

Laws of South Sudan



**National Communications Inspection,
Monitoring and Enforcement Regulations, 2016.**

**Final Text
Directorate of Legislation
Ministry of Justice and Constitutional Affairs
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**Laws of South Sudan
National Communications
Inspection, Monitoring and Enforcement Regulations, 2016**

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In accordance with the provisions of Sections 71 read together with Section 92 of the National Communications Act, 2012, the Authority with the approval of the Competent Minister, issue and promulgate the following into Regulations:

Chapter I
Preliminary Provisions

1. Title and Commencement

These Regulations shall be cited as the National Communications Inspection, Monitoring and Enforcement Regulations, 2016, and shall come into force on the date of its signature.

2. Repeal and Saving

Any existing regulations or orders, directives, rules and guidelines governing the subject of these Regulations is hereby repealed; provided that any orders issued or regulations made thereunder, except to the extent they are cancelled by or are otherwise inconsistent with provisions of these Regulations shall continue in force and effect until repealed or amended by these Regulations.

3. Interpretation

In these regulations, all words and expressions that are defined under the Communications Act, 2012, shall have the same meanings herein; unless the context otherwise requires:

"Contravention"

means, non-compliance with or breach of any of conditions of license and provisions of the Act or Regulations.

"Enforcement"

includes administrative actions of the Authority, and any other action taken for purposes of ensuring compliance with the Act or Regulations.

"Monitoring"

means powers of the Authority to verify compliance with provisions of the Act, Regulations and licenses.

Chapter II
Authority Powers and Compliance, Principles, Guidelines and Procedures

4. Authority Monitoring and Enforcement Powers

The Authority shall monitor and enforce compliance with the Act, Regulations and conditions of licenses by all licensees.

5. Guidelines

The Authority shall issue guidelines on installation and maintenance of communication infrastructure.

6. Principles and Procedures of Monitoring and Enforcement

When carrying out its inspection, monitoring and enforcement duties, the Authority:

a. Shall be guided by the Act and the Regulations in addition to the following principles:

- i. transparency, fairness and non-discrimination;
- ii. provide modern, qualitative, affordable and readily available communications systems and services in South Sudan;
- iii. promote fair competition and investment in information and communications technology industry;
- iv. promote and improve quality of service provided by licensees in South Sudan; and
- v. any other principles that the Authority may, from time to time, consider necessary and in public interest.

b. May issue directives to any person to secure compliance with the Act and these Regulations.

c. May enlist and rely on assistance of law enforcement agencies and other relevant departments, ministries of the Government and international agencies, as provided in the Act; and

d. May appoint any person to inquire into and report to the Authority on any matter pending before it and upon receipt of any report, the Authority may:

- i. issue directives on procedures for conducting such inquiries; and
- ii. any person appointed to carry out such inquiries shall, submit report to the Authority in form and manner as the Authority may direct.

7. Commencement of Processes for Monitoring and Enforcement

The Authority shall exercise its powers under these Regulations:

- a. on its own initiative; or
- b. in response to any complaint made by any person or on behalf of any person whom the Authority considers to have interest in the matter subject of representation.

8. Licensees Duty to Prepare, Submit and Maintain Reports

1. Every licensee shall, after every quarter and at end of its financial year, prepare and submit to the Authority in prescribed form, an annual report of its operations.
2. Every licensee shall prepare and submit to the Authority quarterly report of its operations and extent to which conditions of their license have been adhered to.
3. Licensee may request the Authority to treat any information contained in report presented to the Authority under these Regulations, confidential business information that may not be disclosed to third party other than, relevant or competent government agency.

9. Investigations by the Authority

1. The Authority may commence investigations on any licensee compliance, where it has reasonable cause to believe that licensee has failed to comply:
 - a. with construction, installation or service provision requirements issued by the Authority;
 - b. has contravened any condition of license issued by the Authority; or
 - c. with any of performance obligations under the Act, Regulations or its license conditions.
2. The Authority shall, in carrying out investigations on any matter under the Act or Regulations, take into account the following factors:
 - a. any representation made to the Authority by or on behalf of any person whom the Authority considers to have interest in subject matter and fully authorize in case of representation;
 - b. complaint by any customer of the licensee or member of public to the Authority, in relation to services provided by licensee; and
 - c. the Authority necessary inquiries and appropriate measures to be taken as circumstances of the case may require.
3. Any licensee shall keep proper records in such manner as the Authority may prescribe, and shall allow the Authority to access records for purposes of carrying out its mandate under the Act.

4. The Authority may request licensee to periodically submit reports, statistics, data and any other information that it considers necessary for verification.

5. When making request under sub-regulation (4) of this regulation, the Authority shall ensure that, it does not impose undue burden on the licensee in procuring and furnishing such information.

6. The Authority may, from time to time, publish compliance or investigation reports in the Public Media, if deemed necessary.

