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LEGAL NOTICE NO. 38 OF 2022

Broadcasting Code, 2022

Pursuant to section 40 of the Communications Act, 2012¹, I,

TŠOINYANA RAPAPA

Minister responsible for communications, science and technology make the following code:

Citation and commencement

1. This code may be cited as the Broadcasting Code, 2022 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. In this code,

“Act” means the Communications Act, 2012;

“advertisement” means any item which is broadcast in return for payment or other valuable consideration to a broadcaster and which seeks to directly or indirectly -

- (a) sell to a listener or viewer any product or service;
- (b) convince a listener or viewer of a belief;
- (c) course of action; or
- (d) promote or oppose a product, service, belief, course of action, person or organization but which excludes party political advertisement.

“age restriction” means an age under or over which television or radio programmes content may be listened to or viewed;

“assigned frequency” means the centre of the frequency band assigned

to a broadcasting service;

“audience” means viewers and listeners of content on the internet or terrestrial television or radio;

“Authority” means Lesotho Communications Authority established under Section 4 of the Act;

“broadcaster” means any natural or juristic person licensed or registered by the Authority that performs a broadcasting service over the internet or terrestrial platform;

“broadcasting service” means a single defined service which consists in the audio, visual broadcasting or programming to the public or sections of the public or to the subscribers to such service;

“broadcasts intended for adult audiences” means broadcasts depicting strong language, excessive violence and explicit sexual conduct and should exclude broadcasts intended for children;

“business days” means any day of the week excluding weekend days and holidays’

“child” means a person under the age of 18 years;

“code” means the Broadcasting Code, 2022;

“coded language” means use of prohibited words, presented in a different or substituted format in order to defeat the non-compliance with the code with intention to communicate to selected group of audience;

“content classification” refers to the suitability of audio or visual programmes for children, teenagers, or adults categorized as follows;

“parental guidance” means that the material may contain classifiable elements that may be disturbing or harmful for young viewers, and that parents or caregivers are in the best position to decide whether or not a child in their care may access material classified as ‘PG’ subject to the specified rating applicable to such material with an age restriction of 10 or 13 during prime time and other time slots which children may

consume broadcast content of 16 or 18 age restriction limited to the ages of 16 or 18 years as the case maybe which on audio-visual should be accompanied by either of the following symbols: nakedness (N), sex (S), violence (V) and coarse language which includes swearing or insolence (L) during the watershed period;

“community standards” means local norms constituting acceptable code of conduct which sets values and guidelines for participation in the community;

“complaint” means an assertion made in writing or by email to a broadcaster by any person that the broadcaster had broadcast matter which, in the opinion of the complainant, breaches this code;

“coverage area” means areas identified and designated as areas to which a broadcaster should provide service;

“hate speech” means an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, national origin, political affiliation, gender, religion or sexual orientation;

“indirect advertising” means a form of marketing that does not use the formal everyday methods such as newspapers and magazines but a product in a television show, free;

“Panel” means the Broadcasting Dispute Resolution Panel established by Section 39 of the Act;

“party political broadcast” means a programme which is -

- (a) broadcasting free of charge; and
- (b) intended or calculated to advance the interest, beliefs or objects of a political party;

“party political advertisement” means an item which is -

- (a) a broadcast in return for payment or other valuable consideration to the broadcaster; and

- (b) intended or calculated to advance the interests, beliefs or objects of any political party.

“person” means a natural person or a body corporate;

“political party” means a single party, or any alliance of parties which is registered as a political party under the laws of Lesotho, or which has publicly declared its intentions to register as a political party or to contest elections on a local or national level or any alliance of such parties;

“prime time” means the times between 6am and 10 am and 6.30pm and 9.59pm;

“programme” means -

- (a) broadcasts that are intended to inform, educate enlighten, caution, or entertain or advertise or sponsorship matter whether or not of a commercial kind; and
- (b) for the purpose of regulation 8, includes news bulletins, current affairs, information programmes, interviews, panel and phone in discussion programme.

