

BROADCASTING AND INFORMATION FLOW IN ZAMBIA:

A Policy Document initiated by the Zambia Independent Media Association (ZIMA), the Zambian Chapter of the Media Institute of Southern Africa (MISA) Zambia and Press Association of Zambia (PAZA) under the Media Legal Review Committee

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1. POLICY ARTICULATION

In democratic governance, which Zambia is trying to achieve, the airwaves, which are the medium through which broadcasting and telecommunications are conducted, belong to the people and are, therefore, to be acquired and used for the public good and public interest. Accordingly, government, which is the custodian of public good and public interest, should ensure that the acquisition, control and use of the airwaves are carried out freely, fairly, and equitably for the good and interest of Zambian society generally.

Similarly, in democratic governance, those in the executive wing of government should be accountable and transparent to the people for their actions or the lack of them. This accountability and transparency is only possible if the people in government do not control and manipulate the flow of information in the media of public communication, particularly those of broadcasting. There is, therefore, an absolute need for the government of the day to distance itself from controlling or influencing the acquisition of broadcast stations their administration, their editorial independence as well as their programming. Such control and influence should be left to an independent body, which is not answerable to the government of the day.

In democratic governance, people in the executive wing of government should not only allow but also actively promote information to circulate freely within society so as to promote debate and free association of the people to ideas of their choice. Consequently, people in government should avail to the media generally as well as on request, information which enables the public to know what the people they have put in office are doing or not doing in their name so that the public can pass judgement on the merits and demerits of the actions or the lack of them. This also enables the people to have access to the widest range of political information so that they can meaningfully participate in political debate and decision-making.

2. BASIC POLICY GUIDELINES

In line with the democratic philosophy enunciated above, the following basic policy guidelines regarding broadcasting and the flow of information in Zambia should be declared.

- a. That the airwaves are exhaustible public property which should be allocated, controlled and used in the public good and public interest;
- b. That government, as the custodian of all public interest and public good, should put in place laws and other regulatory bodies, which will ensure that the allocation, control and use of the airwaves in broadcasting is done in a free, fair and transparent manner that gives equal opportunity to everyone.

- c. That the executive wing of government does not have an undue influence and control over the acquisition, control and use of the airwaves in broadcasting;
- d. That the executive and other wings of government make available generally and when requested, all the information that the public needs in order to exercise its democratic rights of debating matters of public interest, passing judgement on such matters, and exercising their right of free choice on the basis of information available to it.
- e. That a truly public broadcaster is set up which would cater for the diverse political, cultural, religious, ethnic, gender and racially information in the country;

3. AUTHORITY FOR THE POLICY

The authority to support the broadcast and information flow policy enunciated in this document can be found in international charters and agreements dealing with the right of people to freely communicate and receive ideas individually as well as in any medium of public communication. The authority is also found in the Constitution of Zambia and government documents. The main sources of authority for this policy document are derived from:

i. United Nations Universal Declaration of Human Rights

Article 19 of the United Nations Universal Declaration of Human Rights states:

Everyone has the right to freedom of opinion and expression
this right includes freedom to hold opinions without
interference and to seek, receive and impart information and
ideas through any media and regardless of frontiers.

This Article clearly protects the individual's liberty to freedom of expression. This expression can be undertaken in various forms, including broadcasting. The Article is generally understood to be against all forms of censorship of information, which the people are using to express themselves in the media of public communication.

ii. African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights adopted at the 18th conference of Heads of State and Government of the Organisation of African Unity (OAU) in June, 1981 in Nairobi, Kenya, specifically protects the right to receive information and express and disseminate opinions. Article 9 of the Charter states:

1. Every individual shall have the right to receive information
2. Every individual shall have the right to express and disseminate his opinions within the law

Zambia was not only a signatory to this important Charter but was even given a seat to serve on the African Commission on Human and Peoples' Rights.

iii. Windhoek Declaration (1991)

In 1991, UNESCO organised a conference on promoting an independent and pluralistic African press in Windhoek, Namibia. The conference declared, in Article 1, that consistent with Article 19 of the Universal Declaration of Human Rights, the establishment, maintenance, and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development.

The Declaration concerned itself only with the newspaper press at the exclusion of the broadcast press and noted, in Article 17, that in view of the importance of radio and television in the field of news and information, the United Nations and UNESCO are invited to recommend to the General Assembly and the General Conference the convening of a similar seminar of journalists and managers of radio and television services in Africa, to explore the possibility of applying similar concepts of independence and pluralism to these media. Accordingly, at the 10th anniversary of the Declaration, in 2001, UNESCO turned to make a similar declaration concerning the broadcast media.

iv. African Charter on Broadcasting (2001)

The African Charter on Broadcasting which came out of the UNESCO Conference in Windhoek marking the 10th anniversary of the Windhoek Declaration, calls on signatories, of which Zambia was one, to declare that:

