Foundation, Ltd.; France's <i>Fond de soutien à l'expression radiophonique</i> (Support Fund for Radio Expression); and the Netherlands' Radio and Television Licensing Service.</p>	<p>There is no provision for public funding for community radio and they receive no public funds. According to the National Telecommunications Policy, GIFTEL is to support community media development.</p>

## 1.5.7 Commercial Broadcasting

Attributes of best practice	Summary of Practice in Ghana
<p><b>Regulation</b> Regulation of private commercial broadcasting should be designed to meet the public interest in a range and diversity of services and to ensure fair competition between private broadcasters. Commercial broadcasters normally require a license to operate.</p> <p>* See GOOD PRACTICES GUIDE at <a href="#">page 120</a>, referencing South Africa’s ICASA; and <a href="#">page 121</a>, referencing Canada’s Radio-television and Telecommunications Commission.</p>	<p>There are no specific regulations for private commercial broadcasting. The NCA which grants frequencies has no say in programming and the NMC which should be monitoring content is not involved in the licensing process and does not have the capacity to regulate content. There is very little diversity in programming and no rules on fair competition.</p>
<p><b>Licensing Process</b> Licensing processes for commercial broadcasting should be fair and transparent, and should be overseen by an independent body. License conditions should serve the overall goals of broadcast regulation and should not be arbitrary or oppressive.</p> <p>[* See GOOD PRACTICES GUIDE at <a href="#">page 122</a>, referencing procedures of Canada’s Radio-television and Telecommunications Commission .]</p>	<p>The NCA which grants frequencies to private commercial broadcasters is a government agency which reports to the Minister of Communications. There are no clear published criteria for decisions on applications for frequencies. It is not known whether the NCA has explicitly refused any applicant a frequency to broadcast but some applications have been outstanding for more than five years and the reasons for the delay have not been made officially known. There are no published rules for handling competing applications for services in the same area and no provision for public comments on applications.</p>
<p><b>Rules on Concentration of Ownership</b> Rules preventing undue concentration of ownership in the broadcast sector, or between that sector and the print media sector, are legitimate as long as their actual purpose and practical effect is to promote diversity in the provision of broadcast services.</p> <p>* See GOOD PRACTICES GUIDE at pages 122 and 123 (referencing South Africa’s Ownership Concentration laws and Indonesia’s Broadcasting Act).</p>	<p>The NCA Act and NCA Regulations have no provisions on broadcasting ownership concentration and cross-media ownership. The National Media Policy of the NMC discusses the need for rules on concentration and cross media ownership. Currently most operators are single service providers but there is some multiple ownership of radio broadcasting services.</p>

### 1.5.7 Commercial Broadcasting (continued)

Attributes of best practice	Summary of practice in Ghana
<p><b>Rules on Foreign Ownership</b> Restrictions may be imposed on the extent of foreign ownership and control over broadcasters, as long as these restrictions take into account the need for the broadcasting sector as a whole to develop and for broadcasting services to be economically viable. A total ban on foreign investment in the broadcasting sector is not legitimate.</p> <p>[* See GOOD PRACTICES GUIDE at page 123, referencing United States Communications Act (1934, as amended).]</p>	<p>There are no enforceable rules on ownership by foreigners. The National Media Policy proposes minority stake for foreigners in broadcasting services. The NCA Act allows any Ghana registered company to own a broadcast service, regardless of its composition. In practice there are foreigners who fully own or have a majority stake in both radio and television firms. External services of other countries, including VOA, RFI and BBC have been granted FM broadcasting frequencies in Accra.</p>
<p><b>Public service requirements</b> Private commercial broadcasting may be subject to public service requirements in relation to content and coverage where they can be expected to hold a dominant position in the market. Such requirements should be designed only to further public interest objectives and should not be disproportionate in scope such that they threaten the viability of the service.</p> <p>[Examples are being added to GOOD PRACTICES GUIDE.]</p>	<p>There are no rules requiring private commercial stations to comply with any public service requirements or obligations.</p>
<p><b>Public Advertising</b> Public advertising budgets spent on commercial broadcasting should be allocated on a strictly non-discriminatory and commercial basis.</p> <p>[* See GOOD PRACTICES GUIDE at page 124, referencing United States Supreme Court ruling in 1995.]</p>	<p>There are no rules regarding such advertising</p>
<p><b>Subsidies</b> Public subsidies may be offered to commercial broadcasters in order to promote a range and diversity of services. They should be allocated according to set criteria pursuant to a fair and transparent process overseen by an independent body.</p> <p>[* See GOOD PRACTICES GUIDE at page 125, referencing analogous practice of indirect and direct subsidies provided to newspapers in France, and the criteria for these subsidies.]</p>	<p>No public subsidies are given to private commercial stations.</p>

## 1.5.8 Radio Frequency Spectrum

Attributes of best practice	Summary of Practice in Ghana
<p><b>Radio Spectrum</b> The radio spectrum is a limited natural resource that should be managed in the public interest through transparent and accountable regulatory frameworks. Spectrum planning should be designed to ensure fair and efficient use of this resource. It should respect the need for equitable distribution between different geographical areas and it should always ensure sufficient spectrum is available for educational, humanitarian and other non-commercial uses, including public service and community broadcasting.</p> <p>* See GOOD PRACTICES GUIDE at page 127 (referencing the radio spectrum and frequency authorization in the United Kingdom).</p>	<p>The NCA has provided a copy of the National Frequency Plan but has not provided detailed spectrum policy and planning information for the broadcast bands. It is not known what plans it has in place or on what policies these might be based. The NCA does not have a clear and specific mandate to manage the radio spectrum in the public interest.</p>
<p><b>Spectrum Planning for Broadcast Services</b> Commission to manage that part of the radio spectrum that has been specifically allocated for broadcast use should be assigned to the regulator responsible for broadcast licensing in order that it can be independently managed within the framework of broadcast policy objectives. Spectrum planning for broadcast services should ensure a fair and equitable distribution between public service, commercial and community broadcasters.</p> <p>[See GOOD PRACTICES GUIDE at page 128, referencing France’s, United States’ and Thailand’s allocation of about 20% of the FM band to non-profit local and community broadcasting.]</p>	<p>There is no agreement between the NMC and NCA on who should manage spectrum for broadcasting .NCA asserts its responsibility and this is currently supported by law. The NMC is the Constitutional body responsible for the media and although it currently has no hand in spectrum planning for broadcast services, international best practice would link spectrum planning for broadcast with broadcast regulation.</p>
<p><b>Must-carry Rules</b> “Must carry” rules are a useful regulatory mechanism to guarantee access to cable and satellite networks for public interest uses, including public service and community broadcasters. Broadcast law should ensure that broadcast regulators have powers to make “must carry” rulings and a duty to do so where such rulings are in the public interest.</p> <p>* See GOOD PRACTICES GUIDE at page 129 (referencing Germany’s Inter-State Agreement on Broadcasting Services); and page 130 (referencing Spain’s Cable Telecommunications Act and Article 26 of the Royal Decree).</p>	<p>There are no such provisions in the NMC or NCA acts and currently no Ghana-based satellite operators or major cable networks to which this would apply</p>

### 1.5.8 Radio Frequency Spectrum (continued)

**Public Access Channels**

Public access channels are channels on cable or satellite networks that have been set aside for non-commercial public use such as educational, community or public service programming. Broadcast law should ensure the regulator is able to insist on the inclusion of public access channels as a condition of licensing a cable or satellite operator.

\* See GOOD PRACTICES GUIDE at page 130 (referencing public access television channels in Germany); and page 131 (referencing public access television channels in the United States).

There are no such provisions in the NMC or NCA acts and currently no Ghana-based satellite operators or major cable networks to which this would apply

## **2. Institutional analysis of NMC and NCA**

### **2.1 *National Media Commission***

#### **2.1.1 Introduction**

The National Media Commission (NMC) was set up on the 7 July 1993 by the National Media Commission Act 1993 (Act No. 449) based on the terms of Chapter 12 of the 1992 Constitution. The functions of the NMC are:

- (a) to promote and ensure the freedom and independence of the media for mass communication or information;
- (b) to take all appropriate measures to ensure the establishment and maintenance of the highest journalistic standards in the mass media, including the investigation, mediation and settlement of complaints made against or by the press or other mass media;
- (c) to insulate the state-owned media from governmental control;
- (d) to make regulations by Constitutional instrument for the registration of newspapers and other publications, except that the regulations shall not provide for the exercise of any direction or control over the professional functions of a person engaged in the production of newspapers or other means of mass communication; and
- (e) to perform such other functions as may be prescribed by law not inconsistent with this Constitution.

In its Mission Statement, the NMC states that it exists “to promote free, independent and responsible media so as to sustain democracy and national development”. In particular it states that it is committed to maintaining its independence from political influence, ensuring that state owned media are independent from government control, raising professional standards among media practitioners, ensuring fairness to the public, protecting journalists from harassment, and encouraging the media to play their role of holding people in authority to account and protecting the rights of the individual.

The NMC has a Constitutional mandate but there are no further specific provisions in the NMC Act as to its regulatory powers and procedures other than with respect to complaints settlement (which is also the subject of a separate Legislative Instrument). As a result the NMC has sought a regulatory framework which will enable it to exercise the needed supervision over the broadcasting industry. Currently, the NMC carries out three functions with respect to broadcasting – developing content guidelines, monitoring, complaints settlement and training - all based on the Constitutional provision for journalistic standards.

The guidelines do not have an explicit legal status and the sanctions available are limited to the publication of a correction, an apology, a rejoinder or “direct disciplinary action”. Nevertheless they are used, together with other instruments -including the GJA Code of Ethics<sup>5</sup> and relevant Constitutional provisions (e.g. on privacy) - as the basis for rulings of the Complaints Settlement Committee. The NCA operates in some respects as an arbitrator rather than a judge and generally seeks to settle complaints by negotiation.

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<sup>5</sup> The Ghana Journalists Association (1994)



## 2.1.2 Governance

The Constitution provides for NMC to be composed of 18 members nominated from 12 named constituencies together with two persons appointed by the President and three persons nominated by Parliament. Any change to this composition would require amendment of the Constitution.

The representation, which includes religious organisations, media sectors, journalists, teachers and lawyers, appears intended to ensure balance against the dominance of any one view in decision making although it may have the side effect of lowering the level of regulatory expertise on the NMC.

The nature of the constituency representation may also have the effect of reducing regional representativeness and gender balance. Most of the representatives are nominated by organisations headquartered in Accra. All but two of the current 18 members live in Accra. Only three of the eighteen representatives are women.

The presence of media sector representatives ensures a degree of co-regulation with the media sectors, for example the NMC makes use of the Ghana Journalists Association Code of Ethics. On the other hand such representation may create conflict of interest in judging cases involving competitors.

If the NMC were to acquire greater powers, including those of deciding which operator must be considered for broadcast authorisation, a corporate governance issue could arise, with respect to conflict of interest, investor confidence and industry capture. Section 9 of the NMC Act, provides for declaration of interest and disqualification from participation in the related deliberations but such provisions may be difficult to enforce in practice and there are currently no legislative provisions on confidentiality in the NMC Act. It would be advisable for such provisions to be set out in new legislation.

The Commission meets once a month. The Commission is responsible for policy formulation and the Secretariat is responsible for implementation. Commissioners constitute the highest decision making body, supported by the Secretariat. The work of the Commission has been divided into 5 committees: Complaints Settlement, Legal Committee, Media Committee, Training and Relations Committee, and Finance and Administration. A code of conduct for Commissioners has been developed to govern and provide rules and procedures for their operation. The NMC has a 10 year Strategic Plan (1999-2009), however this does not seem to be guiding its operations. Indeed, one member said it may not even be known by many of the current Commissioners suggesting a possible lack of continuity and prioritization.

Article 168 of the Constitution requires the NMC, in consultation with the President, to appoint the Chairperson and other members of the governing bodies of public corporations that manage the state-owned media. The powers of the NMC to appoint and to remove the Board of GBC, including the Chief Executive, means the NMC might be perceived as being “both a referee and a player”. While this may not be a priority issue at present it could merit greater attention, in the long term, if NMC powers of sanction are enhanced.

### **2.1.3 Regulatory and other operations**

The National Media Commission Profile describes five departments of the secretariat corresponding to the committee structure of the NMC and a sixth Technical Department that appears not currently to be operational. A separate paper provided on Organisational Structures and Job Descriptions describes three work divisions: Support Services, Professional Services and Operations.

Operationally, on a day-to-day basis, the NMC deal with a range of issues including complaints from the media, and from the public against the media. These complaints are processed by the Secretariat. According to the 2003 Annual report, NMC received 47 complaints and 32 rejoinders. Eleven complaints were struck out because complainants decided to withdraw.

It is reported that NMC settled 90 per cent of the cases that appeared before it last year which can be considered a success by any measures used. From an analysis of the Annual reports, it would appear that a high priority is placed on the functioning of the Complaints Settlement Committee.

The Complaints Settlement Committee (CSC) is comprised of seven Commissioners and chaired by the Chairperson of the Commission. The bulk of the infractions concern complaints against the media from the public rather than complaints from the media themselves. The NMC requests a copy of the offending article or, if possible a recording of the transmission (in case of broadcasting). The NCA Act requires radio stations to keep programmes for a fixed period of time. According to the 2003 NMC Annual Report, the NMC cannot sub-poena witnesses, and this has been confirmed by court<sup>6</sup>. It has been suggested that Parliament could amend the NMC Act to provide this power, on the other hand some members feel that this could create too strong a juridical function for NMC, when the courts should be the place of last resort. As currently constituted the NMC has been set up in such a way that its orientation is towards arbitration rather than an adversarial approach.

In addition to complaints handling, the NMC undertakes selective monitoring but does not monitor all media. It might focus on a particular media outlet, presenter or programme. The monitoring unit is described by NMC as very weak, consisting of one Director of Research and one assistant. The NMC recruits a number of national service personnel to assist with monitoring. One Commissioner argued that monitoring needs to be undertaken "scientifically" and that effective monitoring should not be "fire-fighting" in response to complaint but rather should be a "pro-active" function.

### **2.1.4 Funding and human resources**

The Commission is entirely dependent on revenue from Government. According to the latest Audited Financial Report<sup>7</sup> the total income for the year 2003, amounted to Cedis 1,115.6 million compared with Cedis 927.0 million in 2002, an annual increase of 19.6 per cent. Internally Generated Funds amounted to only Cedis 6.6 million. There are no fees or other funding paid by media organisations to the NMC for the services provided.

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<sup>6</sup> High Court Ruling on the matter filed against Messrs Kwaku Baako Jnr and Kwesi Pratt for refusing to appear before the Complaints Settlement Committee of the Commission.

<sup>7</sup> Audit Service (2004)

The NMC Secretariat consists of the Executive Secretary and three senior staff, Deputy Executive Secretaries (Operations), Deputy Executive Secretary (Finance and Administration) and Director (Research and Monitoring) who all report directly to the Executive Secretary. At the time of the study there was no Executive Secretary or Deputy Executive Secretary (Operations) in post. The Deputy Executive Secretary (Finance and Administration) was also the Acting Executive Secretary. In addition to the senior staff team there are around 18 ancillary personnel including researchers, clerical and security staff. The Commissioners also play a close role in day-to-day operations of the NMC.

### **2.1.5 External relations and accountability**

The NMC publishes guidelines and Annual Reports and has also published the National Media Policy. As an independent governance institution, mandated by the Constitution, the NMC is independent of Government and reports directly to Parliament. However the funding from government is made directly through the Ministry of Finance and Economic Planning.

The NMC has no direct relationship with the National Communications Authority (NCA) even though the NCA is currently responsible for broadcasting frequency spectrum management and assignment. It appears the problem arose from a perception that the NCA was created to usurp some of the powers of the NMC and maintain government control over some aspects of mass media operations. It is acknowledged by both NMC and NCA that the rivalry relationship is not in the public interest. Both institutions acknowledge their work is inter-related and note the need for co-ordination.

The NMC has noted that there is some overlap of responsibilities with the Commission on Culture, a body which, among other matters deals with film classification. The NMC notes that viewers complaining about a film on television may address their complaint to the NMC in the first instance.

