

NATIONAL MEDIA COMMISSION ACT, 2002

Arrangement of Sections

Section
PART I - PRELIMINARY
1. Short title
2. Interpretation
PART II - ESTABLISHMENT AND COMPOSITION OF THE NATIONAL MEDIA COMMISSION
3. Establishment of the National Media Commission
4. Membership of the Commission
5. Meeting
6. Delegation of functions
7. No remuneration to members
PART III - FUNCTIONS
8. Functions
PART IV - MANAGEMENT AND STAFF
9. Executive Secretary and support staff
PART V - FINANCIAL PROVISIONS
10. Funds
11. Accounts and audit
12. Annual reports
PART VI - REGISTRATION
13. Registration

element "C" to The Gambia Gazette No. of

National Media Commission Act, 2002.



THE GAMBIA

NO. 7 OF 2002.

Assented to by The President,

5th day of August, 2002.

Henry Amnell
President.

AN ACT to establish a National Media Commission, to regulate the media, provide for a code of conduct and to ensure the impartiality, independence and professionalism of the media and for matters connected therewith.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the National Media Commission Act, 2002.
2. In this Act, unless the context otherwise requires -

PART VII - COMPLAINTS

14. Powers of the Commission in respect of complaints
15. Power of the Commission to require disclosure of source of information
16. Lodging of complaints
17. Procedure and evidence
18. Fixing of hearing day
19. Hearing in absence of parties
20. Re-hearing of case heard *in absentia*
21. Witnesses
22. Hearing to be in public
23. Adjournment of hearing
24. Record of proceedings
25. Dispensing with certain requirements
26. Extension of time
27. Exhibits and books to be kept by Secretary
28. Withdrawal of complaints
29. Orders of the Commission
30. Publication of name of media practitioner or media organisation reprimanded
31. Appeals
32. Offences
33. Use of derogatory language, etc.
34. False publication
35. Offences by corporations

PART IX – MISCELLANEOUS

36. Suspension of registration in default of payment of penalties, etc.
37. Liability of media organisations
38. Immunity of Commission and staff
39. Inconsistency
40. Regulations
41. Repeal of Act No. 11 of 1991

"broadcasting stations" means television and stations;

"Chairperson" means the Chairperson of the Commission;

"Commission" means the National Media Commission established under section 3;

"hearing" includes trial;

"member" means a member of the Commission

"media" means all forms of mass communication

"media organisation" means an organisation engaged in transmitting news and information to the public includes a media house, association, club and company engaged in the business of mass communication;

"media practitioner" means any person engaged writing, editing or transmitting of news and information to the public and includes the proprietor, publisher, editor, editor-in-chief and manager of any newspaper and broadcasting station, and journalists;

"newspaper" has the meaning assigned to it in section 2 of the Newspaper Act;

"Secretary of State" means the Secretary of State responsible for the administration of this Act.

Cap. 32:04

PART II - ESTABLISHMENT AND MEMBERSHIP OF THE NATIONAL MEDIA COMMISSION

3. (1) There is hereby established a Commission to be known as the National Media Commission.

(2) The Commission is a body corporate with perpetual succession and a common seal and may -

(a) sue and be sued in its corporate name;

(b) enter into contracts and acquire, hold and dispose of property; and

(c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

(3) The application of the common seal of the Commission shall be authenticated by the signature of the Chairperson or any other person as authorized by the Commission to sign on its behalf and every document bearing the imprint of the seal of the Commission shall be deemed to be properly sealed unless the contrary is proved.

4. (1) The Commission shall have the following members -

(a) a Chairperson who shall be a Judge of the High Court to be appointed by the Chief Justice;

(b) one youth representative;

(c) one representative of the Gambia Press Union;

(d) one representative of the Gambia Teachers Union;

(e) one representative of the Supreme Council;

(f) one representative of the Gambia Council;

(g) one representative of the Women's Bureau;

(h) the Director General of The Gambia Radi Television Services or his or her nominee;

(i) one representative of the National Assembly

(j) one representative of the Gambia Bar Association and

(k) the Executive Secretary of the Commission.

(2) The members of the Commission shall elect a Chairperson from amongst their number.