“sponsorship” means any item of publicity other than advertisement broadcast in return for payment or any other valuable consideration to a broadcaster station;

“station” means one or more transmitters and receivers including the accessory equipment necessary at one location for carrying on a radio or television communications service;

“watershed period” means the period between 2200 hours and 0500 hours;

Application of the code

3. The code shall apply to all broadcasters licensed and registered under the Act.

Editorial independence

4. A broadcaster shall -
 - (a) take editorial responsibility of every broadcast occurring in his media house;
 - (b) take steps to manage conflict of interest between matters including production and presentation;
 - (c) ensure that all relevant employees and programme matters including those from whom they commission programme understand the code contents and its significance; and
 - (d) have in place internal procedures for ensuring that programme producers seek guidance on the code within the broadcaster's organization at all managerial or administrative level.

Capacity

5. (1) A broadcaster shall, when applying for a licence, submit -
 - (a) organizational structure of the radio station;
 - (b) profiles of staff members with their academic qualifications and level of experience in broadcasting which shall be at level prescribed in regulation 5 (2); and
 - (c) a capacity building programme.
- (2) A broadcaster shall recruit and retain -
 - (a) presenters who have certification confirming journalistic training of no less than 6 months of continuous training from a registered and recognized institution; and
 - (b) editorial staff who have certification confirming journalistic training of no less than two years of

continuous training from a registered and recognized college or university.

(3) Within 24 months of coming into effect of this code, all registered and licensed broadcasters shall comply with Regulation 5(1).

Community standards and language

6. A broadcaster shall -

- (a) ensure accuracy, balance, credibility, impartiality and fairness in their news and current affairs;
- (b) not broadcast in any manner, content which when measured by community standards -
 - (i) offends against good taste or decency, uses offensive language including profanity, blasphemy and other culturally and religiously insensitive material in programmes especially designed for children; or
 - (ii) uses an excessively and grossly offensive language before the watershed period on television or radio at times when large numbers of children are likely to be part of the audience on television or radio;
- (c) not broadcast music that -
 - (i) contains offensive language;
 - (ii) insults or degenerates a particular person or group of persons either directly or using coded language; or
 - (iii) incites violence or hatred;
- (d) refrain from using coded language in its broadcasts, particularly to avoid compliance with provisions of this

code;

- (e) ensure that during the periods referred to above where practicable, such programmes should be approved in advance by the broadcaster's senior management;
- (f) ensure that the regulatory guidelines are displayed in every studio at all material times; and
- (g) ensure that the regulatory guidelines and awareness messages designed by the Panel are read on radio or television at least three times a day.

News - fairness, accuracy and impartiality

- 7. (l) A broadcaster shall -
 - (a) report news and information accurately, fairly and impartially;
 - (b) present news and information in the correct context and in a fair and balanced manner, without distortions, exaggeration, manipulation, misrepresentation or material omissions;
 - (c) only present as a fact that which may reasonably be true having regard to the source of the news or information, and such fact shall be broadcast fairly with due regard to context and importance. Where a report is not based on fact or is founded on opinion, supposition, rumours, or allegation, the broadcaster shall present it in such a manner as to indicate clearly that this is the case;
 - (d) not divulge, directly or indirectly, the identity of rape victims and other victims of sexual violence in any broadcast;
 - (e) advise viewers or listeners in advance of scenes of violence or graphic reporting, on delicate subject matter such as sexual assault or court action related to sexual crimes before the watershed period; and

- (f) refrain from the use of explicit or graphic language related to stories of destruction, accidents or sexual violence which could disturb children and other sensitive audience.

(2) Where there is a reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. Where such verifications are not practicable, that fact shall be mentioned in the report.

(3) Where it subsequently appears that a broadcast report was incorrect in material respect, it shall be rectified without reservation or delay.

(4) The rectification mentioned in sub-regulation (3) above shall be presented with such a degree or prominence and timing as in the circumstances may be adequate and fair so as to readily attract attention and include apology.

Controversial news, information and issues of public importance

8. (1) A broadcaster shall -

- (a) In reporting or presenting a programme in which controversial issues of political, industrial or public importance are discussed, fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of programmes with similar time slots; and
- (b) When covering controversial issues of political, industrial or public importance during a live coverage or phone-in programmes, ensure that a wide range of opinions are represented over a reasonable period of time.