## **2.2 National Communications Authority**

### **2.2.1 Introduction**

The National Communications Authority (NCA) was established by the NCA Act 524 of 1996 to regulate communications by wire, cable, radio, television, satellite and similar means of technology for the orderly development and operation of efficient communication services. The objects of the NCA, as set out in the NCA Act, are as follows:

- (a) To ensure that there are provided throughout Ghana as far as practicable such communication services as are reasonably necessary to satisfy demand for the services;
- (b) To ensure that communications system operators achieve the highest level of efficiency in the provision of communications services and are responsible to customer and community needs;
- (c) To promote fair competition among persons engaged in the provision of communications services;
- (d) To protect operators and consumers from unfair conduct of other operators with regard to quality of communications services and payment of tariffs in respect of the services;
- (e) To protect the interests of consumers;
- (f) To facilitate the availability of quality equipment to consumers and operators;

(g) To promote research into and the development of technologies and the use of new techniques by providers of communication services and to develop adequate human resources in collaboration with such other government departments and agencies as the Authority considers appropriate.

The NCA Act also sets out detailed functions for the NCA which include the following matters that pertain, or may pertain to broadcasting:

- To advise the Minister for Communications and the Minister for Information on policy formulation and development strategies for the communications industry
- To ensure strict compliance with this Act and regulations under it
- To grant licence for the operation of communications systems as defined in Section 44 (the scope includes broadcasting systems)
- To assign, allocate and regulate the use of frequencies in conformity with international protocols
- To prepare and review the National Frequency Allocation Plan
- To designate standards of communications equipment
- To establish training standards for communications operators and to monitor the implementation of the training standards
- To provide, where reasonably practicable, advice to operators in the communications industry in Ghana
- To maintain a register of operators

The licensing powers of the NCA are explicit in the NCA Act and set out in detail in the National Communications Regulations 2003. They include the licensing of broadcasting services the procedure for which, is described in the regulations as “frequency authorisation”.

### **2.2.2 Governance**

The NCA Board is comprised of seven members. The Board is appointed by the President in consultation with the Council of State (NCA Act Section 5). The composition, set out in the NCA Act, consists of a Chair, the Director General, one representative of the National Security Council and four other persons “with knowledge in matters relevant to the functions of the Authority”.

Though there is no prescribed process in the Act for the appointment of members of the Board, in practice the Ministry of Communications, having in view the major stakeholders of the industry, identifies people and presents a shortlist to the President’s office. The President makes the final selection after consultations with the Council of State.

There are no other requirements for representation of different interests or for gender balance and the present members of the Board are all men.

Attempts have been made in recent times to distance the Authority more from direct Government control. Until recently, the Chair of the Board was also the Minister for Communications thus providing a direct line of political control over the NCA. This has however changed and a non-political member of the Board is now the Chair of the Authority. Under the law Government still maintains direct control under Section 4 of the NCA Act which states that: “The Minister may give to the Authority such directions of a general character as appear to him to be required in the public interest relating to the discharge of the functions of the Authority”. This leaves the Authority open to accusations of political interference in the award of operating licences for

communication services, whether for broadcasting or other purposes. There were indications given during the work on the Study that the NCA Act is currently under review and that the new law will make the Authority even more independent of Government.

Section 7 of the NCA Act provides a requirement for Board members to make a written declaration of interest disclosure in relation to any contract proposed to be entered into by the Authority. Failure to disclose an interest renders the member liable to be removed from the membership of the Board.

The Board is responsible for policy formulation and the Director General is responsible for implementation. The Board is required by the Act to develop regulations for the procedures of meetings. The Board may appoint committees to discharge their functions. These may include external advisors to assist with the work of the committees, except that a committee of non-Board members may only advise the Board. Currently the NCA has a Finance and Audit Committee, a Management and Technical Committee (which deals with licensing decisions) and Projects and Operations Committee.

### **2.2.3 Regulatory and other operations**

With respect to the licensing of broadcasting services, the National Communications Regulations 2003 (LI 1719) sets out the procedures known as “frequency authorisation” through which commercial and community broadcasters must apply for permission to broadcast. Additional detail on the information required to be submitted in an application is provided in the NCA Guidelines for Submission of Feasibility Report for Broadcasting Projects.

Although the information requested includes business plans and programming philosophy the only published selection criteria are those set out in the NCA Act 2003 Section 13(1) which states: “The Authority shall grant the licence to an applicant where it is satisfied that the communication system in respect of which the application is made is technically suitable for the service intended to be rendered, and a licence for the operation of such system has not been granted exclusively to another operator in the public interest”. The Act further states: “An application under subsection (1) of this section shall be granted by the Board unless there are compelling reasons founded on technical data, national security, public safety or other reasonable justification which shall be communicated to the applicant.

The NCA is not known to have ever given a written refusal to an application to operate a broadcasting service however there are cases of applications which have been made several years ago on which a decision has apparently not yet been taken. There is no fixed duration for a decision to be taken and no readily available list of decisions. These are clear illustrations of the need for a more adequate licensing process. It appears the NCA is caught between concerns, possibly legitimate, for not providing a licence in some cases but does not have an adequate set of criteria in statute to justify such decisions. Inevitably this situation leaves the NCA open to accusations of political bias.

In line with the National Telecommunications Policy and the National Media Policy, the NCA recognises three categories of broadcasting - public, commercial and community - for the purpose of frequency authorisation and fees. Applications are submitted in a defined category and must be supported by technical information, a business plan, the programming philosophy and

other information as set out in Guidance from the NCA. The NCA Management and Technical Committee consider the applications, then prepare their summary of the applications and recommendations. The final decision is by the full Board.

The NCA requires broadcasting equipment to conform with ITU standards and that the broadcast should not interfere with other broadcasters or other sensitive communications. NCA have monitoring vehicles for the purpose of monitoring compliance. There have been a few occasions where stations have not been allowed to go on the air for not complying with technical requirements. Stations are given specific reasons and forewarning for such action.

Under Section 182 of the National Communications Regulations 2003 the NCA can impose fines for the contravention of any NCA regulations, which in effect could apply to a broadcasting organization. Section 41(2) of the NCA Act prescribes prison terms in addition to fines for infringing NCA regulations.

The NCA is responsible for preparing and reviewing the National Frequency Plan and this is available to the public. There are no detailed plans or consultations published for the use of broadcasting spectrum. The NCA has recently announced a freeze on further commercial broadcasting authorisations “as a result of the current exercise on the switch over from analogue to digital systems” however detailed planning on the switchover of television services to digital was not available to the study team. Planning for the introduction of digital sound broadcasting appears to be at a very early stage and would not seem a valid reason for suspension of new sound broadcasting authorisation.

The NCA “freeze” announcement states that community FM broadcasting applications may still be considered and senior staff of the NCA reported that the Authority is planning to concentrate on community radio development.

#### **2.2.4 Funding and human resources**

The NCA collects license fees from operators of which it keeps 20 per cent for its operational costs, whilst 80 per cent is forwarded to Government. The Government determines the percentage of the fee to be retained by the NCA.

The NCA has a staff complement of 50 of which about 35 are professional positions. Of these, 10 are engineers and three are responsible for broadcasting. Convergence of technologies has meant that staff have, of necessity, become multi-skilled, able to work in different departments and with different sectors.

The NCA has identified the need for additional staffing capacity, including lawyers, economists, statisticians, engineers and researchers, to enable it to track and respond effectively to industry developments.

#### **2.2.5 External relations and accountability**

The NCA reports to the Minister of Communications. It produces an Annual Report to the Minister which includes a report of activities and a list of persons granted licences in the year. The Minister is required by the NCA Act to then make a report to Parliament on the activities of the Authority to which

the Annual Report relates. The financial books of the NCA are audited by the Auditor-General whose report is included in the Annual Report

NCA has no formal relationship with the NMC, but recognises the NMC's Constitutional responsibilities in the content sphere. Senior NCA staff expressed the view that greater collaboration and clarity of roles was desirable.

The NCA has no formal obligations to engage in public consultation. Prior to decisions on important regulatory matters they normally undertake consultation with telecommunications industry stakeholders.

Internationally, the NCA represents Ghana in the ITU and works closely with other bodies including West African Telecommunications Regulatory Assembly (WATRA), African Forum for Utility Regulators (AFUR) and African Telecommunications Union (ATU).

## 2.3 Comparative Assessment of NMC and NCA

### 2.3.1 Legal and Constitutional framework

	NMC	NCA
1. Constitutional provisions and establishing law	<ul style="list-style-type: none"> <li>- Chapter 12 of the Constitution of 1992,</li> <li>- NMC Act 1993 (Act 499).</li> </ul>	NCA Act No. 524 of 1996
2. Mandate	<ul style="list-style-type: none"> <li>- Derived from Chapter 12 of the Constitution.</li> <li>- to promote and ensure the freedom and independence of the media for mass communication and information.</li> </ul>	<ul style="list-style-type: none"> <li>- Regulate communications by wire, cable, radio, television, satellite and similar means of technology for the orderly development and operation of efficient communication services.</li> <li>- National Communication Regulation L.I. 1719 of 2003.</li> </ul>
3. Objectives of the law	<ul style="list-style-type: none"> <li>- Not clear with respect to broadcasting, in view of the NCA Act</li> <li>- No clear objective to promote fair competition amongst the broadcasting industry</li> <li>- to promote and ensure the freedom and independence of the media for mass communication and information.</li> <li>- to insulate the state-owned media from Government.</li> <li>- to take all appropriate measures to ensure the establishment and maintenance of the highest journalistic standards in the mass media</li> <li>- to make regulations by Constitutional instrument for registration of newspapers and other publication.</li> </ul>	<ul style="list-style-type: none"> <li>- to ensure that there are provided throughout Ghana as far as practicable such communication services to satisfy demand for the services.</li> <li>- to ensure that communications system operators achieve the highest level of efficiency in the provision of communications services</li> <li>- to promote fair competition</li> <li>- NCA Act Section 2</li> </ul>
4. Independence legally enshrined commercial interests government party political interests	<ul style="list-style-type: none"> <li>- Commission is subject only to the Constitution not to the direction or control of any person or authority</li> <li>- Constituent-based representation in the Commission, including broadcasters</li> <li>- Appoints own Chair</li> <li>- Independent of Government but has Parliamentary nominees and Presidential appointees.</li> </ul>	<ul style="list-style-type: none"> <li>- Board and Director General appointed by the President of the Republic and are directly responsible to the Minister of Communications</li> <li>- Not fully independent of Government, Minister may give directions to the NCA.</li> </ul>
5. Relations with Government – separation of powers. Policy making and Regulatory functions	<ul style="list-style-type: none"> <li>- independence provided for in Chapter 12 of the Constitution.</li> <li>- Funding, however, is provided by Government</li> </ul>	Section 4 of NCA Act provides that the Minister of Communications may give directions of a general character in the public interest.



### 2.3.1 Legal and Constitutional framework (continued)

	<b>NMC</b>	<b>NCA</b>
6. Public accountability Publication of Annual / Three Year Plan Publication of Findings and Reasons for Decisions made Audited Annual Report	- 10-Year Strategic Plan but not published - Annual report presented to Parliament	- No published plan of activities - Annual Reports submitted to the Minister of Communications who submits report to Parliament
6. External audit	Auditor-General	Auditor-General
7. Role of the Courts – provision for judicial review	Decisions are subject to judicial review	Decisions are subject to judicial review

### 2.3.2 Governing Body

	<b>NMC</b>	<b>NCA</b>
8. Appointment process of Governing body	- Section 166 of the Constitution provides for a constituency-based representation. The nomination process is not specified and therefore, by default, is determined by the constituents.	- President (in consultation with Council of State) appoints Board members in terms of Section 5 of the NCA Act. - The process is not clearly outlined and not formally subject to scrutiny
9. Appointing body	- 2 nominated by Ghana Journalists Association, 1 each from 11 other constituencies plus 2 nominated by President and 3 nominated by Parliament - There are no qualification requirements, the decision is that of the Constituency responsible.	President appoints in terms of Section 5 of the NCA Act.
10. Number of Board members	18 members - current membership 3 women and 15 men	7 members – current membership all men
11. Term of office	Commissioners hold office for 3 years renewable with maximum of two terms	- Board members hold office for 4 years - Director-General 's term is subject to contract and the direction of the Board
12. Conflict of interest avoidance provisions	- Failure to declare and disclose an interest may lead to removal from office (NMC Act Section). - Commissioners take an Oath. - Code of Ethics or Performance Standards.	- Failure to declare and disclose an interest may lead to removal from office (NCA Act Section 7) - No Code of Conduct. - Rules of procedures.
13. Qualification and disqualification provisions	Sections 5, 6, 7 and 8 of the NMC Act provide for membership, disqualification, duration of office and removal from office.	- Section 7(8) and (9) of the NCA Act. - Section 2(d) of the NCA Act provides for appointment of 4 persons with knowledge on matters relevant to functions of the Commission.

### 2.3.3 Licensing framework

	<b>NMC</b>	<b>NCA</b>
14. Licensing powers	None provided for in law.	- Section 9 of the NCA Act. - National Communication Regulation L.I 1719, 2003.
15. Classification or categories of licenses	Not applicable.	Classified in line with the National Telecommunications Policy (2005)
16. Requirements for licenses	Not applicable.	- Outline for Business Plan. - Guidelines for submission of Feasibility Report for Telecommunications projects. - Guidelines for submission of Feasibility Report for Broadcasting projects.
17. Licensing processes – public hearings and transparency	Not applicable.	-Guidelines do not provide specific criteria and requirements.
18. Power to issue Terms and Conditions of the service authorisation	Not applicable.	Section 9 of the NCA Act provides for the granting of a license by the Board.

### 2.3.4 Content Regulation

	<b>NMC</b>	<b>NCA</b>
19. Content Codes and Guidelines	Broadcasting Standards, Guidelines for Political Reporting incorporating Election Broadcasting, Guidelines for Publication of Rejoinders,	Not applicable
20. Content monitoring function	Not comprehensive but does undertake ad hoc undertake monitoring of particular stations, presenters or programmes of concern	Not applicable
21. Complaints handling and settlement	Complaints Settlement Procedure Regulations 1994 (LI 1587) Approach is arbitration oriented. No hard enforcement powers but 90% of complaints settled	Not applicable
22. Election broadcasting provisions	Covered by Guidelines for political reporting	Not applicable

### 2.3.5 Other regulatory powers

	<b>NMC</b>	<b>NCA</b>
23. Power to make regulations	NMC can initiate Constitutional Instruments within its mandate but does not have clear powers to make enforceable regulations	Section 41 of the NCA Act gives the Authority power to initiate Legislative Instruments to give effect to the Act including provision for fines and prison terms for contravention of regulations

### 2.3.5 Other regulatory powers (continued)

	NMC	NCA
24. List and documentation of regulations made	For broadcasting : - Broadcasting Standards - Guidelines for Political Reporting - Guidelines for the Publication of Rejoinders	- Technical Planning Guidelines - Guidelines for Broadcasting Services - Guidelines for the Operation of Community Radio Stations - Outline of business plan - National Radio Frequency Spectrum Plan - National Communications Regulations 2003
25. Enforcement provisions	May demand a correction, apology, publication of a rejoinder or disciplinary action (NCA Act Section 15).	Provided in the NCA Act and the Regulations including suspension or withdrawal of frequency

### 2.3.6 Radio frequency spectrum

	NMC	NCA
26. Frequency Spectrum planning and management	Not applicable	- National Radio Frequency Spectrum Plan (1996) - No published policy for broadcasting. - Technical Planning Guidelines for Radio and Television, March 2003.