Chapter III Miscellaneous Provisions

10. Compliance Information

1. When after investigation by the Authority, on its own initiative or subsequent to any complaint made by third party, the Authority is satisfied that licensee is contravening or has contravened any of conditions of license, the Authority shall notify the licensee, in writing.
2. The Authority shall, in notification sent to licensee under sub-regulation (1) of this regulation, specify acts or omissions which, in its opinion, constitute contravention of conditions of license and require licensee to remedy contravention, unless otherwise specified by the Authority in writing, within period of three months.
3. Licensee shall, after remedying contravention specified in notification, prove to the Authority that it has sustainably remedied the contravention.
4. Any licensee aggrieved by decision of the Authority made under these Regulations, may appeal to the Court of competent within thirty days of receipt of notification of the Authority in that regard.
5. If licensee fails, without reasonable cause, to remedy contravention referred to in sub-regulation (1) of this regulation, within required period, the licensee shall be liable to penalty of **South Sudanese Pounds equivalent of US Dollars Five Hundred Thousand (USD 500,000)** and such penalty shall be debt owed to the Authority and recoverable summarily.

11. Payment of Penalty

1. Any penalty imposed by the Authority, pursuant to the Act or Regulations shall become due and payable by contravening person, within thirty days from date of receipt of notification of the Authority to contravening person.
2. The Authority may, in addition to penalty, impose any other enforcement sanctions under the Act or Regulations on licensee.

12. Appointment of Inspectors

1. The Authority may appoint inspectors for purposes of verifying compliance with provisions of the Act and Regulations.
2. The Authority shall issue identity card to all inspectors appointed under these Regulations, which shall be produced by inspectors at request of any person in charge of any place to be inspected.
3. The inspector may, at all reasonable times enter, into any premises owned or controlled by any licensee in which the inspector has reasonable grounds to believe that, there exists document, information, or apparatus relevant for ensuring compliance with the Act or these Regulations and to examine such document, information or apparatus or remove the document, information or apparatus, for examination or reproduction as the case may be.

4. Where inspector has reason to believe that, there is any communication equipment or interference causing apparatus, he or she may examine such equipment, apparatus, logs, books, reports, data, records, documents or other papers and remove such information, document, apparatus, or equipment for examination or reproduction.

5. An inspector shall record and sign for any information, document, article, apparatus or equipment removed by him or her and shall leave copy of the document recording that removal.

6. For the purpose of exercising, performing and discharging powers, functions or duties of the Authority under the Act or these Regulations, inspector may by notice request any person to:

- a. furnish him or her within such time and at such place as may be specified in the notice, with any document specified or described in the notice in custody or control of such person;
- b. produce for inspection any book, return, account or record in his or her possession or control; or
- c. produce for inspection any equipment, apparatus or systems.

7. Subject to provision of sections 97 and 98 of the Act, any person, who willfully obstructs any inspector in performance of his or her duties commits an offence and shall on conviction be punishable with fine not exceeding **South Sudanese Pounds equivalent of US Dollars One Hundred Thousand (USD 100,000)** or imprisonment for period not exceeding one (1) year or both.

8. Subject to provision of sections 97 and 98 of the Act, any person found by any inspector to operate unlicensed or unlawful service commits an offence of fraud and shall on conviction be punishable with fine not exceeding **South Sudanese Pounds equivalent of US Dollars Five Hundred Thousand (USD 500,000)** or imprisonment for period not exceeding three (3) years or both and equipment and assets involved in such operation shall be confiscated and given to the Authority. If the person is of foreign nationality he or she may be declared **persona non grata** and may be deported after completion of imprisonment period.

13. Right of Access

1. All licensees and authorized persons shall allow inspectors to access their facilities at any reasonable times, for purpose of enabling inspectors to carry out inspection and verification, including visits to premises and facilities and inspection of equipment and documents.

2. An inspector shall not have authority to compel any person, for any reason, to produce any document, which he or she may not be compelled to produce in any civil proceedings.

14. Civil Proceedings

Without prejudice to provisions of the Act or Regulations, the Authority may, in exercise of its powers pursuant to these Regulations and the Act, institute civil proceedings against any person for remedies that may include injunctive relief, recovery of penalties, specific performance or pecuniary awards or damages.

Issued by the National Communications Authority this day 29th in the month of December in the year 2016.



Hon. Joseph Luai Achuil
Chairperson,
Board of Directors
National Communications Authority
Republic of South Sudan
Juba

In accordance with the provision of Section 7(4) read together with Section 92 of National Communication Act, 2012; I, Michael Makuei Lueth, Minister of Ministry of Information, Communication Technology and Postal services; do hereby grant approval and authorize the National Communications Authority to issue these Regulations.



Hon. Micheal Makuai Lueth
Minister,
Ministry of Information, Communication
Technology and Postal Services
Transitional Government of National Unity
Republic of South Sudan
Juba