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## Analysis of the Eswatini Broadcasting Bill No.22 of 2019

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### **Introduction**

The Kingdom of Eswatini currently has very stringent media restrictions. In 2005, the government passed a Media and Information Policy, which recommended legislation reforms aimed at modernizing and/or adding enabling structures to meet the needs of the mass media environment. The policy also downplays the significance of the right to education. Since then, more Bills have been introduced, notably, the Eswatini Broadcasting Bill No.22 of 2019(the Bill), which is discussed further below. The Bill purports to place the interests of the media at their centres and they have not originated from within Eswatini.

It is critical to note that Eswatini adopted a new Constitution in 2005, which specifies in section 2 that ‘this Constitution is the supreme law of Eswatini and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void. This should imply that all anti-media legislation in effect prior to 2006 has been repealed, however this is not the case. Although the new constitution guarantees freedom of expression, the long list of anti-media laws that still exist make the environment hostile for the media.

The Eswatini Broadcasting Bill seeks to harmonize the whole broadcasting industry. This is the legislation that will be used by the Communications, as a regulator, in regulating the broadcasting sector.

### **Analysis of the Bill**

#### **1. The objects of the Bill-**

- Establishment of the Eswatini Broadcasting Corporation, a national public broadcaster for the Kingdom of Eswatini, by amalgamating the operations and resources of Eswatini Television and Eswatini Broadcasting and Information Services;
- The regulation of broadcasting services in Eswatini;
- The maximum availability of broadcasting services to the people through the three-tier system of public, commercial, community broadcasting services,

Subscription services, subscription management services, and, online content services;

- Broadcasting to contribute to the socio-economic development of the society, nation-building, provision for educational issues, and the strengthening of the spiritual-moral fibre;
- The establishment of a Board of Directors to run the Corporation and the procedure for the nomination of the members of the Board;
- The licensing of the Corporation; and
- Matters incidental to public broadcasting.

## **2. The Long Tittle**

The long Title of the Bill says that this is;-

An Act to provide for the establishment and the licensing of the Eswatini Broadcasting Corporation, the regulation of broadcasting services in Eswatini; the maximum availability of broadcasting services to the people through the three-tier system of public, commercial, community broadcasting services, subscription services, subscription management services, and, online content services and for matters incidental to broadcasting.

## **3. Purpose of the Bill**

The purpose of the Bill is set out in section 3 as follows:-

- To safeguard and strengthen the cultural, political, social, and economic fabric of Eswatini;
- To contribute to the development of society, gender equality, nation-building, and provision of education;
- To encourage the development of local programming content;
- To ensure fair competition in the broadcasting sector;
- To provide for the public, commercial, and community broadcasting services;
- To ensure the development of human resources and capacity building within the broadcasting sector; and
- Promote investment in the broadcasting sector.

#### 4. Function of the Commission

Section 4 deals with the functions of the Eswatini Communications Commission<sup>1</sup> which shall be to regulate broadcasting services in a manner that would inform, educate, and entertain the public and that would ensure a balanced development of broadcasting on radio and television. The Commission is enjoined by the Bill to:-

- Uphold the unity and integrity of Eswatini and the values enshrined in the Eswatini Constitution Act, 2005;
- Safeguard citizen's rights to be informed freely, truthfully, and objectively on all matters of public interest, national or international;
- Promoting the development of broadcasting services that are responsive to the needs of the people of Eswatini;
- Ensuring that licensees include in their services regular locally produced programs;
- preserving and promoting Eswatini culture by ensuring that licensees include in their services programs reflecting the linguistic and cultural diversity of Eswatini;
- Promoting the provision of a diverse range of radio and television broadcasting services throughout Eswatini;
- To promote research and development activities in order to ensure that radio and television broadcast technology is constantly updated by licensees; and
- Ensure fair competition between broadcasting licensees.

In terms of section 5 the Commission shall have power to - (a) inquire into public complaints against a licensee and take any action it considers appropriate; (b) set acceptable standards for programs and advertising and monitor compliance with those standards; and (c) ensure that broadcasting services – (i) are of such a nature as not to encourage or incite crime or racial

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<sup>1</sup> Under the Eswatini Communications Act 2013. In terms of section 7 of the Act the Commission shall advise the Government on policy and legislative measures in respect of the provision and operation of communications network and communications services, including radio and television broadcasts, postal services, electronic commerce and data protection in electronic communications; (b) formulate such rules and regulations to be issued by the Minister as may be necessary for the implantation and proper administration of the policy and legislative measures, provide information and issue guidelines or codes to the public and to commercial entities with respect to the matters which the Commission regulates; establish an electronic communications code, amongst other things.

hatred leading to disorder or offending public feeling; (ii) give adequate coverage to information, education, culture, entertainment and recreation; and (iii) are impartial and accurate

### **5. No broadcasting service without a license**

Section 6 of the Bill prohibits the operation of broadcasting without a licence which have been clustered in the following: a public broadcasting service, a commercial broadcasting service, a community broadcasting service, a subscription broadcasting service and any type of broadcasting service to be determined by the Commission.