### 2.3.7 Public consultative procedures

	NMC	NCA
27. Processes of making regulations/guidelines – public consultation/ participation	Consultation with media stakeholders	- Telecommunications stake-holders consulted within the industry through industry workshops
28. Power to conduct public inquiries on any matter	None prescribed in law	None prescribed in law

### 2.3.8 Financial arrangements

	NMC	NCA
29. Funding sources	Government (negotiation with Finance Ministry and approved by Parliament), some donor support	Regulatory Charges for Communication Facilities and Services (NCA, 2005) partly retained by NCA
30. Fees and charges	None levied on media industry bodies.	Regulatory charges for broadcasting frequency authorisation and other communications licences. Scale of broadcast application fees and annual fees from US\$ 1,000 to US\$ 17,000
31. Collection mechanism of fees	Not applicable	Fees paid to NCA bank account
32. Current annual budget	1.5b Cedis	Budget not provided

### 2.3.9 Operational arrangements

	<b>NMC</b>	<b>NCA</b>
33. Committee structure	Commissioners are overall governing body - 5 committees: Complaints Settlement, Legal, Media, Training and Relations, Finance and Administration. Committees are composed of Commissioners	Board and Sub Committees for: - Finance and Audit - Technical (evaluates applications and take decision on frequency authorisation) - Projects and Operational
34. Departmental structure	Executive Secretariat leads 5 departments: Complaints Settlement, Training and Relations, Technical, Media, Legal, Finance and Admin,	Departments include Regulation and Licensing, Frequency Management, Legal, Finance and Administration
35. Senior management	Executive Secretary, Deputy Executive Secretary (Operations), Deputy Executive Secretary (Finance and Administration), Director of Research and Monitoring	Director-General, Deputy Director-General, Directors for Regulation and Licensing, Frequency Management, Legal, Finance and Administration
36. Other personnel	Assistants, clerical and other ancilliary staff (~18 excluding Senior Management)	Around 50 staff total. Broadcasting Section has three engineers plus support staff

### 2.3.10 Other matters

	<b>NMC</b>	<b>NCA</b>
37. Research – social, economic, technical	Very limited research capacity.	Some technical and economic research.
38. International relations	Member of RIARC / ACRAN	WATRA, ITU, ATU, AFUR, CTO,

## **3. Recommendations**

### **3.1 *The Constitution and broadcasting policy***

#### **3.1.1 Introduction**

In this chapter we set out the issues to be considered in broadcasting reform and we make recommendations on the way forward. Our analysis identifies areas of concern which can be grouped in a series of questions:

- What are the purpose and goals of broadcasting regulation?
- What provisions are needed to improve the legal framework?
- Who should carry the associated regulatory responsibilities?
- What action is needed in the short, medium and long term?
- What are the resource requirements and constraints?

The first of these questions must underpin other considerations and needs to be answered with clarity, building not only on such policy as already exists but also anticipating future needs and trends. In doing so it is useful to draw on existing international law and best practice and we have done so in analysing the present legal and regulatory framework. Since Ghana is a Constitutional democracy we are obliged to look at what the Constitution tells us and whether and to what extent this provides an adequate foundation on which to build the necessary laws and regulations. We have also examined the purposes set out in existing laws and regulations and the policy documents of the National Media Commission and the Government of Ghana.

The consideration of purpose and goals must be informed by the present day social, cultural and economic context. What collective concerns and values need to be addressed, if not embedded, in the policy framework? The Ghana Advocacy Steering Committee for a New Broadcasting Law has engaged in extensive consultation through focus groups in different regions of the country as well as organizing a national stakeholders workshop. We are fortunate to be able to draw on the results of this consultation, with stakeholders and members of the public, to ground our assessment in people's real concerns and issues, shared values and differences, and perceived priorities for change.

We need to take account also of future considerations and the impact of new developments and opportunities on the nature of broadcasting regulation and the broadcasting landscape. The convergence of telecommunications and broadcasting technologies is leading policy makers worldwide to re-examine legislative separation between the telecommunications sector and broadcasting and to consider whether and to what extent regulation of communications as a whole, both content services and distribution, should be vested in one body with one overarching statement of purpose.

#### **3.1.2 Constitutional framework**

It is necessary to commence with the Constitutional provisions for human rights and freedoms set out in Chapter 5 of the Constitution and including the principle of "freedom of speech and expression, which shall include freedom of the press and other media" (Article 21(1)(a)). This is reinforced by Chapter 12 of the Constitution on "Freedom and Independence of the Media" which

states that “freedom and independence of the media are guaranteed” (Article 162) subject only to laws that are “reasonably required in the interest of national security, public order, public morality and for the purpose of protecting the reputations, rights and freedoms of other persons”.

In addition the Constitution provides, in Chapter 6, a framework of political, economic, social, education and cultural objectives to guide “in applying or interpreting this Constitution or any other law and in taking or implementing any policy decisions, for the establishment of a just and free society”.

During the course of conducting the study the team heard suggestions that the Constitution itself may need to be changed in order to provide an improved basis for the regulation of broadcasting. The human rights provisions in Chapter 5 of the Constitution are “entrenched provisions” which can only be amended by referendum and which are neither appropriate nor feasible to amend in the furtherance of broadcasting reform. Although there are some improvements to Chapter 12 that could be considered desirable for legal clarity, they are not essential in current circumstances.

In the medium to longer term technological and regulatory convergence might lead to the re-examination of Constitutional provisions with a view to develop a more comprehensive framework for the wider communications sector.

***No Constitutional change is necessary in the short to medium term and the existing Constitutional framework should be assumed to be the basis for broadcasting policy and new broadcasting legislation.***

### **3.1.3 National Media Policy**

In Ghana the Constitution confirms the establishment of the National Media Commission (NMC) whose functions include “to promote and ensure the freedom and independence of the media” and “to ensure the establishment and maintenance of the highest journalistic standards in the mass media”. It is clear, in this respect, that the NMC is the Constitutional custodian of media freedom and independence and of the quality of the media landscape.

The NMC has prepared a National Media Policy which sets out a vision animated by “the well-being of all our people and the continuing vitality of our culture” and published by the Commission in 2000. It provides a series of clear and succinct policy statements applicable to all media, together with more detailed provisions for the broadcast media. The policy statement for broadcasting sets out general principles as follows:

The basic resource of broadcasting, be it airwaves or the broad expanse of space, belongs to the Ghanaian people. The policy challenge for the broadcast media is to utilize this basic resource in such a way that value is added to the quality of life of all Ghanaians and to society and the economy as a whole. Broadcasting, even more than other public media, shall operate on the understanding that it is a public trust. In the discharge of this trust in an open, democratic society, public, commercial and community broadcasting play different but complementary roles.

The National Media Policy provides a good policy foundation for broadcasting development and several of its key provisions, such as the recognition of three broadcasting sectors (public, commercial and community) have already

been integrated into the National Telecommunications Policy. There are some new areas, such as digital broadcasting, that are not addressed but the document, nevertheless, provides the basis for the development of broadcasting policy and a point of reference for all stakeholders.

***It is appropriate for the National Media Policy to be used by all stakeholders as a key policy reference document for the future development and the regulation of broadcasting in Ghana.***

## **3.2 Towards a new legal framework**

### **3.2.1 Constitutional basis for broadcasting regulation**

It is widely recognized that in a democratic country with an independent broadcasting sector, one of the guarantees of independence is the existence of an independent regulatory body to manage the issuance of broadcasting authorisations and to oversee the broadcasting sector.

The Constitution provides for the independence of the NMC's functioning. However, its powers to effectively regulate the sector are limited and have not been developed further by statute, except with respect to its function in the investigation, mediation and settlement of complaints. While this is an important function, it is not in itself a sufficient means to guarantee the freedom and the independence of the media, nor does it enable the NMC to establish and maintain the highest journalistic standards in the mass media.

The important regulatory function of providing or denying authorisation to broadcast has been assumed by the National Communications Authority (NCA) by virtue of its technical responsibilities for the radio frequency spectrum. While the establishment of the NCA demonstrates evolution from a previously departmental body, the Ghana Frequency Regulation Management Board, to a non-departmental body, the NCA still lacks guarantees of independence and can be subject to directions from government. Additionally the NCA does not have a mandate, and hence not the capacity, to assess broadcast proposals from the point of view of content since the Constitution places this in the purview of the NMC. Assessment of the content objectives of broadcasting service proposals is an essential component of regulation in the public interest in order to ensure a range and diversity of programme services and to ensure a high standard of service provision.

***The National Media Commission should be empowered through appropriate legislation to assume its Constitutional mandate as the primary body with responsibility for the regulation of broadcasting.***

### **3.2.2 Broadcasting service authorisation**

The present division of responsibilities in the regulation of broadcasting has left a regulatory vacuum which needs to be filled if broadcasting regulation is to operate in the public interest. On the one hand the NCA has responsibility for frequency authorisation but it has no powers to include content-based criteria in the selection between different proposals from aspirant broadcasters. NCA recognises that content-based decision making falls outside its mandate. On the other hand, the NMC, which clearly has a mandate to promote high-quality content, is not empowered to authorise the use of a frequency which is essential to any broadcast content proposal if it is to reach an audience.

In most countries this issue is resolved through either having a single regulatory body, responsible for broadcast content regulation and for broadcast frequency authorisation, or through a joint process in which frequency assignments are made by a body responsible for frequency management on the basis of a decision by a broadcast regulator to authorise a broadcast content proposal.

We have considered the option of a single regulator. This is an increasingly common approach taken by other countries, particularly where broadcasting and telecommunications regulation have been converged into one body as, for example in South Africa, the United Kingdom and the USA. While this may be a desirable solution in the medium to long term it would, in our assessment require Constitutional reform and a prior period of joint working between the NMC and NCA. In the short to medium term we therefore consider a joint process, in which the different responsibilities are clear set out in law, as being the most straightforward solution to filling the regulatory vacuum.

This would require the creation of a new form of content-based selection to be conducted by the NMC and which, together with other social and economic criteria, would form the primary basis for establishing who is able to provide a broadcast content service. Content criteria would not be prescriptive or exclusive but designed to promote a range and diversity of services of a high quality. The further benefit of this approach is that it establishes a clear contractual relationship between the NMC, as broadcast content regulator, and the broadcaster. This brings greater legal clarity to the broadcaster's content obligations. For example, the requirement to abide by broadcast standards and other codes of practice can be included in the conditions of authorisation as can a general description of the content that the broadcaster has proposed to provide. The latter description, termed a "promise of performance" can be used to ensure that a broadcaster does not obtain authorisation to broadcast under one pretext and then proceed to offer a different content service from that which had been indicated.

***The current NCA procedures for "frequency authorisation" (set out in the National Communications Regulations 2003) should be replaced by a new procedure for "broadcasting service authorisation" under the regulatory responsibility of the NMC. This new procedure should provide for the inclusion of content in the criteria for decision.***

### **3.3 Regulatory powers and responsibilities**

#### **3.3.1 Additional regulatory powers of the NMC**

A new procedure of broadcasting service authorisation under the regulatory responsibility of the NMC would enable new powers and responsibilities to be introduced into the regulatory system that are not currently available. The NMC could be empowered not only to receive and to accept or to reject proposals for broadcasting services but also to ensure broadcasting service providers deliver on their promises of performance and that they comply with relevant regulations on broadcasting service ownership. This would assist in assuring the quality and diversity of services available and addressing issues such as media concentration, cross-ownership and foreign ownership, which are important matters impacting on media freedom and independence.



***Provision should be made in law for the National Media Commission to carry out the following additional regulatory functions:***

***authorisation of broadcasting services, including setting of terms and conditions for such services and ensuring compliance  
regulation of ownership and control of broadcasting services  
regulation of “promises of performance”***

### **3.3.2 Additional NMC powers of sanction**

During the course of our study we heard concerns frequently expressed that NMC powers for regulating content and settlement of complaints are not sufficient to deal with content-based problems such as the use of sound broadcasting services to carry sectarian messages. The NMC itself has suggested it needs more resources to undertake systematic monitoring. We are not convinced that this is the most efficient solution. The most effective monitoring service is that provided by viewers and listeners themselves. However, for viewers and listeners to take steps to making a formal complaint they must have recourse to a body whose function is widely understood and respected and which is capable of taking effective action where action is necessary. The NMC’s current powers of sanction are weak and could be strengthened to allow it to impose a financial penalty or, in extreme cases, to suspend or withdraw the authorisation to broadcast. Such increased powers would need to be balanced by the provision of a formal appeals process within the NMC procedure as well as the right to seek judicial review.

***Amendments should be made to the National Media Commission Act to strengthen its powers of sanction and to provide for a formal appeals process in relation to NMC rulings on complaints.***

### **3.3.3 Maintaining effective spectrum management**

The replacement of the current process of frequency authorisation by a new process of broadcasting service authorisation under the regulatory responsibility of the NMC would require careful attention to assuring the continuation of effective procedures for frequency assignment and spectrum management. The NCA is the agency with the technical capacity in this area and we see no reason to remove this function from the NCA. Instead we propose that the NCA continue to be responsible for assignment of broadcast frequencies but that it do so within the context of a broadcast spectrum plan agreed with the NMC. This would enable frequency assignments to be issued on request from the NMC following an NMC decision to offer a broadcasting service authorisation. The NCA would then be responsible for providing to the NMC the technical parameters to be included in the agreement with the broadcaster for a broadcasting service authorisation.

**The NCA should continue to hold responsibility for setting the technical parameters for broadcast frequency assignment to ensure that broadcast signals do not interfere with one another or with other users.**

In addition to the need to avoid interference between different domestic users of the radio frequency spectrum, the NCA is currently responsible for international frequency clearance negotiations such as arise where a frequency in use in Ghana might interfere with its use in a neighbouring State.

**The NCA should continue to hold responsibility for the negotiation of international frequency clearance for broadcast frequency assignments as with other radio frequency assignments.**

An important aspect of avoiding interference between spectrum users is not only to define the technical parameters but to ensure they are respected. The NCA is the only body with capacity to properly monitor technical infringements and it should continue to perform this function including site visits to broadcasters and monitoring in response to complaints of a technical nature.

**The NCA should continue to hold the responsibility for monitoring technical infringements with respect to the technical parameters of frequency assignments for broadcasting services.**

In most circumstances a technical infringement can be addressed by a warning letter, advising the service provider of the infringement and requesting compliance. In some cases, for example persistent infringement or technical interference that causes serious harm to other users, it may, very occasionally, be necessary to suspend a broadcaster's authorisation until the matter is resolved. The consequence of such action would be to remove a broadcast content service and it should therefore only be undertaken with the agreement of the NMC and within strictly defined rules and procedures.

**Sanctions with respect to technical infringements of a broadcasting service authorisation should be implemented only with the prior authorisation of the NMC, except in the case of serious interference causing immediate harm to other users, in which case the NCA should be able to act to suspend the service pending a decision of the NMC.**

#### **3.3.4 Studio technical requirements**

The NCA currently requires broadcasters (radio and television) to comply with detailed technical specifications for studio and other recording equipment for content production. In a plural media landscape, including commercial and community broadcasters with limited budgets, these requirements can prove unnecessarily onerous and most broadcast regulators no longer impose such obligations. The quality of studio production of a broadcaster does affect the perceived quality of the content for the listener or viewer but it does not affect the transmission signal in any way that can cause harm to other spectrum users. These regulations are therefore not required to assure the proper management of the radio frequency spectrum. It is generally accepted today that broadcasters should determine their own choice of studio and recording equipment and the associated technical standards of production.

***Technical standards for broadcasters that are not connected to the use of radio frequencies, including standards for studio and other recording equipment, should cease, with immediate effect, from being part of the regulatory requirements for broadcasting services.***

#### **3.3.5 Future spectrum planning**

If the NMC is to assume the role of broadcasting service authorisation it will need to do so within the framework of a spectrum plan for broadcasting which should be established on the basis of policy priorities as well as technical constraints. Choices may need to be made, for example, between using frequencies for urban services, or rural services in the periphery of urban

areas. Choices will need to be made in determining the typical coverage radius of public, commercial and community broadcasting services. There may be spectrum opportunities for the introduction of additional national services but this would be at the expense of a potential tier of local services. In this respect the planning of the broadcasting spectrum is a policy decision that substantially affects the services, and therefore the content, that will be available to the viewer and listener. These issues apply not only to the current analogue spectrum but also to the use in the future of frequencies assigned for digital broadcasting.

The NMC should therefore establish a policy and plan for use of the analogue and digital broadcasting spectrum within the technical constraints of available spectrum and designed to bring the greatest benefit in the provision of a diversity of content to viewers and listeners. The NCA should work with the NMC on this exercise to ensure it takes account of international technical recommendations and current best -practice on spectrum re-use and avoids planning which could interfere with non-broadcast spectrum users.

***The NMC should develop, through a public participatory process and in consultation with the NCA, a plan for the use and development of that part of the radio frequency spectrum that is assigned to broadcasting in the Ghana National Frequency Plan, including a future plan for digital broadcasting.***

The need for joint planning driven by broadcast policy considerations and by technical studies would indicate the need to put in place institutional mechanisms for collaboration between the NMC and the NCA which could be easily set out in an inter-agency Memorandum of Understanding and which would include annual review of the implementation of spectrum planning.