(2) Any person or organization shall be given a right to respond to any criticism on any programme where he has been criticized during a broadcasting programme, and such response shall be -

- (a) given a similar degree of prominence; and
- (b) broadcast during a similar time slot and as soon as

reasonably possible after the original programme.

(3) Where the requirement of subregulation (3) above are impracticable, opportunity for response to the programme shall be provided where appropriate right to reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned.

(4) Programme presenters shall ensure that foul and offensive language to other people or programme participants is avoided during phone-in or live programme.

Conduct of interviews

9. (1) A broadcaster shall, before interviewing any person -

(a) timeously advise the interviewee of the subject and content of the proposed interview; and

(b) inform him beforehand whether the interview is to be recorded or broadcast live.

(2) A broadcaster shall not broadcast material or information that was acquired through an off the record interview.

(3) Where an interview is to be conducted with a child, a broadcaster shall obtain permission from the child's parent or legal guardian prior to conducting the interview depending on the degree of subject matter for the interview.

(4) A broadcaster shall exercise due sensitivity in conducting interviews with children, bereaved persons or survivors or witnesses of traumatic incidents or accidents.

Comment

10. (1) A broadcaster shall be entitled to broadcast comment on and criticism of any actions or events of public importance.

(2) The comment mentioned in subregulation (1) shall be -

- (a) an expression of opinion;
- (b) presented in such a manner that it appears to be a comment; and
- (c) based on facts accurately stated or fairly indicated and referred to.

Privacy

11. (1) A broadcaster shall -
- (a) not present material which invades a person's privacy and family life, unless there are legally identifiable public interest reasons for doing so;
 - (b) exercise care and consideration in matters involving the dignity or private lives and private concerns of individuals; and
 - (c) avoid gratuitous and repetitive details in covering sexual offences.
- (2) A broadcaster shall not be forced to disclose sources of information.

Payment for information obtained from a criminal

12. A broadcaster shall not pay persons involved in a crime or other notorious behaviour in order to obtain information concerning any such behaviour.

Political party broadcast and advertisement

13. (1) A broadcaster shall -
- (a) where it broadcasts a political party advertisement, afford all other political parties a similar opportunity and treatment;
 - (b) not discriminate against any political party or give

preference to any political party or subject any political party to any prejudice in availing advertising to a political party;

- (c) not broadcast a political party advertisement unless it is submitted on behalf of a political party by its duly authorized representative;
- (d) not be a mouth piece of any political party;
- (e) take responsibility to ensure live coverage of rallies conforms to the set legislative framework and licence terms and conditions that regulate such broadcaster.

(2) A political party advertisement shall be entirely under the editorial control of the political party which places the advertisement.

(3) Where the programming of the broadcaster extends to the political parties and issues relevant thereto, the broadcaster should provide reasonable opportunities for the discussion of conflicting views and treat all political parties equitably.

(4) Where any criticism against a political party being levelled in a particular programme of the broadcaster without such party having been afforded an opportunity to respond thereto in the same programme or without the view of such political party being reflected therein, the broadcaster shall afford such party a reasonable opportunity to respond to the criticism.

(5) The opportunity to respond referred to in subregulation (4) shall be broadcast with the same degree of prominence and in substantially the same time slot as the initial programme.

(6) A broadcaster shall maintain fair treatment of political parties, in particular, during election periods.

(7) A broadcaster shall consider guidance from the electoral authorities to ensure positive contribution to the electoral process.

Protection of children

14. (1) A broadcaster shall -
- (a) when interpreting the code make a distinction between children approaching adulthood from a much younger audience and exercise due care in avoiding or screening content which may disturb or be harmful to children;
 - (b) not broadcast material unsuitable for children before watershed period;
 - (c) exercise particular caution as provided below, in the depiction of violence in children programming.
- (2) A broadcaster shall ensure that -
- (a) in children's programming portrayed by a real-life character, violence shall whether physical, verbal or emotional, only be portrayed when it is essential to the development of character and plot;
 - (b) animated programming for children, while accepted as a stylized form of story-telling which can contain non-realistic violence, shall not have violence as its central theme, and shall not invite dangerous imitation;
 - (c) programmes for children shall with due care deal with themes which could threaten their sense of security when portraying, for example domestic violence or conflict, death, crime or the use of drugs;
 - (d) programming for children shall with due care deal with themes which could invite children to imitate acts which they see on screen or hear about, such as the use of plastic bags as toys, cultural weapons, use of matches/ explosives, the use of dangerous household products as play things, other dangerous physical acts;
 - (e) programming for children shall not contain realistic

scenes of violence which create the impression that violence is the preferred or only method to resolve conflict between individuals;