(3) A member of the Commission shall hold office for a term of three years and may be re-appointed for a second term.

Meetings

5. (1) The Commission shall meet at least three times a year.

(2) The Chairperson may, at any time, and shall, if not more than five other members request in writing, convene a special meeting of the Commission.

(3) The Chairperson shall preside at all meetings of the Commission and in the Chairperson's absence, the Chairperson shall preside, and in the absence of both the Chairperson and the members present shall appoint one of their number to preside.

(4) A decision of the Commission shall be by a majority of the members present and, in the event of an equal vote, the Chairperson has a casting vote.

(5) The quorum for a meeting of the Commission is six members.

(6) The Commission may co-opt any person to act as an adviser at its meeting except that the co-opted person shall not vote at the meeting.

(7) The validity of a proceeding of the Commission shall not be affected by a vacancy in the membership or by any defect in the appointment of a member.

6. The Commission may delegate any of its functions to committees comprising members or non-members of the Commission or both.

7. (1) No remuneration shall be paid to a member in respect of membership of the Commission except sitting allowances.

(2) The Commission may pay an allowance to a member to cover travel and other expenses incurred in carrying out the duties of a member.

PART III - FUNCTIONS

8. The Commission shall -

(a) ensure the impartiality, professionalism and independence of the media;

(b) maintain a register of media practitioners and media organisations;

(c) provide for a Code of Conduct for media practitioners, and set standards with regard to the content and quality of materials for publication or broadcast by the media;

(d) promote the establishment and maintenance of the highest journalistic standards in the mass media;

(e) ensure the registration of newspapers, magazines, journals and broadcasting stations, in accordance with the Constitution and other laws of Gambia;

(f) consider and determine complaints lodged by individuals, bodies corporate and unincorporated against media practitioners and organisations regarding the content of broadcast, newspaper or other information transmitted via the mass media; and

(g) ensure and protect the rights and privileges of media practitioners, including media practitioners employed by the State, in the execution of their professional duties.

PART IV - MANAGEMENT AND STAFF

9. (1) The Chairperson shall appoint an Executive Secretary in consultation with the Secretary of State,

Executive Secretary and support staff.

(2) The Executive Secretary shall –

(a) be the administrative secretary to the Commission and carry out any other duties as directed by the Commission; and

(b) hold office for a period of five years and may be re-appointed for such further periods as may be determined by the Commission.

(3) The Commission may, with the approval of the Secretary of State, terminate the services of the Executive Secretary.

(4) The Commission shall appoint such number of staff as it may require to carry out its functions.

(5) The Commission may delegate to the Executive Secretary the power to appoint staff.

(6) The Commission shall determine the terms and conditions of service of the staff of the Commission.

PART V - FINANCIAL PROVISIONS

10. The funds of the Commission shall consist of –

(a) monies appropriated to it by the National Assembly;

(b) monies and assets that vest in or accrue to the Commission;

(c) monies paid to the Commission; and

(d) donations and grants.

11. (1) The Commission shall keep proper records and books of account of its income and expenditure.

(2) The Commission shall prepare in respect of each financial year, a statement of accounts.

(3) The accounts of the Commission shall, in respect of each financial year, be subject to audit by the Auditor General.

(4) The Commission shall ensure that within three months from the end of each financial year, a statement of accounts of the Commission for the preceding year is prepared and submitted to the Auditor General.

(5) The audited accounts of the Commission and the Auditor General's report on those accounts shall form part of the Auditor General's overall annual report to the National Assembly.

(6) The Commission shall, not later than three months after the end of each financial year, prepare and submit to the Secretary of State an estimate of its income and expenditure for the next succeeding year.

Annual
reports

12. The Commission shall prepare and submit to the Secretary of State, not later than 31st December in each year, a report on the activities of the Commission during the preceding year and the Secretary of State shall, on receiving the report, cause it to be laid before the National Assembly.

PART VI - REGISTRATION

Registration

13. (1) No person shall, after the commencement of this Act, engage in the dissemination of information by communication unless registered as a media practitioner or media organisation, as the case may be, in accordance with this section.

(2) A media organisation in business at the date of commencement of this Act shall, within one month of commencement of this Act, register with the Commission also submit to the Commission the names of all practitioners registered with that organisation.