***Consultation on broadcast spectrum planning and assignment should be institutionalised in the form of a Joint Frequency Planning Group consisting of representatives from both agencies.***

### **3.4 Governance of the regulatory bodies**

#### **3.4.1 Governance of the NMC**

For the NMC to assume the additional regulatory responsibilities proposed it will need to strengthen its present governance arrangements. There is a need to ensure the recruitment to the NMC of individuals of a high calibre with relevant professional experience. The present appointments process leaves it to individual constituencies to determine their nomination procedure. However, this could be supplemented by guidelines for recruitment of Commissioners. The Commissioners are not “representatives” of the constituencies but are appointed as individuals and the constituency organisations should use their nomination powers to ensure a broad-based NMC including relevant legal, media, regulatory and other expertise.

***The NMC should undertake a joint review with its constituencies into the criteria and procedures for recruitment of Commissioners with a view to establishing a common set of guidelines for selection to improve transparency and to better ensure a Commission that is broad-based and includes relevant legal, media, regulatory and other expertise.***

As presently determined by the Constitution the NMC is a body of 18 Commissioners which can be an unwieldy number in respect of effective decision-making and leadership. While any reduction in number would require Constitutional change and hence is not deemed practical in the short to medium term, NMC governance could be served better by some delegation of powers to committee level including a smaller Executive Board. This change could be effected by amendment of the existing NMC Act and would not require Constitutional amendment.

***The existing NMC Act should be amended to bring greater clarity to the committee structure and to strengthen NMC governance including an Executive Board to drive policy and performance.***

The introduction into the functioning of the NMC of new regulatory powers with respect to broadcasting may raise some issues of potential for conflict of interest and commercial confidentiality, particularly with respect to individual Commissioners with connections to the broadcasting industry. The NMC Act makes provision for the handling of conflict of interest. Good practice would also be served by the NMC adopting a more detailed code of conduct with respect to the Commissioners Constitutional and statutory responsibilities.

***The NMC should conduct and a review of internal policies and procedures with respect to roles, responsibilities and code of conduct of Commissioners including handling of conflicts of interest.***

### **3.4.2 Governance of the NCA**

We have noted that although the NCA is a non-departmental public body constituted by statute it does not have full independence from Government since Board members are appointed directly by the President, there is no independent scrutiny over the nomination of Board members and there remain powers of the Government to give directions to the NCA. Reform of the NCA Act would give stronger guarantees of independence and be in line with international best practice. In this context the amended NCA Act should clarify that the NCA's principal purpose is to serve the public interest. These changes would also facilitate future convergence between broadcasting and telecommunications regulation.

***The NCA Act should be reformed including changes to the governance of the NCA to guarantee its independence from government and to establish a principal purpose of serving the public interest.***

## **3.5 Planning for future broadcasting development**

### **3.5.1 Development of sound broadcasting**

The development of sound broadcasting in Ghana has proceeded, since 1996, in a manner that has brought a new freedom to establish independent broadcasting services and a large number of new commercial services have started, mostly concentrated in major urban areas. In Accra and Kumasi, in particular, this is beginning to lead to some congestion of the radio frequency spectrum. Community radio, on the other hand, is relatively under-developed and is an area with considerable potential especially with respect to providing services that empower marginalised groups and rural communities.

To date, the development of independent broadcasting has been somewhat *ad hoc*, reflecting a period that has been described to us as “seeing what emerges”. With spectrum becoming scarce in some areas, and with better understanding of the gaps in the types of broadcasting services being provided, it will be useful to introduce some policy-based planning into the future use of spectrum for sound broadcasting. Planning should remain flexible to respond to demand but should, at the same time, provide a broad public-interest driven policy and frequency planning framework in which services can develop. In particular it should seek a more equitable distribution of frequencies between public, commercial and community services.

***The NMC should commence a public consultation process on the development of sound broadcasting services leading to a plan for the future development of public, commercial and community services.***

This could usefully build on the findings of consultations already organized by the Ghana Advocacy Steering Committee for a National Broadcasting Law. In the meantime, there is no need to suspend current development while future plans are fine-tuned. In particular, we believe encouragement should be given to the development of new community radio services, particularly as this fits well with Government support for community-based empowerment in poverty reduction. The criteria developed by Ghana Community Radio Network reflect good practice in the purpose and operations of community radio.

***Pending legislative change and a future plan for sound broadcasting services, the NCA should give an immediate priority to the authorisation of new community radio services based on and guided by the criteria developed by the Ghana Community Radio Network.***

In developing community radio the NCA has recently suggested it could be limited to a 5km radius. Generally, and particularly outside urban areas, this would be likely to prove an unreasonable limitation which would undermine the viability of community radio services and their social and developmental objectives. Rural communities, in particular, are quite widely dispersed and would need a much greater coverage area for the community radio service to have a viable community base.

***The development of community radio should permit transmission coverage appropriate to the community intended to be served and taking account of the different needs of urban and rural services.***

### **3.5.2 Planning for digital broadcasting**

During the course of our enquiries we heard some interesting statements about the impact of the introduction of digital broadcasting systems. There is some international pressure to accelerate transition to digital systems mainly because of the spectrum that would be released and that could be re-used for mobile telephony. While there may be short-term revenue to the Government to be made from the sale of spectrum there are also significant social and economic costs associated with the replacement of analogue television receivers with more expensive digital receivers. There are also significant costs for television operators in conversion to digital transmission. If not handled carefully the transition to digital can result in viewers losing services that are currently available to them and being left with a blank screen, without understanding or being able to afford to change to the new technology.

***The NMC should review existing studies and commission additional social and economic research into digital terrestrial television broadcasting including feasibility assessment and cost benefit analysis of introducing switchover from analogue to digital distribution. This should be carried out in consultation with broadcasters and the NCA.***

In the case of the transition to digital sound broadcasting, we noted that this was given, in September 2005, as the reason for an NCA “freeze” on further spectrum authorisations for commercial radio services. However, most governments have no short or medium term plans to switch existing analogue sound broadcasting spectrum over to digital sound broadcasting or any other use. Instead they are using additional spectrum for the development of digital sound broadcasting and only have very long term plans, if any, for phasing out analogue FM. It is not even clear at this time which digital technologies are most likely to emerge internationally as the market leader.

***For the purpose of medium-term planning of the development of FM sound broadcasting, the impact of new digital distribution systems should be discounted and, instead, a “wait and see” approach should be taken to the emergence of digital sound broadcasting.***

### **3.5.3 Future of public service broadcasting**

We have not conducted detailed analysis of the functioning of GBC however it is apparent from our enquiries that there are a number of issues that need attention if GBC is to maintain its position in the broadcasting landscape and to be a true public service broadcaster. Under the Ghana Broadcasting Corporation Decree 1986, GBC does not have a well-defined public service mandate and in particular the boundaries between its commercial and non-commercial activities are not clear. The decline of public revenues, and particularly the decreasing value of the television receiving set licence fee, has led GBC to rely increasingly on commercial revenue with a consequent reduction in public service programming. It is also struggling to maintain existing services and has been slow to develop online and digital services.

The NMC has powers to appoint (and to remove) the Board and Chief Executive of GBC but it could also take a legitimate interest in the wider policy framework within which GBC operates. GBC remains Ghana’s largest broadcasting organisation with substantial funding from Government. Its future is a matter of public interest that merits wider public discussion.

**The NMC should commence a public consultation into the future of GBC with the aim of developing a new statute for GBC with a clear and more detailed public service broadcasting mandate. The consultation should have particular regard to consulting on GBC’s public service responsibilities and performance, its commercial activities, the development of GBC online and digital services and its future funding.**

## **3.6 Resource requirements**

### **3.6.1 Building NMC capacity**

The NMC has a short fall in capacity for its existing regulatory functions. An increase in its regulatory responsibilities would require a substantial gearing up of the organisation. This would require additional professional and

administrative staff including additional legal, research, policy development, monitoring and technical capacity.

***The NMC should recruit a Technical Director with know-how in the area of radio frequency engineering, a Legal Advisor with know-how in the media industry and additional professional and administrative staff sufficient to operate an increased regulatory workload.***

The NMC might also benefit in the short term from a secondment to provide support in institutional development and putting in place of new regulatory systems. This could assist in building capacity across the organisation.

***Options should be explored for recruiting and funding the short term secondment to the NMC of a high level professional with experience in regulatory systems and institutional development***

### **3.6.2 Building NCA capacity**

Providing additional powers of broadcasting regulation to the NMC would require a closer working relationship between NMC and NCA. Each institution would need to understand the function of the other and the legal and policy framework within which it operates. This know-how could be introduced through training of existing personnel and/or through recruitment of new personnel. For NCA. existing personnel, with some training and orientation, could assume the roles of liaison with NMC.

***NCA staff working on broadcast frequency assignment should receive orientation and training to better understand the policy goals and functions of public interest broadcasting regulation.***

### **3.6.3 Funding of the NMC**

The current government financial support to the NMC is not sufficient for the changes proposed and additional funding would be needed. This could partly come from an increase in government support but the NMC should also build capacity to achieve a higher level of internally generated funding.

This could come in part from annual fees paid by broadcasters. Currently the NMC provides a complaints settlement service to the broadcasting industry but it receives no fees for doing so nor is it able to levy fines which could also be a significant source of revenue. The creation of a broadcasting service authorisation responsibility would enable the NMC to establish a contractual relationship with broadcasters including the receipt of application fees and annual regulatory fees. These fees would replace the current frequency authorisation fees levied by the NCA. For the NCA this represents only a very minor part of its revenue with the major part coming from telecommunications licensing. NCA could be commensurated for its provision of technical service for broadcasting regulation through a commensurate increase in its funding retained from telecommunications licensing fees.

In addition we believe the NMC is under-exploiting the potential for donor support and, whilst it should avoid dependence on external donors, this can be a means to support project-based work such as research reports, development of codes of practice, publications and public consultation. There is also scope for external funding of the investment costs associated with the NMC's institutional development such as training and technical assistance.

We envisage revenue of the NMC would need to approximately double in the short term (2003 income: cedi 1,109m), in comparison to its present income and expenditure, with around one third each coming from broadcaster fees, donors and increased government support. In the medium term further revenue increases would come from additional broadcaster fees.

***There should be an increase in government funding to the NMC to be matched by internally generated funding through service authorisation fees paid by broadcasters (currently paid to the NCA for frequency authorisation) and additional donor support for short-term projects including development of the NMC's institutional capacity.***

#### **3.6.4 Funding of GBC**

We have commented above on the need for a review and public consultation on GBC and one aspect of such review must be its funding and associated guarantees of independence. GBC currently has in place a collection mechanism for the television receiver set licence fee but inflation of several years has reduced the value of the fee to less than the costs of collection. The licence fee remains a potentially valuable mechanism for funding GBC. It can contribute to the financial independence of the broadcaster without compromising commitments to public service broadcasting. While other potential mechanisms exist such as a levy on electricity bills, the licence fee has proved to be a resilient mechanism in other countries. In the case of GBC, this collection mechanism is already in place. What is needed is for the fee to be increased to a level that generates significant revenue without being so great an increase as to cause hardship for television viewers.

***Parliament should take immediate steps to update the licence fee to a viable level with a built-in protection against inflation.***

#### **3.6.5 NMC and GBC staff remuneration**

In our discussions with NMC and GBC attention was drawn to a structural problem in the recruitment of people of sufficiently high calibre to meet the specifications of senior professional positions. The payment of salaries through the public servant payroll and linked to public service scales has meant that the institutions are unable to compete with rates of pay in the private sector for similar work. This is a difficult problem to address but it presents a significant risk to other efforts to build capacity through staff appointments and additional funding. Rapid growth in the commercial communications sector would justify giving this issue special consideration and it is a factor that is increasingly taken into account in other countries.

***There should be a review of terms of remuneration of senior staff in NMC and GBC to ensure they are competitive with industry standards and sufficient to recruit qualified professionals.***



## **4. Implementation**

### **4.1 Implementation strategy**

#### **4.1.1 Ensuring engagement of all stakeholders**

The implementation of the recommendations set out in Chapter 4 will require the commitment and the concerted joint effort of all major stakeholders. The Ministry of Communications and the Ministry of Information will need to work closely together to drive the process and to ensure political coherence. The National Communications Authority and the National Media Commission will need to put aside past differences in order to work together on a common strategy including putting in place mechanisms for inter-agency coordination.

The support of broadcasting industry stakeholders will be vital and this should build on the regional and national consultations that have been organised by the Ghana Advocacy Steering Committee for a New Broadcasting Law. Industry stakeholders including GBC, commercial and community broadcasters will need to be closely consulted in the drafting of broadcasting legislation. Given the public interest in broadcasting and broadcast content regulation efforts also be made to ensure participation beyond the broadcasting industry groups and to include wider civil society interests.

#### **4.1.2 Working with the e-legislation process**

Work is at an advanced stage in the drafting of a series of e-legislation initiatives. These include draft Bills on e-commerce, data protection, telecommunications and the National Communications Authority. Drafting on new telecommunications legislation is expected to lead to amendment of the National Communications Authority Act 1996 and the repeal of the National Communication Regulations 2003. This will necessarily require attention to the future arrangements for broadcasting regulation since the 2003 Regulations include the current procedures for broadcasting frequency authorisation. There appears to be two options available:

**Either:** Inclusion of new broadcasting legislation within the Telecommunications Bill. The draft legislation could be titled Communications Bill reflecting a step towards regulatory convergence with a part of the Bill focussing on broadcasting, particularly the regulatory framework for broadcasting and strengthening of the powers of the NMC;

**Or:** Preparation of a separate Broadcasting Bill.

The first option would have the benefit of building on an existing process underway and would assist in avoiding any possible conflict which might arise between legal provisions for telecommunications and those for broadcasting. This option would require the two Ministries responsible (Communications and Information) to work closely together in the drafting of the Bill and the work would need to be ready to proceed to a timetable already in place.

The second option of a stand-alone Broadcasting Bill would provide greater flexibility and a less pressured timetable but would still require close coordination with the work currently underway on a Telecommunications Bill.

Whichever option is chosen there should remain scope for further regulatory detail to be addressed in secondary legislation in the form of a Legislative Instrument. This would need to be prepared alongside the primary legislation. Annex A presents framework recommendations for the content of the primary legislation with sections that would be needed and issues to address.

The legislative drafting would most appropriately be done by Ghanaian experts. The Study team would be available for discussions and clarifications with the local drafting team. The Ministry of Communications and the Ministry of Information would need to be involved in reviewing the draft and especially in stakeholder consultations on the proposed legislative content.

#### **4.1.3 Building human and institutional capacity**

Successful implementation of the proposed new legal and regulatory framework will require significant commitments to capacity-building that would need to commence in advance of legislative change.

The NMC will need additional human resources including a Technical Director, a Legal Advisor and additional policy, research, monitoring and other support staff. The Technical Director would be responsible for development and implementation of a frequency plan, liaison with the NCA on technical matters and research into the impact of new transmission technology. Existing NMC staff would need training in new regulatory procedures including processing of broadcasting service proposals. Existing monitoring and complaints procedures would also need to be reviewed to become more efficient and more responsive. Total staffing at the NMC could increase from 22 to around 50. Secondment to the NMC of a Development Advisor could assist the process of change, including the review of existing procedures, the integration of new functions, provision of advice on incremental staffing requirements, and institution of an iterative review and adjustment process.

In addition to staff recruitment and training, change would be needed in the organisational structure of the NMC with a clearer separation of roles between the Commissioners and the executive staff. Day to day regulatory and other operations would need to be delegated to the Executive Secretary/Chief Executive together with other senior executive staff. This would require clearer demarcation of departmental responsibilities.

The role of Commissioners would need to be reviewed, along with the committee structure and frequency of meetings. The Commissioners responsibilities should be primarily those of appointment, oversight and regulatory adjudication with executive staff responsible for research, investigation and initial assessment of proposals and complaints. An Executive Board of three or four Commissioners and two or three senior executive staff could assist in driving NMC policy and performance.