- a. The legal framework for broadcasting should include a clear statement of the principles underpinning broadcast regulation, including promoting respect for freedom of expression, diversity, and the free flow of information and ideas, as well as a three-tier system for broadcasting: public service, commercial and community;
- b. All formal powers in the areas of broadcast and telecommunications regulation should be exercised by public authorities which are protected against interference, particularly of a political or economic nature, by among other things, an appointments process for members which is open, transparent, involves the participation of civil society, and is not controlled by any particular political party;
- c. The decision-making process about the overall allocation of the frequency spectrum should be open and participatory, and ensure that a fair proportion of the spectrum is allocated to broadcasting uses;
- d. The frequencies allocated to broadcasting should be shared equitably among the three tiers of broadcasting;

- e. Licensing processes for the allocation of specific frequencies to individual broadcasters should be fair and transparent, and based on clear criteria which include promoting media diversity in ownership and content;
- f. Broadcasters should be required to promote and develop local content, which should be defined to include African content, including through the introduction of minimum quotas;
- g. States should promote an economic environment that facilitates the development of independent production and diversity in broadcasting;
- h. The development of appropriate technology for the reception of broadcasting signals should be promoted.

v. Constitution of Zambia

Article 20 of the Constitution of Zambia is actually patterned on the UN Declaration of Human Rights. It too protects the individual's right to expression and is very explicit about the individual's right not only to impart his or her ideas on others but also the individual's right to receive ideas. In today's world, broadcasting plays a crucial role in the dissemination of ideas. As such, broadcasting should occupy a special place in our hierarchy of instruments or media that promote freedom of expression.

vi. Media Reform Committee (1993)

Early in its life, the MMD Government organised, in 1993, a conference on the Zambian media and the way forward. At the conference, a Media Reform Committee was formed consisting of representatives from the Ministry of Information and Broadcasting Services, the University of Zambia, the Zambia Institute of Mass Communications, the Press Association of Zambia, the Zambia Privatisation Agency, the Law Association of Zambia and other interested parties. The Committee identified five critical areas, which required attention by government:

- a. the need for constitutional and comprehensive legal reform;
- b. the need to privatise the state run press and address the economic and financial constraints to the development of an independent and plural press;
- c. the need to strengthen media associations, including the training of journalists;
- d. the need to place state-owned broadcasting services under independent public control, rather than under the control of the government and to enable private participation in broadcasting; and
- e. the need to set up a media resource centre.

vii. Governance (document)

In the Governance document issued by the Government of the Republic of Zambia on April 26, 1999, which sets out the national capacity building programme for good governance, the Government states that freedom of the press is a facilitator of the democratic process. A country needs an informed public in order to make informed choices. (Government of the Republic of Zambia, 1999:13)

In paragraph 3.1, under the heading ‘political broadcasts’, the document stated that The Government took note of the fact that the political opposition was concerned that the Zambia National Broadcasting Corporation did not provide equal time to all political parties participating in the election. It suggested a number of steps to remedy this, including the observation of electoral conduct regulations.

viii. Motion on Liberalisation of Government Controlled Print and Electronic Media

Subsequently, Dr. Ludwig Sondashi, moved a private member’s motion in Parliament appealing to the House to urge Government to liberalise the Government controlled print and electronic media so that it is able to objectively cover issues related to violations of Human Rights, democratic governance and rallies held by the opposition political parties.

The motion was defeated due to the overwhelmingly MMD constitution of the House (Dr. Sondashi was then not an MMD MP).

ix. Information and Media Policy (1996)

In the Information and Media Policy published in 1996, Government states that the principle goals of its policy:

Are to increase media outreach throughout the country, promote and safeguard press freedom, encourage private investment and diversify media ownership. (p.2)

The document goes on to state the role of the media to provide checks and balances for Zambia’s democratic governance:

In the liberalised media climate, it is government’s responsibility to lay down basic communication infrastructure.

This will not only encourage private investment into the media, but also provide an environment for checks and balances while promoting community participation in the democratic governance of Zambia. The media should, therefore, continue to play a watchdog role in society, while creating awareness and respect for human rights. (p.2)

x. Parliamentary Committee on Information and Broadcasting Services

The Parliamentary Committee on Information and Broadcasting Services has so far issued two reports.

In its 1999 report, the Committee recommended, among other things, that:

- a. The Ministry of Information and Broadcasting Services must start to implement the reforms recommended by the 1993 Media Reforms and the

- Coopers and Lybrand Report. There is need for political will in the implementation of the reforms;
- b. A time-frame should be set to which Government should implement the recommendations for the Media Reforms Committee;
 - c. ZNBC should cease sitting on the Licensing Committee forthwith;
 - d. ZNBC should be turned into a national public broadcaster and legislation to make it so should be passed accordingly;
 - e. An Independent Media regulatory Authority should be set up which will have no interference from Government in its decisions. Government's role would be to make media policy, whilst an independent regulatory body would licence and monitor media institutions, control frequency allocations and enforce rules and regulations;
 - f. While recognising that there is no absolute freedom, your Committee recommended that Government should go further to enshrine freedom of the press in the Constitution;