(3) Notwithstanding subsection (1) but subject to subsection (4), a media practitioner shall register with the Commission in practice -

(a) at the commencement of this Act, within two months of the commencement of this Act; and

(b) after the commencement of this Act, within one month of the commencement of the practice.

(4) The provisions of subsection (3) do not apply to a practitioner who is employed by the Government.

(5) The Commission shall issue a licence to a media practitioner or media organisation registered under this section.

(6) The registration of a media practitioner or media organisation shall be valid for one year and may be renewed from year to year.

(7) A media practitioner or media organisation which contravenes this section commits an offence and is liable to a fine of not less than five thousand dalasis in the case of a media practitioner and ten thousand dalasis in the case of a media organisation, and in default of payment of the fine within a period of thirty days from the date of the finding of the Commission, the registration and licence of the media practitioner or media organisation shall be deemed to be suspended -

(a) in the case of a media practitioner, for a period of twelve months; and

(b) in the case of a media organisation, for a period of eighteen months.

PART VII - COMPLAINTS

14. (1) Notwithstanding the provisions of any other law, the Commission shall, to the exclusion of any other court or tribunal, consider and determine all complaints against a media practitioner or media organisation, in accordance with the provisions of this Act.

(2) The Commission shall also have exclusive jurisdiction over all ancillary matters and other preliminary issues connected with any hearing under this Act.

(3) Subject to the provisions of this Act, the Commission shall, following complaints made to it by any person under section 16, have the power to –

- (a) inquire and procure all such evidence, written or oral and examine all such persons as witnesses as the Commission may deem fit;
- (b) try all the offences created under this Act;
- (c) summon any person in The Gambia to attend hearing conducted by the Commission to evidence or produce any document or other in his or her possession and examine him or her as a witness and may require him or her to produce any document or other thing in his or her possession;
- (d) consider and deal with any matter referred to the absence of any party who has been summoned to appear before it;
- (e) admit any evidence whether written or oral, act on the evidence;
- (f) enter on any land or premises personally or any agent duly authorized in writing by the Commission for any purpose which, in its opinion, is material to the hearing of a complaint, and for the purpose of obtaining evidence or information or of inspecting or taking copies of any documents or other things required by or which may be of assistance to the Commission, and

(ii) safeguarding any document or property which in the opinion of the Commission ought to be safeguarded for any purpose of the hearing;

- (g) adjourn its proceedings, from time to time; and
- (h) generally give all such directions and do all such things as are necessary or expedient for dealing speedily and justly with any matter before it.

15. If the Government or any of its Departments of State, organs or agencies alleges in the complaint that the information provided to a media practitioner or media organisation –

- (a) was without authorisation; or
- (b) is a contravention of the Official Secrets Act,

the Commission shall require the media practitioner or media organisation to disclose the source of the information and if a media practitioner or media organisation fails to disclose the source of the information within the period stipulated by the Commission, the Commission shall impose one or more of the penalties provided for under section 29.

16. (1) A person who is aggrieved by anything –

- (a) published in a newspaper or broadcast by a broadcasting station in respect of that person; or
 - (b) done in respect of that person by a media practitioner in that capacity,
- may complain in writing to the Commission.

(2) The Commission shall not entertain a complaint under this Act unless the complaint is made within twelve months from the date on which the complainant first became aware of the matters alleged in the complaint.

(3) Where the complainant -

(a) is a minor, the complaint may be made by the parent, a member of the family or guardian of the minor; or

(b) is unable to act by reason of infirmity of mind or body or other cause or has died, the complaint may be made by the personal representatives or a member of the family of the complainant.

(4) A complaint made by a person who is an inmate of a government institution or detained in a prison shall be forwarded to the Commission by the person for the time being in charge of that institution within fourteen days of receipt of the complaint.

17. (1) Subject to the provisions of this Act, the procedure for hearing a complaint shall be such as the Commission considers appropriate in the circumstances.

(2) The Commission may receive in evidence any relevant material evidence notwithstanding that such evidence would be inadmissible in evidence before the ordinary courts.