The NMC and NCA would need to put in place systems for coordination and joint working, including the arrangements for NCA to provide advice and support to NMC, the system for NCA frequency assignment based on NMC's broadcasting service authorisations, and procedures to ensure technical compliance of broadcasting service providers. Joint working could be assisted with additional staff training and exchange. This would aim to build the technical capacity of the NMC and to ensure effective inter-agency working.

#### 4.1.4 Financing arrangements

Short-term financing would be required to meet the initial costs of implementation including work on drafting the new legislation, advice in restructuring of the NMC and commissioning studies and reviews.

The immediate and critical priorities would be:

- drafting work on the new legislation
- secondment of an institutional development specialist to the NMC
- review of NMC code of conduct for Commissioners
- review of NMC recruitment procedures for Commissioners
- training and capacity building of NCA and NMC staff

At an early stage the NMC should have financial and staffing capacity for:

- preparation of a frequency plan for broadcast development
- public consultation on the future of GBC
- preparation of a policy for the future of sound broadcasting
- research into the transition from analogue to digital television

In the medium to long term the conduct of studies and enquiries and the additional regulatory responsibilities would lead to an increase in the funding requirements of the NMC. It is reasonable to assume that NMC's budget would need to double within three years. Its income would need to come partly from increased government funding, partly from internally generated funding from fees paid by broadcasters, and partly from external donor support. While more detailed analysis will be needed, based on an institutional development program, provisional estimates for the current and next two years budget could be as follows:

<b>NMC</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
	<b>m Cedi</b>	<b>m Cedi</b>	<b>m Cedi</b>
	<b>(US \$,000)</b>	<b>(US \$,000)</b>	<b>(US \$,000)</b>
<b>Income</b>			
Government of Ghana	1,300 (144)	1,700 (189)	1,900 (211)
Broadcaster fees	0 (0)	400 (44)	900 (100)
External donor support	10 (1)	800 (89)	600 (67)
<b>Total income</b>	<b>1,310 (145)</b>	<b>2,900 (322)</b>	<b>3,400 (378)</b>
<b>Expenditure</b>			
Staff salaries and benefits	300 (33)	700 (78)	900 (100)
Administrative expenses	700 (78)	1,000 (110)	1,200 (133)
Service activity (inc NCA)	100 (11)	600 (67)	800 (89)
Studies and enquiries	210 (23)	600 (67)	500 (56)
<b>Total expenditure</b>	<b>1,310 (145)</b>	<b>2,900 (322)</b>	<b>3,400 (378)</b>

Including the costs of employing additional staff we estimate additional external financing would be needed in the region of Cedi 1.4 billion (US \$ 156,000) over two years. External support for incremental operating costs would need to be on a rapidly declining basis. It is likely that the governmental budgetary allocation will need to increase correspondingly, with a levelling off as the revenue stream increases from commencement of broadcaster fees. In

the medium to long term external support would be used for studies and projects and not for core activities.

## 4.2 Indicative Timetable

### 4.2.1 Preparatory phase

If the Ministries of Communication and Information concur on the substance, the preparatory phase leading up to legislative change will need careful attention to timetable and sequencing over a period of six months from November 2005 to April 2006. The key milestones over this period would be the publication of a Bill in Parliament (anticipated in February 2006) and the approval of the Bill as an Act of Parliament (anticipated in April 2006). A timetable setting out the main activities in this phase is provided below.

<b>Preparatory phase</b>	Nov	Dec	Jan	Feb	Mar	Apr
MoC and MoI prepare outline						
Consultation with broadcasters						
Draft broadcasting legislation						
Draft Legislative Instrument						
Parliament debates/approves Bill						
Parliament debates/approves LI						
Review NMC recruitment						
Review NMC code of conduct						
NMC institutional development						
<b>Key milestones</b>						
Publication of Bill				◆		
Act of Parliament						◆

### 4.2.2 First-year implementation

Subsequent to passage of the legislation, NMC in particular would need to move rapidly to put in place additional staff and new regulatory procedures, so that it could properly exercise its new regulatory powers when these would become NMC's responsibility. It should also commence a series of studies and reviews on the future of broadcasting in Ghana, in order to set medium and long term policy objectives in consultation with stakeholders. The following timetable assumes the NMC is vested with new powers effective July 2006. It is indicative and assumes that external resources to support NMC institutional and capacity development would be available when the proposed legislation becomes effective. Consultations into digital television would be carried out over an extended timeframe commencing with a review of existing work.

<b>First year implementation 2006/2007</b>	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar
NMC institutional development				
NMC staff recruitment				
NMC regulatory procedures				
NMC sound broadcasting policy				
NMC digital television policy				
NMC consultation on GBC				
NMC complaints settlement				
NMC new regulatory functions				
NMC/NCA joint frequency plan				
NMC/NCA joint planning group				
NCA capacity building				

<b>Key milestones</b>	
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New powers vested in NMC	◆
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### 4.2.3 Future considerations

In the medium term the NMC would need to ensure it could effectively process a substantially heavier workload than at present, including handling increased numbers of complaints and processing broadcasting service applications. It would need to establish an annual planning and reporting cycle, with the annual planning process open to public participation, and it should retain capacity in any given year to manage two or three strategic studies or consultations.

In the longer term, further consideration should be given to assessing the potential benefits of a merger between the NMC and the NCA particularly in the context of new technological developments in broadcasting and communications. This would almost certainly require Constitutional change in view of the Constitutional status of the NMC. A decision to go down this route would require planning over a two to three year period including legislative and Constitutional reform and integration of NMC and NCA functions.

## 4.3 Risks

### 4.3.1 Political factors

The implementation strategy depends on concerted commitment from all stakeholders. The parliamentary and electoral cycle sets timing constraints. Linking of broadcasting to telecommunications legislation will further narrow the window for legislative change. Implementation will need clear political leadership to avoid slippage and to ensure policy coherence across governmental departments. The regulatory bodies will need to be closely involved in the preparation for and implementation of the new legislation and must be fully committed to the process and its intended outcomes. Close consultation with broadcasting sector stakeholders, including members of the public, will also need to continue throughout, to ensure those affected by legislative change understand and, where necessary, are able to adapt to what is being proposed.

### 4.3.2 Operational factors

At the preparatory stage the critical operational factors will be the capacity to prepare draft legislation, to conduct effective consultations and to enable the NMC to commence work on institutional development and capacity building. As noted above, after Parliamentary approval of the new legislation, the NMC would need to move rapidly on the recruitment of additional staff, commencement of studies and reviews, putting in place of new regulatory procedures and the conversion of existing frequency authorisations to the new Broadcasting service authorisation. These all require forward planning to put into place. In both the preparatory phase and the first year of implementation, resources will need to be available in advance of new revenue streams coming online from broadcaster fees. This will require additional financial support to be available when needed, either from government or external donors or a combination of both.

## **4.4 Conclusions**

### **4.4.1 Summary and next steps**

With the concerted support of all stakeholders, the recommendations and implementation strategy set out in this Study present a viable approach to improve the legislative and regulatory framework for broadcasting in Ghana. The implementation plan will require significant investment particularly in the transitional period of institutional development that will need to accompany the vesting of new powers in the NMC. The timetable for implementation is linked to the wider agenda for e-legislation. Addressing both broadcasting and telecommunications in a broader Communications Bill may assist in anticipating future technological convergence. Detailed legislative drafting will be required to take this work forward. This will need to be backed-up by close consultation with the all major stakeholders, followed by informed consultations with legislators. The implementation programme - focussing principally on institutional strengthening of NMC, technical support and consultations needed to develop policies, plans and strategies for the sector - will need to be costed and an appropriate source of external funding determined and agreed.

### **4.4.2 Concluding remarks**

Ghana has developed a dynamic and plural broadcasting landscape over the last 10 years. This has come about through a liberal regulatory approach that has opened the door to new actors and enabled commercial broadcasting to take root. Community broadcasting is much less developed but has already demonstrated its vital role in reaching out to rural communities and poor and marginalised groups. The approach taken has given Ghana the flexibility to test out different broadcasting approaches and to move beyond the era of a monopoly state broadcaster. There is an acknowledged need now to put in place clear and robust regulatory procedures that will enable Ghana to build on these achievements. The analysis and recommendations of this Study aim to support the growth of a diverse broadcasting landscape that can sustain Ghana's cultural heritage and contribute to its future development priorities.

## **Annexes**

## Annex 1. Proposed Content for Broadcasting Legislation

This annex provides advice on the structure and content of broadcasting legislation for Ghana, reflecting an amalgam of global good practices directly relevant to the Ghanaian context. The information is intended as a framework for the Ghanaian legal drafters' use. For the sake of conciseness, it is presented in a table, with chapter and section titles on the left, and brief explanations of the sections' intent on the right. If the legal drafters would find it useful, the Bank will arrange for conference calls and other discussions to provide clarifications during the drafting process. [Please refer to Section 1.5 of this report (pages 14 - 31) for references to good practice examples discussed in the draft *Guide to Good Practices on the Enabling Environment for Voice and Media*, which informed the content below.]

Chapter and Section Titles	Explanatory Notes
<b>CHAPTER I: BROADCASTING SERVICE AUTHORISATION</b>	
1. Prohibition on provision of broadcasting service without authorization	This section would establish the need to obtain a broadcasting service authorisation.
2. Categories of broadcasting service authorization	This section would set out the categories of authorisation including public, commercial, community, institutional and temporary.
3. Application procedure in relation to broadcasting service authorisation	This section would set out procedures for a broadcasting service authorisation.
4. Hearings in relation to applications for broadcasting service authorisation	This section would provide for the option of public hearings to be conducted before issuing a broadcasting service authorisation.
5. Entitlements under and conditions pertaining to broadcasting service authorisation	This section would confirm the entitlement of the holder of a broadcasting service authorisation to use the frequency or frequencies assigned to it for the provision of that broadcasting service subject to conditions set by the NMC, including technical conditions, content obligations, ownership and other general conditions.
6. Renewal of broadcasting service authorisations	This section would set out arrangements and conditions for renewal of authorisation.
7. Public broadcasting services	This section would set out specific criteria to be used in determining a proposal for a public broadcasting service.
8. Commercial broadcasting services	This section would set out specific criteria to be used in determining a proposal for a commercial broadcasting service.



Chapter and Section Titles	Explanatory Notes
<b>Chapter 1 (continued)</b>	
9. Community broadcasting services	This section would set out specific criteria to be used in determining a proposal for a community broadcasting service.
10. Institutional and temporary broadcasting services	This section would set out specific criteria to be used in determining a proposal for institutional and temporary broadcasting services.
11. Limitations on foreign control of private broadcasting services	This section would set out rules on foreign ownership, for example this could include a requirement that ownership be restricted to companies with majority Ghanaian ownership.
12. Limitations on control of private broadcasting services	This section would set out rules on concentration of ownership, for example this could limit to not more than one radio station covering the same location, and/or limits on the total number of radio or television services.
13. Limitations on cross-media control of private broadcasting services	This section would set out rules on ownership across more than one media, for example this could be used to prevent a newspaper from holding majority ownership in a television and a radio station serving the same location.
14. Prohibition on granting of broadcasting service authorisation to party political or religious bodies	This section would prevent party political or religious bodies from operating a broadcasting service.
15. Amendment of broadcasting service authorisation	This section would provide for the NMC to make amendments to a broadcasting service authorisation
16. Term of broadcasting service authorisation	This section would set out the duration for which the broadcasting service authorisation is valid, for example six or eight years.
17. Record of programmes broadcast by broadcasting service operators	This section would set out a requirement on broadcasting service operators to record and retain a copy of their programme output for a fixed period eg 28 days, after broadcast.

Chapter and Section Titles	Explanatory Notes
<b>CHAPTER II: FREQUENCY ASSIGNMENT FOR BROADCASTING SERVICES</b>	
18. NMC principally vested with powers in relation to planning and use of broadcasting services frequency bands	This section would establish that primary responsibility for the planning and use of broadcasting frequencies rests with the NMC. This is a policy not a technical function.
19. Broadcasting Frequency Plan	This section would set out the need to establish a frequency plan for broadcasting.
20. Joint NMC / NCA Frequency Management Committee	This section would establish a Joint NMC/NCA Frequency Management Committee to coordinate between the policy and regulatory responsibilities of the NMC and the frequency assignment responsibilities of the NCA.
21. Transmitters and transmission characteristics to be assigned by NCA	This section would establish that the technical parameters for transmitters and transmission coverage are to be assigned by the NCA within the framework of the broadcasting frequency plan and to meet the technical requirements of a broadcasting service authorisation.
22. General technical obligations of broadcasting service operators	This section would set out the duty of broadcasting service operators to comply with the assigned technical parameters
23. Powers of NCA to enforce compliance with technical obligations	This section would provide the NCA with powers to warn in the case of non-compliance and to request compliance. The NCA would also have limited powers of intervention to suspend a service in cases of serious interference causing immediate harm.
24. Obligations of third party carriers of broadcasting services	This section would provide that third party carriers of broadcasting services must be registered as such with the NMC and may only carry authorised broadcasting services.

Chapter and Section Titles	Explanatory Notes
<b>CHAPTER III: REGULATION OF BROADCASTING CONTENT</b>	
25. Broadcasting standards	This section would provide a primary law basis for (updated) NMC Broadcasting Standards.
26. Advertising standards	This section would provide a primary law basis for (new) NMC Advertising Standards.
27. Prohibition on broadcasting of party election broadcasts except in certain circumstances	This section would provide a primary law basis for (updated) NMC Guidelines for Political Reporting
28. Broadcasting of party election broadcasts by broadcasting service operators during election period	This section would provide a primary law basis for (updated) NMC Guidelines for Political Reporting
29. Equitable treatment of political parties by broadcasting service operators during election period	This section would provide a primary law basis for (updated) NMC Guidelines for Political Reporting
<b>CHAPTER IV : ENFORCEMENT</b>	
30. Broadcasting Monitoring and Complaints Committee	This section would amend the NMC Act 1993 to provide a new primary law basis for (updated) NMC Broadcast Service Monitoring and Complaints Settlement Procedures
31. Hearings held by Broadcasting Monitoring and Complaints Settlement Committee	This section would amend the NMC Act 1993 to provide a new primary law basis for (updated) NMC Broadcast Service Monitoring and Complaints Settlement Procedures
32. Recommendations of Broadcasting Monitoring and Complaints Settlement Committee	This section would amend the NMC Act 1993 to provide a new primary law basis for (updated) NMC Broadcast Service Monitoring and Complaints Settlement Procedures
33. Powers of NMC in Cases of Proven Non-compliance with Act, Licence Conditions or Regulatory codes	This section would amend the NMC Act 1993 to provide a new primary law basis for (updated) NMC Broadcast Service Monitoring and Complaints Settlement Procedures
34. Offences and Penalties	

Chapter and Section Titles	Explanatory Notes
<b>CHAPTER V: GENERAL PROVISIONS FOR GOVERNANCE AND FUNCTIONING OF THE NMC</b>	
35. Establishment of Executive Board of NMC	This section would provide for the establishment and composition of an Executive Board of the NMC.
36. Powers, duties and responsibilities of Executive Board	This section would set out the powers, duties and responsibilities of the Executive Board.
37. Meetings of Executive Board	This section would set out the procedures for meetings of the Executive Board.
38. Establishment of Standing Committees	This section would amend the NMC Act 1993 provision for standing committees to include explicitly a committee for the authorisation of broadcasting services.
39. Powers duties and responsibilities of Standing Committees	This section would amend the NMC Act 1993 to set out powers, duties and responsibilities of Standing Committees.
40. Meetings of Standing Committees	This section would set out the procedures for meetings of the Standing Committees
41. Delegations of powers to the Executive Board and Standing Committees	This section would set out the basis on which NMC may delegate powers to the Executive Board or the Standing Committees
42. Inquiries by the NMC	This section would provide a new power of the NMC to conduct public inquiries.
43. Register of broadcasting service authorisations	This section would place a duty on the NMC to maintain a public register of broadcasting service authorisations.
44. Records to be kept by broadcasting service operators	This section would set out the record keeping requirements of broadcasting service operators to be included in conditions of authorisation.
45. NMC may demand production of broadcasting service operators books, records, etc	This section would provide a new power to the NMC to require production of broadcasting service operators books and other records.
46. Transfer of broadcasting service authorisation	This section would set out the conditions, procedures and approvals required in the transfer of a broadcasting service authorisation from one beneficial owner to another.