### **6. Conditions of issuing license by the Commission**

For the various classes of broadcasting to be issued license by the Commission certain requirements must be met. In terms of section 7(1) of the Bill, a commercial broadcasting licence may be granted by the Commission to provide a diverse range of programming addressing a wide section of the Kingdom, programming in the official language or in any other local language of the Kingdom widely spoken in the Kingdom or any particular area; and (c) within a reasonable time, comprehensive coverage of the areas which a licensee is licensed to serve. All programs by a commercial broadcasting service shall reflect the culture, character, needs, and aspirations of the people in the areas that the licensee is licensed to serve, provide an appropriate amount of local or national programming as may be prescribed, and include news and information programs on a regular basis, including discussion on matters of national, regional, and where appropriate, local significance, and meet the highest standards of journalistic professionalism.

### **7. Community broadcasting services license**

Section 9 deals with Community broadcasting services. A community broadcasting service licence may be granted by the Commission in the following categories: - free-to-air radio broadcasting services; or free-to-air television services. Any person who wishes to apply for a community broadcasting service license shall do so in accordance with the provisions of the Electronic Communications Act relating to the application for a radio license. The criteria for a community broadcasting service license shall be -for community purposes; received by commonly available equipment; free to the public; and produced and broadcast in the language of the community.

In terms of section 10 of the Bill an applicant who desires to make a profit shall not be eligible for a community broadcasting license. This also goes to an entity which wholly foreign-owned so is an applicant who has been convicted of any offence involving dishonesty. Political parties or entities are also not spared. Community broadcasting shall be community-based without any interference or control from any other media service. This is in terms of section 10 (2) of the Bill provides that a newspaper, private radio, commercial radio or television station proprietor shall not own or control any share or interest in a community radio station.

In terms section 11(1) a community broadcasting service shall serve a community, and the members of such a community that it is intended to serve shall be given an opportunity to run the service. The programming provided by a community broadcasting service shall reflect the needs of the people in the community which shall include culture, language and demographic needs, and shall – provide a distinct broadcasting service dealing specifically with issues which are not predominantly dealt with by the broadcasting service covering the same area, shall serve to eradicate information poverty through participatory communication in the community, be informative, educational and entertaining, focus on the provision of programs that highlight grass-root community issues including but not limited to developmental and general educational, environmental, local, international and current affairs and reflect local culture; promote the development of a sense of common purpose and improve the quality of life; and help foster cultural and communal identity.

## **8. Availability of frequency**

Section 13 of the Bill deals with the availability of frequency. In a nutshell it provides that such frequency, for community broadcasting, shall be issued by the Commission Subject to Part VII of the Electronic Communications Act.<sup>2</sup>

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### **PART VII RADIO FREQUENCY MANAGEMENT** Frequency management

34. (1) The Commission shall be responsible for managing the efficient and effective use of radio frequency spectrum, including spectrum and orbital locations used by satellite services, and in doing so shall –

- a) after consultation with all major stakeholders including the sound and television broadcasting industries in accordance with Section 32 of the Swaziland Communications Commission Act, recommend a national frequency allocation plan which may be revised periodically, as necessary;
- b) assign radio frequency spectrum or groups of radio frequency spectrum in accordance with the national frequency plan and with publicly available national policies;
- c) monitor the use of the radio frequency spectrum for purposes of eliminating harmful interference, ensuring efficient usage, planning of radio frequency spectrum allocation and radio frequency spectrum assignment, and for making spectrum-occupancy related information available to the industry and consumers;

## **9. Prohibition of holding more than one community radio**

Section 14 of the Bill stipulates that only one person may hold a community broadcasting license. This means that a single person cannot have several licenses.

## **10. Free to air broadcasting services**

Section 15 of the Bill enjoins a commercial broadcasting service to provide free-to-air broadcasting services. The Bill's principle appears to be that, because commercial broadcasting will be profitable, unlike other media, it should provide free-to-air programming as a community service. It is not only free to air, but it is also mandatory that major quantities of Eswatini drama, documentaries, and children's shows reflect Eswatini themes, literature, and historical events are included in the programming.

## **11. Subscription management broadcasting services**

Section 16 of the Bill deals with subscription management broadcasting services. Simply put, a subscription broadcasting service is one that is made available to members of the general public in exchange for the payment of a subscription fee, whether such payment is periodic or not, and whether such fee is charged separately or as part of a fee for multiple services, including the broadcasting service. Subscription services are for revenue purposes and it must carry the national broadcaster.