- (r) programming for children shall not contain realistic scenes of violence which minimize or gloss over the effect of violent acts. Any realistic depictions of violence should portray in human terms the consequences of that violence to its victims and its perpetrators;
- (g) programming for children shall always consider traditional or cultural norms in depicting a character in any storyline; and
- (h) programming for children shall not contain any frightening or otherwise excessive or exaggerated special effects not required or necessary by the storyline.

Violence

15. A broadcaster shall not broadcast any material which, judged within its context -

- (a) contains gratuitous violence in any form, which does not play as integral role in developing the plot, character or theme of the material as a whole; or
- (b) sanctions, promotes or glorifies violence.

Violence against women

16. A broadcaster shall not broadcast any material which, judged within its context -

- (a) sanctions, promotes or glorifies any aspect of violence against women;
- (b) ensure that women are not depicted as victims of violence unless the violence is integral to the story being told; and

- (c) be sensitive not to perpetuate the link between women in a sexual context and women as victims of violence.

Violence and hate speech against specific groups

- 17. (1) A broadcaster shall -
 - (a) not broadcast material which judged within its context sanctions, promotes or glorifies violence based on race, ethnic origin, political affiliation, colour, religion, gender, sexual orientation, age, mental or physical disability, or culture;
 - (b) not broadcast -
 - (i) propaganda for war or an insurrection;
 - (ii) incitement of imminent violence; or
 - (iii) advocacy of hatred that is based on race, ethnicity, gender, religion, culture or that constitutes incitement to cause harm.
- (2) The prohibitions mentioned in subregulation (1) shall not apply to -
 - (a) genuine scientific, documentary, dramatic, artistic, cultural or religious broadcast which judged within its context is of such nature; or
 - (b) broadcast which amounts to -
 - (i) discussion, argument or opinion on a matter pertaining to religion, belief or of conscience; or
 - (ii) a genuine discussion, argument or opinion on a matter of public interest.

Broadcast of sexual content

18. (1) A broadcaster shall not broadcast material which judged within its context, contains real or simulated scenes of any of the following:

- (a) a person who, or is depicted as engaging in or assisting another person to engage in sexual conduct or a lewd display of nudity;
- (b) explicit violent sexual conduct;
- (c) explicit sexual conduct which degrades a person in the sense that it advocates a particular form of hatred based on gender and which constitutes incitement to cause harm.

(2) The broadcaster shall exercise due care when broadcasting programmes on the topics of sexuality or sexual orientation before watershed period.

Audience advisories

19. (1) A broadcaster shall, in assisting in the selection of programmes, provide advisory assistance which shall include guidelines as to age, sexual conduct, violence, and offensive language at the beginning of broadcasts.

(2) Warnings should be considered when programme content is likely to offend or disturb a significant number of listeners and or viewers -

- (a) Parental Guidance (PG10 or PG 13) Recommended: these are programmes that contain material that is more suited for adult audience but may not necessarily be harmful to children, parent's discretion in the circumstances is necessary; and
- (b) content rated 18 or 16 SNVL: these are programmes that contain a mature theme and are intended for viewing and or listening during Watershed period.

Watershed period

20. (1) A broadcaster shall -
- (a) not broadcast -
 - (i) programming which contains scenes of violence, sexually explicit conduct and culturally offensive language intended for adult audience; or
 - (ii) promotional material and music videos which contain scenes of violence, sexually explicit conduct or culturally offensive language intended for adult audiences, before the watershed period.
 - (b) adhere to the provisions of regulation 19 on audience advisories to enable parents to make an informed decision as to the suitability of the programming for their family members.
 - (c) provide sufficient information to facilitate parental control in terms of regular scheduling patterns or on-air advice to assist parents to make appropriate viewing or listening choices where some programmes broadcast outside the watershed period will not be suitable for very young children.
- (2) Notwithstanding the provisions of subregulation (1), the Broadcaster may broadcast -
- (a) programming which contains scenes of violence, sexually explicit conduct, culturally offensive language intended for adult audience; or
 - (b) promotional material and music videos which contain scenes of violence, sexually explicit conduct or culturally offensive language intended for adult audiences, during the watershed period.