Chapter and Section Titles	Explanatory Notes
<b>CHAPTER V (continued)</b>	
47. Conflict of interest	This section would amend the NMC Act 1993 to strengthen the provision for dealing with conflict of interest
48. Confidentiality	This section would provide for a new duty of confidentiality for NMC Commissioners.
49. Legislative Instruments	This section would provide the NMC with additional powers to initiate regulatory instruments in relation to broadcasting service authorisation and broadcasting content.

## **Annex 2. Comparative Analysis of Broadcast Regulation in Africa**

This annex compares the enabling environments of four countries of sub-Saharan Africa, in terms of :

- Guarantees of Freedom of Expression;
- Broadcast Regulation;
- Broadcast Content;
- Public Service Broadcasting;
- Community Broadcasting;
- Commercial Broadcasting; and
- Radio frequency spectrum.

Comparative examples are drawn from South Africa and from three countries of the sub-region: Benin, Burkina Faso, and Mali. The choice of examples is based on assessment against international best practice. While broadcasting legislation, regulation and practice in the three West African countries do not meet all best practice standards they are the three best examples in the sub-region and provide useful comparative data in the context of work in ECOWAS on communications regulation. South Africa is included in the comparative analysis, because it is an internationally recognised model of good practice and it provides the best anglophone African reference.

### **1 Guarantees of freedom of expression**

#### **1(a) Benin**

The Constitution of the Republic of Benin adopted on December 1990 from the recommendations of the National Sovereign Conference held on February 19 to 28, 1990, provides specific guarantees of freedom of expression. Article 23 states: "Every person has freedom of thought, of conscience, of faith, of religious cult, of opinion and of expression within the respect of public order as established by law and regulations. The exercise of faith and the expression of religious beliefs are to be exercised in respect to the secularity of the State". Freedom of the press is further referred to in Article 24 which states: "Freedom of speech is recognized and guaranteed by the State, it is protected by the *Haute Autorite de l'Audiovisuel et de la Communication* under the conditions set by the law".

The Constitution provides for the direct applicability of international law.

The Preamble of the 1990 Constitution refers to the United Nations Charter of 1945, to the Universal Declaration on Human Rights and to the African Charter on Human and Peoples Rights which is annexed to the Constitution. Article 7 of the Constitution indicates that the rights and obligations guaranteed by the African Charter on Human and Peoples Rights are equally guaranteed in Benin. The Preamble and Article II indicates also that any treaty and agreement to which Benin is a signatory takes precedence over domestic legislation as soon as it is ratified. Thus Benin has today many human rights instruments which are part of its national legal system.

**1(b) Burkina Faso**

Freedom of opinion and expression is guaranteed in general terms by Article 7 of the June 1991 Constitution which states: "Freedom of religious belief, as well as non belief, freedom of religious and philosophical opinion, freedom of exercise of a religious cult, freedom of assembly, freedom to follow the customs as well as the freedom of public demonstration are guaranteed by the present Constitution, as long as long as the laws, public order, the public morals and human dignity are respected".

Article 8 indicates more specifically: "Freedom of opinion, freedom of the press and freedom of information are guaranteed. Every individual has the right to express and transmit his/her opinions within the context of the laws and regulations in place".

The Preamble of the Constitution indicates that Burkina Faso subscribes to "the Universal Declaration on Human Rights of 1948 and to the international instruments on economic, social, cultural and political issues", and reaffirms its "adherence to the African Charter on Human and People's right of 1948". The Code of Information (Law 56/93 enacted on Dec, 1993) provides additional guarantees on freedom of information: "Freedom of Information is one of the fundamental human rights of the citizens of Burkina Faso".

**1(c) Mali**

Freedom of Expression is explicitly guaranteed by Article 4 of the Constitution which states: "Every person has the right to freedom of thought, conscience, religion, opinion, expression and creation in respect to the law". Freedom of the press is explicitly guaranteed by Article 7 which declares: "Freedom of the press is recognized and guaranteed."

The Constitution makes room for situations when "exceptional powers" might be vested on the President of the Republic which might impose limitations to the right to freedom of expression. Such a situation is limited to special circumstances: "when the institutions of the Republic, the independence of the Nation, the integrity of the Nation, the implementation of international accords are gravely and immediately threatened and that the regular functioning of public and constitutional powers are interrupted, the President of the republic takes such actions as required by the circumstances after consultation with the Presidents of the National Assembly and of the Constitutional Court..." Other circumstance when the right of freedom of expression might be limited is the "state of emergency" and the "state of siege" as described by Article 72 which is limited to 10 days maximum, after the National Assembly has given its authorisation.

The Constitution provides for the direct applicability of international law and subscribes to the December 10, 1948 Declaration on Human Rights and to the African Charter on Human and Peoples Rights. The Constitutional Court set up by article 85 of the Constitution is a mechanism to provide constitutional guarantees for it "judges of the constitutionality of laws and guarantees the fundamental human rights and public liberties. It is the regulating organ of the functioning of the institutions and public authorities."

**1(d) South Africa**

Section 16 of the South African constitution provides that “Everyone has the right to freedom of expression, which includes freedom of the press and other media”.

Section 36 of the constitution provides for limited restrictions on all rights, including freedom of expression, as follows:

The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including-

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

In practice, the Constitutional Court has interpreted this as to permit only very limited restrictions on freedom of expression.

**2. Broadcast regulation****2(a) Benin**

The creation of a regulatory body, the *Haute Autorite de l'Audiovisuel et de la communication* (HAAC) on August 21, 1992 (Law N 92-021) was a recommendation of the *Conférence Nationale Souveraine* (February 19 to 28, 1990), imposed by civil society organizations on the military regime to review the governance of the country. The Conference laid the foundations of a system based on the rule of law, the respect of fundamental human rights and free enterprise. The Conference appointed an interim Prime Minister charged with the preparation of a referendum on a new Constitution and symbolically changed the country name from Dahomey as it was called by the French during colonization to Benin its ancient name. The new Constitution adopted by referendum on December 1990 sought to insulate the media from government pressure and make it a watchdog of government and recommended that the regulatory body be rooted in the Constitution in order to give it legitimacy comparable to that of the Executive and thus established that “the *Haute Autorité de l'Audiovisuel et de la Communication* is an institution independent of all political powers, organization or lobby of any sort”

The mandate and powers of the HAAC are extensive and include: “To guarantee and ensure freedom and protection of the press and of all media of mass communication, in the respect of law...”, “To ensure respect of professional standards and ethics, ensure equitable access of all political parties, organizations and citizens to the media” and “To guarantee the proper and equitable use of the public press and the broadcasting means, each according to its constitutional missions and act as referee, if necessary.”

This broad definition does not describe the full extent of the mission of the HAAC missions which concerns the print media as well as the broadcast media, and extends from settling disputes between the media and the public, to the training of journalists, the appointment of the Directors General of the



state owned media organizations, the enforcement of ethical guidelines, and the allocation of broadcast frequencies for television as well as for radio.

The HAAC is composed of nine members including three designated by the Head of State of which one is a legal practitioner and the other a communication specialist or a journalist; three designated by the National Assembly (with the same profile as those designated by the Head of State) and three designated by the journalists. The three representatives of the journalists are first elected by their different constituencies (the print, the broadcast and the technology sectors), after a campaign during which they present their program for the HAAC. The president of the HAAC is appointed by the President of the Republic as indicated by the Constitution. This disposition is however being presently challenged by the journalists and a demand for the revision the Constitution to amend it is seriously considered. HAAC Councilors serve one single term of 5 years, and cannot be revoked.

The HAAC meets regularly with the various media houses and hold public consultations on various matters, notably on the frequency plan, the availability of frequencies and the selection of frequency licensees. It publishes an annual report that it sends to both the Head of State and the President of the National Assembly. Its audited accounts are presented to the Head of State, to the National Assembly, to the Communication Ministry and to the Ministry of Finance. The budget of the HAAC is provided for by the National Assembly upon request of the President of HAAC through the Ministry of Finance. Decisions of the HAAC can be challenged either in the Constitutional Court, in the Supreme Court or even before the ordinary Courts.

## **2(b) Burkina Faso**

The Conseil Supérieur de l'Information (CSI) is an "administrative", (i.e. not constitutionally-based) organization, set up on August 1995 by presidential decree as recommended by the Code of Information Act of December 1993, replaced by a law enacted by the National Assembly on June 28, 2000 and endorsed by Presidential Decree on January 4, 2001. The CSI is responsible for "the implementation of the legislative and regulatory framework for all public and private broadcasters so as to protect the freedom of information". More specifically, the CSI has the power to authorize the use of frequencies by private radio and television stations and to authorize the use of television rebroadcast through MMDS. However, broadcasting licenses are formally allocated by the Communication Minister after the telecommunication operator has confirmed the availability of the frequency.

As part of its mission, CSI has a duty to enforce pluralism and balance in the broadcast media contents, to ensure the access of political parties to public media during electoral campaigns, to ensure the respect of ethics by journalists, and to enforce professional standards and mediate in disputes between the public and the media. In relation to the executive and legislative branches, CSI may be requested to give advice in relation to the drafting of a Bill or to formulate recommendations in relation to its field of competence. The CSC may also draft specific licensing requirements for the various private and public broadcasting categories.

The CSI has 11 Councilors: 4 nominated by the President of the Republic, 3 by the President of the National Assembly, 2 by the Supreme Court, and 2 by the Journalists' Association.

The CSI holds conferences and seminars throughout the country on different aspect of its mission. It is for example presently consulting with the media on the organization of the coverage of the 2006 presidential elections. The CSI is formally accountable to the President of the Republic to whom it presents an annual report and to the Court of Accounts to which it submits its financial statement. The CSI receives its budget from the Government and is not allowed by law to receive money from any other source.

## 2(c) **Mali**

Two regulatory bodies the *Conseil Supérieur de la Communication* (CSC) which was set up in December 1992 and the *Comité National de l'Égal Accès aux Médias d'État* (CNEAME) set up in in January 1993 are in charge with the implementation of Article 7 of the 1992 Constitution which states that freedom of expression is guaranteed under the law.

The CNEAME regulatory role is concerned only with the access of political parties to State media and its activities are developed mainly during electoral campaigns. The regular regulation of the broadcast media rests entirely with the CSC. The composition, powers and duties of the CSC are set out in the CSC Act of 1992 (Num 92-038). The CSC decides on the allocation and withdrawal of frequencies to radio and television broadcasting stations and ensures that stations abide by their service commitments.

The CSC is consulted on all legislative and regulatory decisions to be taken concerning the media, print and broadcast. It may undertake research to promote communication, on print or broadcasting. It also controls all practices which could threaten normal business competition or which could permit undue dominance and control of the market. The Communication Ministry may ask the advice of the CSC for any project relative to the communications sector. The CSC is consulted in the formulation of the position of Mali with respect to international negotiations regarding radio and television broadcasting.

The regulatory role of the CSC concerning the broadcast media, radio and television, is to grant broadcast authorisations and eventually give suspension and withdrawal orders of frequency licenses, the telecom operator being in charge with technical implementation (drawing the national frequency plan and with making the frequencies available). However, the policy formulation role of the CSC is clearly indicated in Act 92-038, thus if the actual technical management and planning of the frequency spectrum are managed by the telecom operator, it is under the policy guidance of the CSS. And the frequency allocation by the telecom operator and the signing of the license by the Communication Minister are performed only after the CSS has given a broadcasting authorisation.

The CSC has 9 councilors appointed by the President of the Republic (3), the President of the National Assembly (3) and the President of the Economic and Social Council (3). The Councilors elect one of them as President. The CSC has a permanent Secretary appointed by the Minister of Communication who is not however a member of the Council. The Councilors and Permanent

Secretary are confirmed by Presidential Decree. The Councilors are not expected to devote full time to their work with the CSC but work on sessions of less than 5 days for which they are paid fees. The term of a CSC councilor is 3 years, renewable only once. In case, a councilor does not go to the end of his/her term, his/her replacement goes only to end of the tenure. CSC members may not hold any interest in any business relating to broadcasting, print media, edition or advertising. The CSC is accountable to the President and to the public. It publishes an annual report that it sends to the President and presents to the media. Decisions of the CSC can be challenged through the low Courts. The CSC operates on a budget provided by the government through the Ministry of Communication.

## **2(d) South Africa**

The South African Constitution states, in Section 192: “National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society”. Section 192 expressly obliges Parliament to establish an independent authority to regulate broadcasting. In execution of this constitutional obligation, Parliament has enacted the Independent Communications Authority of South Africa 2000 Act (ICASA Act). ICASA took over the function of two previous regulators, the South African Telecommunications Regulatory Authority (SATRA) and the Independent Broadcasting Authority (IBA). The preamble to the ICASA Act acknowledges “that the establishment of an independent body to regulate broadcasting and telecommunications is required”. Section 3(3) and (4) describes ICASA in the following clear terms: <sup>8</sup>

The powers and duties of the Independent Communications Authority of South Africa (ICASA) are drawn from the ICASA Act 2000, the Independent Broadcasting Act 1993, the Broadcasting Act 1999 and the Telecommunications Act 1996. The Broadcasting Act 1993 gives primacy to the purpose of serving the public interest in Section 2 which states: “The primary purpose of this Act is to provide for the regulation of broadcasting activities in the Republic in the public interest” <sup>9</sup> In furthering the public interest in broadcasting the principal duties of ICASA include, in part, to:<sup>10</sup>

- (a) promote the provision of a diverse range of sound and television broadcasting services on a national, regional and local level which, when viewed collectively, cater for all language and cultural groups and provide entertainment, education and information;
- b) promote the development of public, private and community broadcasting services which are responsive to the needs of the public.

The seven members of the Independent Communications Authority of South Africa (ICASA) Council are appointed by the President on the recommendation of the National Assembly, in accordance with the following principles: the public participates in the nomination process, the process is transparent and open, and a shortlist of candidates is published. To be appointed, individuals must be committed to fairness, freedom of expression, openness and accountability, possess suitable qualifications, and represent collectively, a cross-section of society. Individuals with strong political connections, such as elected representatives, civil servants and those with

<sup>8</sup> The Independent Communications Authority of South Africa Act No 13 of 2000 [www.icasa.org.za](http://www.icasa.org.za)

<sup>9</sup> Independent Broadcasting Act 1993 (Act No 153 of 1993), see [www.icasa.org.za](http://www.icasa.org.za)

<sup>10</sup> Ibid.

interests in broadcasting may not be appointed as members. Individuals are appointed members for four years – apart from the chair, who is appointed for 5 years – and may be reappointed for a second term. Strict rules govern the removal of members, which is only possible when certain conditions apply, such as incompetence, misconduct or failure to disclose an interest.

The Independent Communications Authority of South Africa (ICASA) is defined as a “public body” within the terms of the Promotion of Access to Information Act 2000. ICASA publishes a manual setting out its compliance with access to information legislation as this applies to public bodies.<sup>11</sup> With respect to broadcast regulation ICASA is obliged under the Broadcasting Act 1993 to engage in public consultation with respect to any enquiry it conducts, with respect to frequency planning and with respect to license applications, license renewals and amendments to licenses.

The Independent Communications Authority of South Africa (ICASA) Act 2000 requires, under Section 16, that ICASA prepare an annual report, within three months of the financial year, to include “information regarding licenses granted, renewed, amended, transferred, suspended or revoked and such other information as the Minister may in writing require”<sup>12</sup>. The Minister is required to table the report in Parliament within fixed time limits. ICASA is also required to produce annual financial statements and the Auditor-General’s report on those statements. All decision of ICASA are subject to judicial review.

### 3. Broadcast content

#### 3(a) Benin

The HAAC enforces the Code of Ethics of the main Journalists Association (*Association des Journalistes du Benin*) and works with the self regulatory body, *Observatoire de la Deontologie dans les Medias* (Observatory on Ethics in the Media), to see that broadcast content respects professional standards and ethics. It can apply sanctions which range from warning, to suspension for a month, to a fine, to withdrawal of the frequency (see: *Code de Deontologie des Journalistes du Benin*). Sanctions that HAAC can implement are described in article 47 of the law (n° 92-021 of august 1992) enacting the regulatory body which states:

In the case that publicized warnings have been acted upon, the HAAC can pronounce against the contravening party, one of the following sanctions, depending on the gravity of the contravention: :

- (a) the suspension of the broadcast authorisation or of part of the program for maximum of one month,
- (b) the reduction of the duration of the authorisation for a maximum of a year.
- (c) the withdrawal of the authorisation.