## **12. General guidelines on the content of programmes**

In terms of section 27 (1) of the Bill, a licensee shall, in its broadcasting of a licensed service, shall offend against good tastes, morality or decency or is likely to encourage or incite crime or lead to disorder, or be offensive to public feeling, repugnant, or conducted in bad faith; that any

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- d) in collaboration with the Minister, make and publicize decisions necessary for the management and the use of the radio frequency spectrum;
  - e) in collaboration with the Minister, prescribe fees for the use of the radio frequency spectrum;
  - f) in the allocation and assignment of radio frequency spectrum, give due regard to the requirements of safety and emergency services;
  - g) where necessary, specify compatibility standards for the interoperability of radio frequency equipment and ensure that the standards are adhered to; and
  - h) Represent the country in international for a on matters regarding radio frequency spectrummanagement.

news given, in whatever form, in its programs is presented with due accuracy and impartiality; that due impartiality is preserved on the part of the person providing the service as respect matters of political or industrial controversy or relating to current public policy; that due responsibility is exercised with respect to the content of any of its programs which are religious programs, which do not involve –

- (i) any improper exploitation of susceptibilities of those watching the programs; or
- (ii) (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.

That its programs do not include any technical device that, by using images of brief duration or by other means, exploits the possibility of conveying a message to or otherwise influencing the minds of persons watching the programs without their being aware, or fully aware, of what has occurred; and that its programs do not encourage or foster hatred or racial tension.

### **13. Programme standards**

In terms of section 29 of the Bill mandates every licensee to develop a code of professional standards which shall comply with the minimum requirements for respect for human dignity and human rights and freedoms,<sup>3</sup> and contribution to the tolerance of different opinions and beliefs including comprehensive, unbiased, and independent news broadcast and current affairs programs with commentary clearly distinguished from the news; observance of procedures for correcting factual errors and redressing unfairness; observance of the principle of the right to reply; protection of the integrity of minors by clearly classifying and distributing programs that may endanger the development of a child; and clear separation of advertisements from other program outputs.

### **14. Standards and ethics**

The Eswatini Communications Commission is in terms of section 30 of the Bill empowered to set up a Standards Committee which shall draw up a code of ethics and advertising practices for licensees.

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<sup>3</sup> Human rights are guaranteed and protected under chapter III of the Constitution of Eswatini.

The code of ethics and advertising practices shall give guidance to the technical standards required in the preparation, production and presentation of broadcast programs including the need for subtitling for the benefit of the deaf where applicable; the standards and practice in advertising and in the sponsorship of programs, including the absence of discrimination; the promotion of locally-produced programs; the optimization of air-time occupancy; and standards of taste and decency for broadcasting programs particularly having regard to the portrayal of violence or sexual conduct.

When drawing up or reviewing the code of ethics and advertising practice, the Standards Committee shall consult every licensee; and a spectrum of listeners and viewers.

The Standards Committee shall conduct audience research in such manner and at such times as the Commission may determine. The Standards Committee shall make periodic reports to the Commission on the standards attained by every licensee. The Commission may make different provisions in the code of ethics and advertising for different cases or circumstances.

### **15. Review of code ethics and advertising**

Section 30 (1) of the Bill the authorizes the Commission to review from time to time the code and shall give guidance as to - the rules to be observed with respect to the showing of violence, or the inclusion of sounds suggestive of violence, in programs included in licensed services, particularly when large numbers of children and young persons may be expected to be watching the programs; the rules to be observed with respect to the inclusion in such programs of appeals for donations; and (c) such other standards and practices for such programs as the Commission may consider necessary.

In terms of section 33, a licensed service shall be barred from making advertisements that are political in nature.

### **16. Establishment of the Eswatini Broadcasting Corporation**

Section 35 Bill establishes the Eswatini Broadcasting Corporation which shall be a national broadcaster for the Kingdom of Eswatini by amalgamating the operations and resources of the two existing broadcasters, Eswatini Television and the Eswatini Broadcasting and Information Services.

Section 45 of the Bill deals with main objects of the Bill wherein it states that corporation's main objective will be to satisfy the aspirations and interests of listeners and viewers in the field of information by providing them with programming that educates, entertains, and informs. It will also be responsive to audience needs and how it plans to meet these. What is more is that the Corporation shall:-

- (a) provide broadcasts that are fair, balanced, accurate, in good taste and neutral;
- (b) Refrain from giving unnecessary publicity to any person or matter;
- (c) Afford a fair hearing to any person who can be identified in a broadcast;
- (d) Strike the balance in promoting the languages taught or spoken in Eswatini;
- (e) Put across the various points of view on controversial matters;
- (f) Comply with any code of Conduct prescribed by the Communications Commission;
- (g) Make its service available throughout Eswatini; and
- (h) Promote local artistic and cultural talent.