(3) The Commission shall, before the hearing of a complaint, give the media practitioner or organisation, against whom the complaint is made, an opportunity of making representations to the Commission, either orally or in writing, commencing on the complaint.

Fixing of
hearing day

18. (1) On the direction of the Chairperson, the Executive Secretary (in this Part of this Act referred to as "the Secretary") shall fix a day for the hearing of the case and shall serve notice of hearing on each party to the proceedings.

(2) The notice of hearing may be served either personally or by registered post addressed to the residence or place of business of each party to the proceedings.

(3) The notice may be in the form set out in Schedule 1 to this Act and there shall be at least twenty-one days between the service of the notice and the day fixed for the hearing.

19. If a party fails to appear at a hearing, the Commission may, on proof of service on the party of the notice of hearing, proceed to hear and determine the case in the absence of the party.

20. (1) A party who fails to appear at a hearing may, within one calendar month from the pronouncement of the order of the Commission and giving notice to every other party and to the Secretary, apply to the Commission for a re-hearing.

(2) The Commission may, if satisfied that it is just that the case should be re-heard, grant the application on such terms as to costs or otherwise as it deems fit.

21. (1) A summons for the attendance of a witness or the production of a document shall be served in the same manner as a subpoena for the attendance of a witness in a court.

(2) The Commission may issue a warrant for the arrest of a person who, having been served with a summons, fails to appear before the Commission.

Schedule 1

Hearing in
absence of
parties

Hearing of
case heard
in absence of
parties

Procedure and
evidence

Witnesses

Schedule 2

(3) Summonses issued under this Act may be in the form out in the Schedule 2 to this Act and shall be served by police or such other person as the Commission may direct.

(4) No civil proceeding shall lie against a person as result of his or her testimony before the Commission in hearing.

22. The proceedings of the Commission shall be held public but may be held *in camera* in an appropriate case may be determined by the Chairperson.

23. The Commission may, of its own motion, or on application of any party, adjourn the hearing on such fee as to costs, or otherwise, as the Commission shall think fit.

24. (1) The record of proceedings shall be prepared by person appointed by the Commission, and any party who appeared at the proceedings shall be entitled to be supplied with a copy or the transcript of the proceedings upon payment of the stipulated fee.

(2) The Secretary shall supply to any person entitled to heard on an appeal against the decision of the Commission a copy of the transcript of the record on the payment of such fees as may be determined by the Secretary.

25. The Commission may dispense with any requirement with respect to notices, affidavits, documents, service, time, in any case where it appears to the Commission to just to do so.

26. The Commission may in any given case extend the time for doing anything under this Part of this Act.

Exhibits and books to be kept by Secretary

Withdrawal of complaint

Orders of the Commission

27. The Commission may order that any book, paper, or any other exhibit, produced or used at a hearing, shall be retained by the Secretary until such time within which an appeal may be entered has expired, and, if notice of appeal is given, until the appeal is heard or otherwise disposed of.

28. A complainant may, at any time before an order is made by the Commission, withdraw his or her complaint.

29. (1) Where, after hearing a complaint under this Act, the Commission is satisfied that -

(a) the publication or broadcast, in respect of which the complaint is made, is not in accordance with the Code of Conduct prescribed by the Commission; or

(b) the conduct of a media practitioner, in respect of whom the complaint is made, is not in accordance with the Code of Conduct; or

(c) the conduct of a media practitioner is, in the circumstances of the case blameworthy; or

(d) an offence has been committed under this Act,

the Commission shall, make any one or more of the orders specified in subsection (2).

(2) The Commission may make one or more orders under subsection (1) -

(a) directing the newspaper or broadcasting station concerned to publish or broadcast in such manner as the Commission may direct, an apology or correction;

(b) reprimanding the media practitioner or media organisation concerned;

- (c) suspending, cancelling or revoking the registration and licence of the media practitioner or media organisation concerned;
 - (d) imposing a penalty of not less than ten thousand dalasis;
 - (e) directing that an amount of not less than ten thousand dalasis be paid to the complainant as compensation;
 - (f) awarding such damages as the Commission may deem fit to any person affected by the publication of a broadcast;
 - (g) closing down the media organisation concerned; and
 - (h) in the case of an offence, imposing the penalty specified for the offence under this Act, in addition to any of the orders set out in this subsection.
- (3) A media practitioner or media organisation in respect of whose publication or broadcast the Commission has made an order under this section shall comply with the Commission's order.
- (4) An order of the Commission shall be enforced in the same manner as in civil or criminal proceedings, as the case may be, in The Gambia.