Article 47 adds: “The authorisation can be withdrawn, without warning, in the case of a substantial change in of the factors which had been considered for the allocation of the authorisation, notably in the case of changes in the shares of the company, or in its governance or its funding.” Content rules

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<sup>11</sup> *Promotion of Access to Information: manual in terms of Section 14 in respect of the Independent Communications Authority of South Africa*, ICASA

<sup>12</sup> The Independent Communications Authority of South Africa Act No 13 of 2000 [www.icasa.org.za](http://www.icasa.org.za)

observed by the HAAC in regulating the broadcast media are contained in article 3 of its law which states that all stations should observe the following:

- (a) respect for human dignity, observance of the pluralist character of the various groups of thought and of opinion,
- (b) safeguard public order, national unity and territorial integrity of the country
- (c) promote public health and environment protection,
- (d) protection of the child and the adolescent,
- (e) safeguard of the national cultural identity,
- (f) take into account considerations of national security,
- (g) take into account the requirements of the public service,
- (h) consider the necessity to protect, promote and develop the national cultural heritage and the national industry notably that of broadcasting production.

### **3(b) Burkina Faso**

The CSI does not have a specific Broadcast Code of Conduct either. It enforces the Charter of the Journalists 'Association which promotes professional and ethical standards and the Information Code. The Charter initiated and adopted by the Association of Burkina's Journalists (A.J.B) formulates the ethical principles and professional standards to be enforced by the journalists themselves, the media houses and the authorities. For example, Article 1 states: "the journalist of Burkina, by his/her profession, has the right to access information sources" and Article 2 states: "the journalist has to publish information which is true, which sources can be verified, for the general good. He/she cannot be threatened, taken to court or sanctioned". Article 3 states: "the journalist of Burkina refuses to publish under his/her signature information which is contrary to his/her belief and to professional ethics". Article 6 indicates that "the journalist has the right to act according to his/her convictions when the orientations of the media house he/she works for do not coincide any more with his/her convictions or the ethics of the profession".

The Information Code defines broadcasting "as communication by radio whose programs targets directly or in a codified manner the public". It indicates further that "...the organization and functioning modalities of the national (broadcasting) institutions have to be in conformity (with the law)". The Code of Information however sets itself to define the professional journalist, establishes conditions for the publication of corrections and rejoinders and describes sanctions which the CSI could impose on all journalists, including broadcasters.

Sanctions available range from prison terms of three months to 3 years and fines ranging from 50.000 FCFA (US\$100) to 1.000.000 FCFA (US\$2,000) for information which could endanger national security. For the broadcasting of "any information contrary to decency and public morality, sanctions would be those of the common law". Prison sentences of 2 months to one year and / or a fine of 50.000 FCFA to 1.000.000 FCFA could be imposed on anybody convicted of publishing purposely information which affects the private life of an individual. These sanctions are greater than would be considered international best practice and could harm freedom of expression.

The CSI enforces positive content rules including general rules concerning the promotion of gender equality, protection of the child and the adolescent and promotion of the national culture. These specific content obligations as

specified in Article 9 of the 1995 Broadcasting Obligations include carrying 40 per cent of the programs on development, scientific, cultural, religious and recreational issues and 40 per African music of which 20 per cent must be of national music. All broadcasting stations also have to broadcast public service content message when requested. Advertisement of alcohol and firearms is forbidden. Radio also has to contribute “to information, education and entertainment of the public without exploiting and advertisement”. “The specifications and obligations for radio applicants”<sup>13</sup> indicate some other content obligations for radio and television broadcasters notably that programs have to contribute to economic, social and cultural development and ensure the promotion of the national languages (article 5).

Concerning stations owned by religious groups, it is specified that they have to produce and broadcast non religious program for least 30% of their air time. Rebroadcast of foreign stations is subject to an authorisation. Advertisement has to be respectful of the professional journalist ethics “ be free of and be mindful of cultural, religious and philosophical beliefs of the people”(article 31). Breach of any of these content rules is subject to either a suspension for a period of 6 to 12 months or the withdrawal of the frequency.

### 3(c) Mali

The CSC does not have its own Code and rather enforces the Code of Conduct of the Observatory for the Ethics of the Press (ODEP) commonly sponsored by ODEP, the Journalists’ (Union Nationale des Journalistes du Mali) and the broadcasters’ Association (Union des Radios Televisions Libres du Mali). The CSC has powers of sanction. It may reprimand, suspend or withdraw a license.

Article 6 of the CSC Act of 1992 gives three content obligations that CSS should enforce on all broadcasting stations in Mali: the requirements and needs of the rural communities, cultural integration, and the diffusion and enrichment of the national languages

Article 9 of the Obligations adds another obligation in indicating that broadcasting content should contain up to 20% of “international content”.It is not clear how these rules have been implemented by the CSS, however it seems to have translated the “requirements and needs of the rural communities “into a policy which has allowed for the development and support for community radios in the various rural areas of the country.

### 3(d) South Africa

Clause 2(a) of the Code of Conduct for Broadcasting Services, which formed a schedule to the Independent Broadcasting Authority Act 153 of 1993, provided: “Broadcasting licensees shall...not broadcast any material which is indecent or obscene or offensive to public morals or offensive to the religious convictions or feelings of any section of a population or likely to prejudice the safety of the State or the public order or relations between sections of the population.”

In finding a breach of the right to freedom of expression, the Constitutional Court has noted:

<sup>13</sup> Cahier de Missions et Charges des radiodiffusions sonores et télévisuelles au Burkina Faso, 1995

The prohibition against the broadcasting of any material which is 'likely to prejudice relations between sections of the population' is cast in absolute terms; no material that fits the description may be broadcast. The prohibition is so widely phrased and so far-reaching that it would be difficult to know beforehand what is really prohibited or permitted. No intelligible standard has been provided to assist in the determination of the scope of the prohibition. It would deny both broadcasters and their audiences the right to hear, form and freely express and disseminate their opinions and views on a wide range of subjects. The wide ambit of this prohibition may also impinge on other rights, such as the exercise and enjoyment of the right to freedom of religion, belief and opinion guaranteed in section 15 of the Constitution.<sup>14</sup>

#### **4. Public service broadcasting**

##### **4(a) Benin**

A state owned radio broadcasting service was created in Benin, then Dahomey, in 1959 on the eve of the country's independence from France. The television service was inaugurated in the early 1980 and the Radio diffusion Television du Benin was then set up as an attachment of the then Ministry of Information. The Radiotelevision Nationale du Benin (RNB) has since 1999 (Decree 99-315 of June 22, 1999) a public service status, (Etablissement Public A Caractère Industriel et Culturel-EPIC-) by which it is financially autonomous and politically independent from government. It has a duty of public service, "to inform, educate and entertain", and to develop the uses of the national languages as indicated by the National Sovereign Conference. The mandate of the RNB is to perform public service in broadcasting: to implement professional standards while servicing the national community and staying away from political interference.

RNB is governed by a board and is administratively attached to the Communication Ministry. The Board is composed of civil servants appointed by the Head of State, the President of the National Assembly and by the Supreme Court. As with all State owned media in Bénin, the Director General of RNB is appointed by the President of the Republic. But the appointment is made from a short list of three names selected by the HAAC from the applications received after the position has been publicly announced. The Director General shares executives powers with an Executive Committee selected by the Board of Directors.

The public broadcasting service is comprised of the national television (Télévision Nationale du Bénin) and a National Radio with 3 stations, including a 2 FM stations broadcasting from the capital city and one regional FM stations, and 5 autonomous rural FM stations, based at community level, with community participation but managed by a Director representing the National Radio and allowing community participation in programs.

Funding of the National Radio is ensured partly by the budget provided by government and partly by advertisement revenue.

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<sup>14</sup> *Islamic Unity Convention v. Independent Broadcasting Authority*, 2002 (4) SA 294 (CC); 2002 (5) BCLR 433 (CC).

**4(b) Burkina Faso**

Public Service broadcasting is represented in Burkina by the National Radio and Television Service (Office de Radiodiffusion Television du Burkina-ORTB-) and the Radio Rurale. Office de Radiodiffusion television du Burkina was set in 1999 with the merger between Radio National du Burkina, ceated in 1959 in the eve of the country's independence from France, as then the sole national broadcaster, and the national television service, Télévision Nationale du Burkina created in the early 1980s.

The new entity, ORTB, was set up as an Etablissement Public A Caractère Economique ( E.P.E), a status which gave it financial and administrative autonomy, as a Public Corporation, even though it is placed under the control of the Minister of Communication. ORTB is governed by a Board of Directors representing various public institutions, the President of the Republic, the National Assembly, the Ministry of Communication and other sectors. A Director General appointed by the President of the Republic ensures operational control

The duties and responsibilities of the ORTB are:

- (a) to ensure public service broadcasting covering the total territory of the country,
- (b) project abroad the image and voice of Burkina,
- (c) contribute to the cultural and social development,
- (d) contribute to the development of the national languages,
- (e) contribute to the social, economic and cultural development of the country

ORTB operates four regional stations and the national stations based in the capital city. It operates also the 6 Radios Rurales (Rural radio Stations) in different parts of the country under a specific department. Rurales Radios operate on the model of community radios, within local rural communities, with programs developed locally, and local personnel with just one personnel from ORTB.

Funding of the Public Broadcasting service in Burkina originates both from government and from the advertisement and other sources as indicated by the "Specifications and Obligations of Radio and Television broadcasters"(article 16). Public funding is assured by a budget provided for by the National Assembly on the request of the Minister of Communications. Other sources as indicated by the Specifications and Obligations are: brand advertisements, advertisement of public interest, advertisement as documentaries, sponsoring of events, organising of events, any activities which generate funds and are professionally accepted, and donations which are admitted by the laws and regulations.

**4(c) Mali**

The Office de Radio Television du Mali (ORTM) has been granted the status of a Public Service Corporation (Etablissement Public à Caractère Industriel et Culturel) following the enactment of the liberalization of broadcasting, in 1992. A specific law enacted on October 5, 1992 (n° 92-021), indicates that it is as Public Service Corporation autonomous administratively and independent politically, defines its missions and indicates its funding sources. To ensure its political independence, it has a board of directors, made up of representative of different government ministries concerned with its programs



(agriculture, health, education) but comprising also representatives of various civil society organizations. The board constitutes the governing structure of the ORTM.

The ORTM hires a Director General in charge of the overall management of the corporation, appointed by the President of the Republic after having been selected by the Board following a publicized call for applications. A contract plan was established and signed between the government and the ORTM by which the public service obligations of the ORTM were defined and the commitment of the government specified. This was confirmed by a Decree (n° 96-284 taken on October 23, 1996). By Decree 96-284, ORTM committed itself to devote at least 80% of the radio program and 60% of television programs to the public service. It committed itself also to develop quality contents on its national, regional and local network and to progressively extend the radio coverage of 65% of the country in 2003 to 100% in 2015 and to extend the television coverage at that date to 75% of the country from 35% in 2003. On its part, the government took the decision both to constitute through taxation, a regular revenue source for ORTM in order to cover not only its operational costs but also part of its investment needs. On the basis of this contract-plan between the government and the ORTM, the governing Board of the ORTM specified its mandate as follow:

- (a) Develop radio and television programs in line with the objectives of the economic, social and cultural development objectives of the country.
- (b) Promote the use of national languages; promote science, technology and the protection of the environment.
- (c) Develop entertaining programs based on quality shows,
- (d) Promote pluralist, civic and useful information.
- (e) Produce magazines and live reporting, debates and investigations.

Specific objectives include contribute to the fight against poverty, contribute to the increase of the literacy rate, contribute to the health programs and to the development of health services, strengthen formal education, contribute to the de-marginalization of geographically enclaved communities, contribute to the education of adults.

The ORTM network is now comprised of two FM stations broadcasting from the capital city Bamako, 10 regional FM stations based in the regional capitals and about 30 “rural stations”, which are small Fm stations, broadcasting at community level, managed by a representative of the ORTM, with more or less community participation.

#### **4(d) South Africa**

The South African Broadcasting Corporation (SABC) was converted on 1 October 2003 from a statutory corporation to a public company. Although the government remains the sole shareholder, the conversion entrenches the broadcaster’s editorial independence and the authority of the Board of the SABC to manage the affairs of the Corporation. The Charter and purpose of the SABC are set out in the Broadcasting Act 1999 (as amended by the Broadcasting Amendment Act 2002). Section 6 of the Broadcasting Act outlines the Charter with which the SABC must comply. The Charter specifies that the SABC “enjoys freedom of expression and journalistic, creative and programming independence as enshrined in the Constitution.” Section 6 states:

The Corporation must encourage the development of South African expression by providing, in South African official languages, a wide range of programming that-

- (a) reflects South African attitudes, opinions, ideas, values and artistic creativity;
- (b) displays South African talent in education and entertainment programmes;
- (c) offers a plurality of views and a variety of news, information and analysis from a South African point of view; and
- (d) advances the national and public interest.

Section 8 of the Broadcasting Act 1999 sets out additional duties for the SABC including a duty to make its services available throughout the Republic, a duty to provide, in its public broadcasting services, radio and television programming that informs, educates and entertains, and a duty to be responsive to audience needs, including the needs of the deaf and the blind. The Broadcasting Amendment Act 2002 requires clear separation between the public service activities and the commercial activities of the SABC through the establishment of separate operating divisions

The South African Broadcasting Corporation (SABC) is governed by a Board of Directors established under Section 12 of the Broadcasting Act 1999. The Board is the accountable authority of the Corporation and controls the affairs of the Corporation. The Board is responsible for appointing an Executive Committee consisting of the Chief Executive and eleven other members and which is responsible for administering the affairs of the Corporation. The Executive Committee is accountable to the Board and must perform such functions as may be determined by the Board.

The Independent Communications Authority of South Africa (ICASA), a broadcast regulatory body which itself has constitutionally guaranteed independence, has significant regulatory powers with regard to the SABC. Section 6(2) of the Broadcasting Act 1999 gives ICASA overall responsibility for ensuring SABC complies with the terms of its Charter. The Broadcasting Act 1999 requires all broadcasting services of the SABC to be licensees of ICASA. In addition all broadcasters, including SABC must comply with the ICASA Code of Conduct, set out in Schedule 1 of the Independent Broadcasting Authority Act 1993.

Formal accountability of the SABC is to Parliament through the Minister. The Board of the SABC must furnish to the Minister an annual report on the work of the Corporation, together with a balance sheet and a complete statement of revenue and expenditure for that financial year. The financial accounts must be audited and accompanied by the auditor's report. The Minister must table the report in Parliament, within seven days after receiving it if Parliament is in session, or, if Parliament is not in session, within seven days after commencement of its next ensuing session.

The South African Broadcasting Corporation (SABC) is governed by a Board of Directors consisting of 12 non-executive members, along with the Group Chief Executive Officer, the Chief Operations Officer and the Chief Financial Officer. The non-executive members are appointed by the President on advice of the National Assembly, after publication of a shortlist of candidates, in a manner which ensures transparency, openness and public participation in the nominations process. The Broadcasting Act 1999, in Section 13, requires

the Board, viewed collectively, to have suitable qualifications, expertise and experience, to be committed to fairness, to freedom of expression, to the objects of the SABC and to accountability and to represent a broad cross section of the population. The Act sets out strict conflict of interest rules and, in the case of such conflict, requires the Board member concerned to leave the proceedings and let remaining members determine the course of action

Funding of the SABC is mixed. It is provided in part by the Government and derive in part from advertisement.

## **5. Community broadcasting**

### **5(a) Benin**

The HAAC does not have an official definition of community broadcasting. It refers to community broadcasting by three characteristics: its range (40 to 80 km, maximum), its focus on a specific community and its use of specific languages. In its policy documents the HAAC distinguishes between "Community Radio", "Not-for-profit Local Rural Radio" which is government sponsored and "Not-for-profit Non-Community Radio" which is sponsored by a development project and does not necessarily involve the community. There are presently about 15 Community Radios, while there are 5 "Not-for-profit Local Rural Radio and about 10 "Not-for-profit Non-Community Radio". Recently, a more operationally intended definition has been proposed, although it is not yet officially adopted. It is as follows: "Community Radio is a radio in a community, for that community. It speaks to the community and lives by the community<sup>15</sup>".