Ongoing crime reporting

21. (1) A broadcaster may seek guidance from Commissioner of Police when broadcasting issues related to ongoing crime investigation, pending arrests, kidnappings, hijacking or hostage taking.

(2) A broadcaster shall not broadcast crime combating activities that are underway and shall consult the Commissioner of Police when in doubt.

Advertisements and sponsorship

22. A broadcaster shall -

- (a) ensure that all broadcast advertisements -
 - (i) are decent and conform to all acceptable societal norms;
 - (ii) conform to the principles of fair competition in business; and
 - (iii) do not contain any descriptions, claims or other material facts which might directly or indirectly or by implication, mislead about the product or service advertised or about its suitability for the purposes recommended;
- (b) before accepting advertisements, be satisfied that any description and claims have been adequately substantiated by the advisor;
- (c) not accept advertisements which unfairly attack, discredit other product, service or other advertisement directly, indirectly or by implication; and
- (d) not unreasonably discriminate against or in favour of any particular advertiser.

Scheduling of advertisements

23. (1) A broadcaster shall -
- (a) ensure that, where a presenter plays an advertisement, a clear distinction shall be made by the presenter between the programming material and the advertisement which he delivers;
 - (b) exercise responsible judgment when scheduling categories of advertisements that may be unsuitable for children during period when children may be expected to be listening;
 - (c) provide audience advisory where there may be a likelihood of an advertisement unsuitable for children being delivered during period wherein children are part of the audience;
 - (d) not allow indirect advertising during live or phone-in programmes; and
 - (e) distinguish between adverts within the news bulletin.
- (2) Presenters shall refrain from commenting on advertisements.

Sponsorship

24. (1) A broadcaster may accept sponsorship for the news bulletin, weather, financial, traffic reports or any other programmes provided the broadcaster retains ultimate editorial control of the sponsored programme.
- (2) A broadcaster shall -
- (a) ensure that sponsorship of information programmes does not compromise the impartiality, accuracy and truthfulness of the content of the said programme;
 - (b) ensure that the sponsors do not advertise or endorse their goods and services within the editorial content of the

-
- sponsored programme;
- (c) clearly acknowledged sponsor funding and contribution to programme immediately before and after the programme and any link between the programme's subject matter and the sponsor's commercial activities must be made clear;
 - (d) broadcast any programme which has been sponsored; and
 - (e) shall not unreasonably discriminate against or in favour of any particular sponsor.

Free services

25. (1) A broadcaster shall provide public announcements requested in writing by the Commissioner of Police or Head of the Disaster Management Authority free of charge.

(2) A broadcaster shall allow the Authority or the Panel to make announcements or information dissemination free of charge.

(3) Where a request is considered unreasonable, the broadcaster shall refer the matter to the Authority for determination.

Records

26. (1) A broadcaster shall retain the following documents for the duration of the licence period or in line with National Records Retention laws -

- (a) the documents of incorporation or registration of the entity in whose name the broadcasting licence is being held and any amendment thereto;
- (b) agreements of members or shareholders that relate to or are likely to affect the licence;
- (c) resolutions of its Board of Directors or Annual General Meeting minutes; and

- (d) records of employees; showing positions occupied, qualifications and citizenship.

(2) A broadcaster shall retain the following records for a period of three years -

- (a) annual audited financial statements of the broadcaster;
- (b) weekly programme schedules;
- (c) daily programme logs showing programme categories and time allocated to each category;
- (d) rates payable for advertising;
- (e) advertising logs showing all advertisements broadcast;
- (f) number of minutes for advertising per hour; and
- (g) list of complaints received and responses to complaints by the broadcaster.

(3) Recordings of all programmes broadcast shall be retained by a broadcaster for a period of at least three months.

(4) A broadcaster shall ensure that recording devices are functioning before commencement of every programme.

(5) A broadcaster shall not air current affairs or phone in programmes when its recording device is unable to record such programme.