## **17. Editorial policy**

Section 38 of the Bill declares that the Corporation shall have an independent editorial policy. This is fundamental because in the current media landscape there is extreme editorial interference. The editorial policy shall reflected, without bias, a range of opinions, philosophical, religious, cultural, traditional, scientific and artistic trends. It shall also contribute to the development of free and informed opinion as well as respect human dignity<sup>4</sup> and freedoms<sup>5</sup>

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<sup>4</sup> The Constitution on the protection from inhuman or degrading treatment.

- 18.** (1) The dignity of every person is inviolable.
- (2) A person shall not be subjected to torture or to inhuman or degrading treatment or punishment.

<sup>5</sup> Fundamental rights and freedoms of the individual.  
Section 14(1) of the Constitution the fundamental human rights and freedoms of the individual enshrined in this Chapter are hereby declared and guaranteed, namely —

- (a) respect for life, liberty, right to fair hearing, equality before the law and equal protection of the law;
- (b) freedom of conscience, of expression and of peaceful assembly and association and of movement;
- (c) protection of the privacy of the home and other property rights of the individual;
- (d) protection from deprivation of property without compensation;
- (e) protection from inhuman or degrading treatment, slavery and forced labour, arbitrary search and entry; and

enshrined in the Constitution of Eswatini. The editorial policy shall further advance international understanding of the sense of peace and social justice of the public and contribute to the realization of equal treatment and gender balance.

### **18. Powers of the King in a public emergency**

Section 59(1) of the Bill should be read in line with section 64 (4) (e)<sup>6</sup> of the Constitution. Section 59(1) provides that where there is in force a proclamation of a state of public emergency or threatened public emergency under the Constitution, the King may make an order authorizing any officer of any authority to take over all broadcasting stations or any particular broadcasting station in Eswatini; and control and direct all broadcasting services from the broadcasting stations or broadcasting station for so long as the King considers it expedient. This provision gives the King wide powers in an emergency yet public emergency or threatened public emergency is not defined under the definition section. The Bill states that in exercising the powers stipulated in under this provision the king may require the exclusive services of people employed in the Broadcasting stations.

The provisions of section 59 (2) of the Bill states When an officer or an authority is authorized to take over a broadcasting station, the person owning or controlling the broadcasting station shall give up possession to the King or the officer or authority, and the person employed in, working or maintaining the broadcasting station, or in carrying on a broadcasting service from the broadcasting station shall, if the King in terms of that subsection requires their exclusive services, diligently and faithfully obey, during the period the broadcasting station is in possession of the officer or authority all such orders and other directions as the officer or authority may give in connection with the working or maintenance of the broadcasting station.

Under section 59(3) of the Bill reasonable compensation shall be paid to a person who suffers loss or damage through the exercise of the powers to the King from monies appropriated for that purpose by Parliament in such amount as may be agreed between that person and the Minister.

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(f) respect for rights of the family, women, children, workers and persons with disabilities.

<sup>6</sup> The King in his capacity as Head of State has authority, in accordance with this Constitution or any other law, among other things to — (e) declare a state of emergency.

## 19. Conclusion

Press freedom has become a very important political issue in Eswatini. Over the years the government appeared reluctant to hasten the process of opening the communication spectrum in general. The Bill aims to repeal the Eswatini Television Authority Act and it seeks to disengage EBIS and its existing staff members. Notably, the Bill provides for freedom of expression through broadcasting. It also aims to regulate sound and television services and provide for the maximum availability of broadcasting to the people through the three-tier system of public, commercial, and community broadcasting services. The bill also aspires to contribute to society's socio-economic development and nation-building while also enhancing the country's spiritual and moral fiber. The Bill is seen to be opening the broadcasting space and recognizes the Eswatini Communications Commission as a regulator. The Bill is ostensibly hostile to politics but appreciates the right to information and freedom of expression.

The main provision of the Eswatini Constitution as it relates to freedom of the media and freedom of expression in Section 24, which states:

Protection of freedom of expression.

24(1) A person has a right of freedom of expression and opinion.

(2) A person shall not except with the free consent of that person be hindered in the enjoyment of the freedom of expression, which includes the freedom of the press and other media, that is to say —

- (a) freedom to hold opinions without interference;
- (b) freedom to receive ideas and information without interference;
- (c) freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons); and
- (d) freedom from interference with the correspondence of that person.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision —

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of —
  - (i) protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings;
  - (ii) preventing the disclosure of information received in confidence;

- (iii) maintaining the authority and independence of the courts; or
  - (iv) regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television or any other medium of communication; or
- (c) That imposes reasonable restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority of that law is shown not to be reasonably justifiable in a democratic society.