There are presently about 30 Community, Not For Profit and Not For Profit Rural Radios in Benin. In reality, HAAC refers to all these different types of "community radios" as "non commercial radios" which comprises all radios which are not for profit and are community centered. As required by HAAC, non commercial have to be organized as "non profit organizations" and invest a "managing committee" with operational, executive powers and which is comprised of representatives of the local community where it is established and which generally are members of the local peasants organizations, women groups, local Ngos etc...

The licensing process of community radios as well as commercial radios and television starts with the HAAC publishing the list of available frequencies based on its frequency map and issuing a published call for applications from all sectors, public, private and commercial. It processes the received applications and allocates the frequencies based on the proposed program contents as well as on the viability of the stations. Radio licenses are allocated for 6 years, television licenses for 10 years. Licenses for Community Radios and Not-for-profit Radio pay a fee of FCFA 1.000.000 (US D 2.000) and commercial stations, FCFA 2.000.000 (US D 4.000), based on content proposed against stated needs of the targeted audience. Applications for frequencies are examined publicly, in the presence of the HAAC representatives, the applicants and the general public.

Funding of Community radios are expected to derive from the communities thru announcements, cultural events, and volunteer work. Donor contributions

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<sup>15</sup> Statement made by Mrs Aurelie Amoussou, Principal Researcher at the HAAC.

usually contribute to the equipment. However a Public Fund, amounting to 500.000 USD in 2003, is accessible for for all the media houses, including community broadcasters. It is managed by HAAC to fund training and small media projects. It is allocated based on the content produced by applicant media, to adherence to ethical standards and professional standards.

#### **5(b) Burkina Faso**

The CSI considers broadly two types of radios: the public service comprising the national television , the national radio and the Radios Rurales, and the private radios. However with the “private radios”, the Specifications and Obligations for Radio and Television broadcasters” (article 5) considers 3 different types: the national coverage private radios : “which programs reaches to cover the whole territory”, regional radios which cover around 100 kilometers of radius, and local radios which cover around 30 kilometers of radius.

Article 15 recognizes “religious” stations as those owned by a faith/religious organization but have to broadcast at least 30 per cent of non religious programs and recognize the secular character of the State. But the regulation does not make a distinction between commercial and community radios and the licensing procedures and conditions are the same. There are about 15 Community Radios operating presently in Burkina, of which the majority is sponsored by various religious organizations.

Application requests, including equipment specifications, business plan and programming details, are sent to the Ministry of Communication which passes it on to the CSI. A license request is simultaneously sent to the national telecommunication corporation through the Ministry of Communication. After signature by the Minister of Communication of the broadcasting authorisation prepared by the CSI, a frequency is allocated by the telecommunication services. Radio licenses are valid for 3 years and television licenses for 6 years. Costs vary according to the local, regional or national type of coverage requested.

Funding sources for all types of broadcasting services are, as provided by article 16 of the Specifications and Obligations (described under public service broadcasting above), however radios and the print media have access to a Public Fund allocated by government and managed by the Ministry of Communication. Fund amounted to about 500,000 USD in 2003. Criteria include respect of the specific conditions of licensing as well as enforcement of ethics and professional standards.

#### **5(c) Mali**

The CSS recognizes the following categories of radio: Public Radio: ORTM, its regional and local stations and “local rural radios” operated by ORTM, at the community level, commercial radios, and community or local radios. CSS defines private radio as “for profit” and community radio, as “not for profit and owned by local communities”.

The CSS processes the application, requests the control of the frequency availability frequency by telecommunication operator and eventually signs the authorisation and the frequency allocation. Applications are necessarily processed within 15 days and a frequency is allocated for 3 years, after an authorisation had been given by the CSS and the frequency allocated by the

telecom operator. Renewal of Licence is to be requested 3 months before it expires. It is considered granted if it is not answered 15 days after it expires (Article 4 of Act 92-156 enacted on May 14, 1992). Frequency applications are examined by the Conseil Supérieur de la Communication, with representatives of government, broadcasters and the Consumers' Association.

Cost of a license for a community radio is free, only an application cost of 300.000 FCFA (US D 600) is charged. Community radio funding for operational costs are supposed to be derived from announcements and partnerships with development projects. A Public Fund (about 300.000 US DOL yearly) donated by government for the media is managed by the broadcasters, Unions des Radios et Televisions Libres (URTEL), the representative organisation of the broadcasters, the Journalists Associations and the CSC. Community radios have access to this fund. There are about 90 Community Radio operating presently in Mali

#### **5(d) South Africa**

The Independent Broadcasting Authority Act 1993 recognizes the three tier of broadcasting comprised of: a public sector, a private commercial sector, and a community sector. The Independent Broadcasting Authority Act 1993 sets out a licensing framework for community broadcasting services (radio and television). The Broadcasting Act 1999 sets out further provisions for licensing community broadcasting services. The Independent Broadcasting Authority Act 1993 requires ICASA to take account as to:

- (a) whether the applicant is fully controlled by a non-profit entity and carried on or to be carried on for non-profitable purposes;
- (b) whether the applicant proposes to serve the interests of the relevant community;
- (c) whether, as regards provision of the proposed broadcasting service, the applicant has the support of the relevant community or of those associated with or promoting the interests of such community, which support shall be measured according to such criteria as shall be prescribed; and
- (d) whether the applicant proposes to encourage members of the relevant community or those associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service.<sup>16</sup>

The Broadcasting Act number 4 of 1999, in Section 32, describes further provisions for licensing of community broadcasting as follows:

- (1) Despite the provisions of this Act or any other law, a community broadcasting service licence may be granted by the Authority in the following categories:
  - (a) Free-to-air radio broadcasting service;
  - (b) free-to-air television service.
- (2) The licence of a community broadcasting service must be held by a licensee.
- (3) The licensee referred to in subsection (2) must be managed and controlled by a board which must be democratically elected, from members of the community in the licensed geographic area.
- (4) The programming provided by a community broadcasting service must reflect the needs of the people in the community which must

<sup>16</sup> Independent Broadcasting Authority Act 1993

include amongst others cultural, religious, language and demographic needs and must--

- (a) provide a distinct broadcasting service dealing specifically with community issues which are not normally dealt with by the broadcasting service covering the same area;
  - (b) be informational, educational and entertaining;
  - (c) focus on the provision of programmes that highlight grassroots community issues, including, but not limited to, developmental issues, health care, basic information and general education, environmental affairs, local and international, and the reflection of local culture; and
  - (d) promote the development of a sense of common purpose with democracy and improve quality of life.
- (5) All surplus funds derived from the running of a community broadcasting station must be invested for the benefit of the particular community and monitored by the Authority, which has the power to audit the financial records of the services.<sup>17</sup>

The Independent Communications Authority of South Africa (ICASA) is responsible for the licensing of community radio. The licensing process is set out in "Community Sound Broadcasting Services" a 1997 Position Paper inherited from the previous Independent Broadcasting Authority. The Position Paper describes the licensing process as based on three principles of transparency, empowerment and simplicity. ICASA determines in which locations a broadcasting licence is to be offered and whether it is to be a licence for a public, private or community service. It also determines the frequency assignment and technical parameters. Each licence is publicly advertised through a notice in the Government Gazette and in any appropriate media in the area for which the licence is offered. The notice states the category of licence, the frequency and the technical parameters. Applications are invited to be submitted by a published deadline. All applications received by the deadline are assessed by ICASA and are also the subject of public hearings. Public hearings are held in or near the province in which the licence has been advertised. After the public hearings ICASA takes a decision on whether and to whom to award the licence. In considering an application for a community broadcasting licence, ICASA must, according to the Independent Broadcasting Act 1993, take account of:

- (a) whether the applicant is fully controlled by a non-profit entity and carried on or to be carried on for non-profitable purposes;
- (b) whether the applicant proposes to serve the interests of the relevant community;
- (c) whether, as regards provision of the proposed broadcasting service, the applicant has the support of the relevant community or of those associated with or promoting the interests of such community, which support shall be measured according to such criteria as shall be prescribed; and
- (d) whether the applicant proposes to encourage members of the relevant community or those associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service.<sup>18</sup>

In addition ICASA takes account of the extent to which the applicant:

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<sup>17</sup> Broadcasting Act number 4 of 1999, Section 32,

<sup>18</sup> Independent Broadcasting Act 1993

- (1) in the case of geographically founded communities, proposes to meet the diverse needs of the community within the coverage area;
- (2) has taken measures to ensure that the people in its policy making, operational and other structures are representative of the community to be served and encourages members of the community served by it to participate in the selection and provision of programmes;
- (3) in its programming proposes to reflect the needs of the community as identified and prioritized by that community in a forum or any other manner to the satisfaction of the Authority;
- (4) proposes to contribute towards the general enrichment of the lives of members of the community; and
- (5) is distinguishable from other applicants and/or broadcasters serving the same geographical coverage area<sup>19</sup>

After the public hearing ICASA considers and makes known its decision on the application and provides reasons for the decision. If a licence is to be awarded ICASA may also specify pre-conditions for award of the licence or conditions of operation.

There are about 92 Community Radios and 1 Community television operating presently in South Africa.

## **6. Commercial broadcasting**

### **6(a) Benin**

Licensing procedure is the same for all commercial and community radio services; application is processed based on its specific proposal (programme content and location of the station). For commercial broadcasting, the application has to include a business plan and a programming schedule. Licensing of commercial radios follow the same process as with Community Radios : applications are made to HAAC following its publication of a list of licenses available for different parts of the country. The applicant for a commercial radio indicates is expected to describe its proposed service: the program content and broadcast hours and its proposed transmitting power. Licenses are allocated based on these indications and on the expressed needs of the community the radio proposes to service.

There are about 10 commercial stations. Non nationals of Benin may not own majority shares in a media enterprise. A single entity may not own controlling shares in more than two media.

### **6(b) Burkina Faso**

Licensing follows the same process as for Community Broadcasting. Ownership of a radio or television by a non-national is limited to less than 50 per cent of the shares. The same person or corporation cannot own more than 2 broadcast media. Advertising is prohibited for firearms and alcohol. There are about 10 "private" radios, operating presently in Burkina Faso, as commercial radios

### **6(c) Mali**

Licensing of Commercial radios follows the same procedure as for Community radios. However applications for commercial licensing require a business plan, a detailed description of the equipments and a programming

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<sup>19</sup> Ibid.

schedule. Commercial radio licenses costs vary according to location and power of transmitter requested between 2.000.000 FCFA to 4.000.000 FCFA (US \$2.000 to US \$ 4.000).

The CSS being specifically in charge by law to “guard against the constituting of lobbies in broadcasting”, it considers if the applicants already own a broadcast media. The unwritten rule has been so far not to allocate two frequencies to the same entity.

Brand advertising is restricted to commercial radios, community radio are restricted to “announcements”. There are about 30 commercial stations operating presently in Mali.

#### **6(d) South Africa**

Commercial is a separate licence category in South African broadcasting law. The South African law contains complex rules on concentration of ownership. First, no one may, directly, indirectly or through a company, exercise control over more than one private television license. Second, no one may, again directly, indirectly or through a company, exercise control over more than two private FM or AM sound broadcasting license. Furthermore, no one may control substantially overlapping either FM or AM services (although overlapping ownership of one FM and one AM license would appear to be permitted). Cross-ownership rules prohibit anyone from controlling a newspaper and both a radio and a television license. Furthermore, anyone in a position to control a newspaper with a circulation of 20% of the total newspapers readership in any given area may not own a broadcasting license which substantially overlaps with the newspaper circulation. For this purpose, an overlap of 50% or more is deemed to be substantial and a 20% shareholding is deemed to constitute control. These rules may be waived in any particular case, as long as this does not run counter to the objects and principles of broadcast regulation, as set out in the law.



**7. Radio frequency spectrum****7(a) Benin**

Radio spectrum is managed by the HAAC which uses the services of the National Telecommunication operator and is responsible for the establishment of the Spectrum Plan and for the actual allocation of frequencies to specific radios.

The HAAC has taken the initiative on its own to divide the broadcasting spectrum which according to the IUT Plan only 2 frequencies in the each of the main cities of country, into many short range frequencies, to be able to implement its policy of community radio development. The HAAC thus devised its own Frequency Plan which Benin latter negotiated with the IUT.

**7(b) Burkina Faso**

The radio spectrum is managed on the "content" side by the CSI which collaborates with the telecom operator which is in charge with the technical and international aspects (it represents the country at IUT).

**7(c) Mali**

Radio spectrum is managed by the telecommunication operator. After the CSS became operational in 1995 a frequency plan was prepared based on short range FM frequencies distributed throughout the country. Thus, Mali has been able to accommodate about 200 radio stations to date.

**7(d) South Africa**

ICASA is responsible for spectrum management and ensures efficient use of radio spectrum by working with IUT on the international level and drafting a Frequency Plan on the local level.

## **Annex 3. Persons and Organisations Consulted**

### **Ministry of Communications**

1. Hon Albert Kan Dapaah, Minister of Communications
2. Dr Ben Aggrey-Ntim, Deputy Minister
3. Mr K Ofosu-Adarkwah, Acting Chief Director
4. Mr Issah Yahaya, Deputy Director, Policy Planning, Monitoring and Evaluation

### **Ministry of Information**

5. Hon. Shirley Ayorkor Botchwey, Deputy Minister of Information
6. Mr V. T. Kuuzume, Chief Director
7. Mr V.X.K. Senaya, Dep. Director, Policy Planning, Budget Monitoring and Evaluation
8. Mr A. Koblavi, Deputy Director, Information Services Department
9. Mr Elvis Adanyina, Regional Information Officer, Greater Accra
10. Mr. Frank Agyekum, Government Spokesperson - Governance
11. Mr. Nana Ohene-Ntow, Government Spokesperson - Finance and Economy

### **National Communications Authority**

12. Major J.R.K. Tandoh (Rtd), Acting Director-General / Chief Executive Officer
13. Mr. Bernard A Forson, Deputy Director-General
14. Mr. Joshua K. Peprah, Director, Regulations and Licensing
15. Major E. Owusu-Adansi (Rtd), Director, Frequency Management
16. Mrs. Abena K. Asafo-Agyei, Director, Legal

### **National Media Commission**

17. Alhaji Abukari Sidick Ahmed, Chairperson, National Media Commission
18. Hon. Joe Baidoe-Ansah (MP), Commissioner
19. Mr. Joseph E.T. Dottey (APR), Deputy Executive Secretary (Finance/Administration)

### **Ghana Broadcasting Corporation (GBC)**

20. Ms Eva Lokko, Director-General
21. Mr Yaw Owusu-Addo, Director, Radio
22. Mr Kofi Bucknor, Director, Television

### **Ghana Independent Broadcasting Association (GIBA)**

23. Mr Kwasi Twum, Vice-President, GIBA; Chief Executive, Multimedia Broadcasting Company Ltd
24. Mr Kwasi P. Ansah, Executive Council Member, GIBA; Executive Producer, TV Africa
25. Mr James Appiah, Member, GIBA; Managing Director, Atlantis Radio

### **Ghana Community Radio Network (GCRN)**

26. Mr. Kofi Larweh, Chairperson, Ghana Community Radio Network
27. Mr. Alex Quarmyne, Radio Ada

### **Other persons/organisations consulted in Ghana**

28. Mr. Tim Acquah-Hayford, CEO, TBWA/MARKCOM, President of Advertising Association of Ghana (AAG); former NMC Chair
29. Mr. William Kofi Ahadzie, Research Fellow, Centre for Policy Studies; Chair of National Development Planning Commission
30. Mr. Yaw Boadu-Ayebofoh, Editor, Daily Graphic; former Executive Secretary, NMC
31. Mr. Hezekiel Dlamini, Advisor for Communication and Information, UNESCO
32. Mr. Budali Issahaku, Poverty and Accountability Advisor, UK Department for International Development
33. Prof. Kofi Kumado, Director, Legon Centre for International Affairs, Chair of Legislative Review Committee for Telecoms, former Chairperson of NMC
34. Mrs. Wilna Quarmyne, Secretariat, Ghana Advocacy Steering Committee for a National Broadcasting Law
35. Mr. Kofi Tsikata, Communication Specialist, World Bank, Ghana

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