30. The Commission may publish in the Gazette the name of media practitioner or media organisation considered to be in contempt of the Commission and may reprimand the name of any media practitioner or media organisation reprimanded by the Commission.

31. (1) Appeal shall lie from a decision or an order of the Commission to the Court of Appeal whose decision shall be final and not be subject to appeal.

(2) The Commission may review its own decision or order on any matter based on fresh evidence.

PART VIII - OFFENCES

Offences

32. A person who -

- (a) having been summoned as a witness fails to appear before the Commission; or
- (b) being a witness before the Commission, refuses to be sworn or affirmed; or
- (c) having been sworn or affirmed, knowingly makes a false statement or tenders a false document touching any matter which is material to any question related to the hearing; or
- (d) gives false evidence or knowingly makes a false statement in any affidavit sworn to for the purposes of proceedings before the Commission; or
- (e) intentionally insults, interrupts or obstructs the Commission or member of the Commission or staff of the Commission in the performance of any function under this Act; or
- (f) intentionally disobeys an order made by the Commission,

commits an offence and is liable to a fine of not less than five thousand dalasis or in default may be committed for contempt for not less than forty-eight hours and not more than six months.

(2) The Commission or a member or staff of the Commission shall not be called to give evidence or to produce any document or article before a court or tribunal or in any proceeding of a judicial nature in respect of anything coming to the knowledge of the Commission or its staff in the exercise of official functions.

Inconsistency

39. Where any provision of this Act is inconsistent with the provision of any other law, the provision of this Act shall prevail.

Regulations

40. The Secretary of State may, on the recommendation of the Commission, make regulations for the better carrying out of the provisions of this Act and, without limiting the generality of the foregoing, may make regulations –

- (a) providing for a Code of Conduct for media practitioners and media organisations; and
- (b) for the qualification and fees to be paid for the registration of media practitioners and media organisations.

Repeal of Act No.
11 of 1991

41. (1) The National Press Council Act, 1991 is hereby repealed and the Council established under it is hereby dissolved.

(2) As from the commencement of this Act, all the rights, assets, liabilities and obligations of the dissolved National Press Council existing immediately before the commencement of this Act shall be transferred to the Commission.

(3) Any action or proceeding in any court, or any judgment or order which was enforceable by or against the dissolved Council immediately before the commencement of this Act may be continued and enforced by or against the Commission established under this Act.

SCHEDULES

National Media Commission Act, 2002

SCHEDULE I

Section 18

NATIONAL MEDIA COMMISSION ACT, 2002

NOTICE OF HEARING BY NATIONAL MEDIA COMMISSION

In the matter of A. B.

and
Complainant

In the matter of C.D.

Media Practitioner/Media Organisation

Take Notice that the complaint of

the above matter is fixed for hearing by the Commission

on the day of 20....

o'clock in the forenoon

copy of all related documents are attached hereto.

dated this day of 20

Executive Secretary
National Media Commission

Delete where not applicable

SCHEDULE 2

Section 21

NATIONAL MEDIA COMMISSION ACT, 2002

SUMMONS

To
(Name, address and occupation of person summoned)

You are hereby summoned to appear before the National Media Commission
at on the day of 20
at o'clock or so soon thereafter to give evidence with respect to the hearing
the conduct or affairs of -

.....
.....
*and you are required to bring with you the following books, documents or
things -

- a } (Specify the
- b } books, documents
- c } or other things)
- d }
- e }

GIVEN under my hand at this day of 20.....

.....
Chairperson
National Media Commission

* Delete where not applicable

PASSED in the National Assembly this
the year of Our Lord Two Thousand and Two

24th day of July

Ag. Clerk of the National Assembly.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill
which has passed in the National Assembly, and found by me to be a true and correct copy
of the said Bill.

Ag. Clerk of the National Assembly.