Submission of records to the Authority

27. A broadcaster may be required to submit to the Authority -

- (a) annual audited financial statements within six months after the broadcaster's financial year end;
- (b) any other records it keeps in terms of Regulation 26 on request;

-
- (c) a detailed disclosure of their funding and sponsors; and
 - (d) a detailed report outlining broadcaster's performance in respect of its compliance to licence conditions.

Inspection

28. A broadcaster shall grant unhindered access to employees of the Authority or any designated person to inspect its premises, all records, installations and equipment at the broadcaster's place of business at all times.

Complaint lodged with a broadcaster

29. (1) A person who is aggrieved by any broadcast shall -
- (a) file a written complaint with the broadcaster; and
 - (b) have the right to access the recording of the alleged broadcast.
- (2) The broadcaster may impose a reasonable fee for the production of recordings referred to in regulation 26 (3) in order to defray costs, and where there is doubt, the matter shall be referred to the Authority for determination.
- (3) The broadcaster shall -
- (a) ensure that complaints are received and recorded; and
 - (b) respond to every complaint in writing within 14 days of the receipt of the complaint.
- (4) The broadcaster shall inform the complainant that he has the right to refer the complaint to the Panel if the complainant is dissatisfied with the response of the broadcaster.
- (5) The request for the recording mentioned in Regulation 26 (3) shall not be unreasonably refused.

Record of complaints

30. (1) A broadcaster shall keep a written record of complaints, which shall include -
- (a) the date the complaint was received;
 - (b) the name and address of the complainant;
 - (c) the substance of the complaint; and
 - (d) the substance and date of the broadcaster's response.

Complaints lodged with the Panel

31. (1) Where the complainant is dissatisfied with the response of the broadcaster, the complainant shall lodge the complaint with the Panel providing all the record of the complaint.

(2) The Panel shall inform the broadcaster of the complaint, requesting a broadcaster to make representations on the complaint within five days.

(3) Upon receipt of the response from the broadcaster, the Panel may make a resolution in terms of Section 41(3) of the Act on the basis of the written submissions or may convene a hearing.

(4) Where the Panel is unable to resolve any complaint, it shall refer such a complaint to the Authority in accordance with Section 41(4) of the Act.

(5) Where a complainant is dissatisfied with the determination of the Panel, he may submit such determination for review by the Authority within 15 days of such determination.

Complaints referred to the Authority

32. (1) The Authority shall consider a report of the Panel in respect of any complaint referred to it by the Panel, and the Authority shall -

- (a) initiate the enforcement proceedings in terms of section 46 of the Act; or

(b) dismiss the complaint by giving reasons.

(2) The Authority shall make decisions on complaints submitted for review on the basis of written submissions of parties.

(3) The Authority may impose penalties as prescribed by Section 47 of the Act.

(4) Where a party to a decision made by the Authority is dissatisfied with such decision, he may apply for review in the High Court of Lesotho.

Penalties

33. (1) Where the Panel determines that there has been a contravention of the Code, the Panel shall -

(a) direct the broadcaster to issue retraction, clarification or public apology;

(b) direct the broadcaster to adopt a corrective action plan which may include -

(i) suspension or restructuring of a programme;

(ii) suspension or retraining of a presenter; or

(iii) such measure as may deem appropriate under the circumstances;

(c) direct the broadcaster to pay restitution; or

(d) impose a fine not exceeding eighty thousand Maloti payable to the Authority.

(2) Where a broadcaster continues to contravene the Code despite the directives from Panel, the Panel shall refer the matter to the Authority recommending a penalty in terms of Section 47(1)(e) of the Communications Act.

Universal ethical standards

34. (1) The universally accepted ethical practices and code of conduct of broadcast media, subject to Lesotho laws and their implementing Rules and Regulations are deemed adopted in this Code;

(2) The violations of universally accepted ethical principles and code of conduct for broadcast media not otherwise specifically covered by this Code shall be sanctioned with censure.

Repeal

35. The Broadcasting Rules of 2004² are repealed.

DATED:

**TŠOINYANA RAPAPA
MINISTER OF COMMUNICATION, SCIENCE AND
TECHNOLOGY**

NOTE

1. Act No. 4 of 2012
2. L.N. No. 71 of 2004