In its 2000 report, the Committee recommended, among other things:

- a. The Government through the Ministry of Information and Broadcasting Services should consider putting in place a time frame to implement the recommendations of the June 1999 media Task Force which is a follow-up to the Media Legal Reforms Committee of 1993 to demonstrate its seriousness in amending laws that affect the media;
- b. The Printed Publications Act Cap. 161 be amended in order to provide for penalty fines;
- c. The Government should consider establishing a single Independent Communications and media Authority with one wing dealing with the media while the other, (sic) dealing with Communications' matters. This is more so with the already existing Communications Authority. Your Committee, therefore, further recommend the amendment of the Communications Authority Act to enable the creation of an Independent Communications and Media Authority;
- d. The Government should start implementing some of the 1993, 1996 and 1999 Media Reforms recommendations to demonstrate its seriousness in amending laws that affect the media;
- e. The Constitution be amended to enshrine press freedom and the government be urged to repeal all laws that affect the media. In addition, the Freedom of Information Act be enacted in order to compel public leaders/figures to release the information in the interest of the public;
- f. The Government should amend all laws that impede press freedom as soon as possible;
- g. Urges Government to urgently amend the Zambia national Broadcasting Corporation Act in order to remove the licensing powers from the Zambia National Broadcasting Corporation (ZNBC);
- h. Urges Government to implement Media Reforms at the shortest time.

xi. Task Force on Media Law Reforms (2000)

The taskforce on Media Law Reforms, which consisted of representatives from media and legal institutions has recommended a number of actions to reform the media law in the country. These recommendations have been presented to the Government.

3. BACKGROUND

This policy pronouncement comes against a background of intense lobbying by civil society, in particular media associations such as Zambia Independent Media Association (ZIMA) and the Press Association of Zambia (PAZA) as well as the Oasis Forum. These groupings have been concerned with the quality of the contribution to good governance the media in Zambia, in particular, broadcasting have rendered. A series of seminars and workshops have been held with stakeholders on the way forward, given the current unsatisfactory state of affairs in the main media of public communication in which government owns and controls the bulk of media in the country in terms of volume and reach.

The seminars and workshops have, in particular, focussed on suggesting legislation that would result in the media in Zambia being truly independent means of public communication, which would:

- a. Enable the people of Zambia to communicate and receive ideas freely;
- b. Serve as a watchdog on government;
- c. Make people in government responsible and accountable for what they do or do not do;
- d. Make the actions or lack of actions of people in government transparent.

Specifically, the seminars and workshops have been centred on reform of media legislation, which would make the media achieve the above objectives. The proposed legislation has included the setting up of an Independent Broadcasting Authority (IBA), the reconstitution of the Zambia National Broadcasting Corporation (ZNBC) into a public broadcaster, and the passing of a Freedom of Information Act.

5. RECOMMENDATIONS FOR LAW REFORMS

The policy pronouncements above would require substantive changes to the current law affecting the media in the country. However, since law reforms are best done step by step rather than comprehensively and at once, this policy document strongly recommends the following changes in the law affecting the media to start with:

- a. Creation of an Independent Broadcasting Authority;
- b. Repeal of the Zambia National Broadcasting Corporation Act;
- c. Promulgation of a new Broadcasting Act; and,
- d. Passing of the Freedom of Information Act.

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Creation of an Independent Broadcasting Authority (IBA)

This should be the legislation that sets out the functions and powers of the Independent Broadcasting Authority (IBA) in Zambia. The IBA should decide who gets a broadcasting license, to whom they should broadcast and how (programming) they should broadcast.

Repeal of the Zambia National Broadcasting Corporation (ZNBC) Act

The Zambia National Broadcasting (ZNBC) Act should be repealed and its contents incorporated in the IBA Act and the Broadcasting Act.

The section in the Act dealing with the allocation of licences should be incorporated in the IBA Act. The ZNBC should be re-established as a public broadcaster, rather than a government broadcaster which it is today. The new ZNBC as a public broadcaster should be contained in the Broadcasting Act as a section.

Promulgation of a new Broadcasting Act

The Broadcasting Act should deal with the establishment of the various types of broadcasting stations, which should include:

- a. Public Broadcasting;
- b. Community Broadcasting;
- c. Commercial Broadcasting; and,
- d. Religious Broadcasting

The Act should define each of these types of broadcasting stations and how they should be acquired and managed.

All the four types of broadcasting stations, including the public broadcaster, should apply for their licenses to the IBA and abide by the conditions for obtaining such licenses.

Passing of the Freedom of Information Act

There is need to promulgate the Freedom of Information Act so that the flow of information, particularly from the executive wing of government is enhanced to benefit the demands of democratic governance. As a matter of fact, Government has already recognised this need when it drafted The Freedom of Information Bill, 2001. This draft could be improved upon and enacted by Parliament.