



**TOWARDS THE ENACTMENT OF THE INDEPENDENT BROADCASTING  
AUTHORITY (IBA), AMENDMENT AND SUBSEQUENT REPLACEMENT OF  
THE ZAMBIA NATIONAL BROADCASTING CORPORATION (ZNBC) ACT  
AND ENACTMENT OF A FREEDOM OF INFORMATION (FOI) ACT IN  
ZAMBIA**

**REPORT COMPILED BY ZAMBIA INDEPENDENT MEDIA  
ASSOCIATION (ZIMA), THE ZAMBIAN CHAPTER OF THE  
MEDIA INSTITUTE OF SOUTHERN AFRICA (MISA)**

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This report arises out of the Zambia Independent Media Association (ZIMA)'s advocacy project on media law reforms focusing on the above pieces of legislation.

## **SITUATION ANALYSIS**

### **Zambia National Broadcasting Corporation**

Up until 1991, when Zambia reverted to multi-Party politics, broadcasting remained a government privilege, through the state owned Zambia National Broadcasting Corporation (ZNBC), a forerunner of the Zambia Broadcasting Services (ZBS), a department in the then Ministry of Information and Broadcasting Services (MIBS). ZBS was transformed into a Corporation, the present institution, for purposes of attaining commercial autonomy. ZNBC therefore was established through the ZNBC Act in 1987.

In 1994, the government enacted the Zambia National Broadcasting Corporation (Licensing) regulations to allow individuals, corporate bodies and other organizations to establish and run broadcasting outfits. This removed monopoly by ZNBC.

Under the then ZNBC Act (1987), the Minister of Information and Broadcasting Services had too much power at his disposal as far as the issuing of broadcast licenses and the control of ZNBC were concerned. Only the minister had authority to give and revoke broadcasting licenses. Also, no sufficient editorial independence was guaranteed because the minister had absolute power to appoint and disappoint the board of Directors of the corporation. This meant the board had to ensure they pleased the minister failure to which they would be removed. This did not allow independence.

At the time, ZNBC as an institution sat on the licensing and technical committee of the ministry. It was not clear whose interests the corporation represented other than its own. This was within an environment where new radio stations were coming up.

Because of that situation, the institution could not attain commercial viability and operate in the public interest as expected by the tax paying Zambians.

### **Independent Broadcasting Regulation**

Concerns over the lack of transparency in the issuing of broadcasting licenses, as well as the ruling Movement for Multi Party Democracy (MMD)'s monopoly over ZNBC vehemently called for the introduction of an Independent Broadcasting Authority (IBA) by various stakeholders including ZIMA to be

responsible for issuing both radio and TV licenses, apart from regulating broadcasting in the Zambian public interest. The IBA was also seen as instrumental in guaranteeing fairness in awarding broadcast licenses and attaining media pluralism, diversity accessibility as well as quality in broadcasting.

### **Freedom Of Information**

The purpose of this legislation is to encourage a more open and transparent government where members of the public, including media, can have access to some information about government operations upon request. With this legislation, members of the public would have access to reports of commissions of enquiry, audits of various government offices and reports held in government offices. With this, government officials would be obliged by law to release information.

In 2001, the government published the bill for stakeholder input but did not proceed to enact it into law.

Due to a serious lack of commitment by the Zambian government to media legal reform in the last ten years, ZIMA, in conjunction with Press Association of Zambia (PAZA), Zambia Union of Journalists (ZUJ), Zambia Association of Media Women (ZAMWA) and Society of Senior Zambian Journalists (SSZJ) joined hands to advocate for the amendment and subsequent replacement of the ZNBC Act of 1987 with a Broadcasting Act that would encompass all forms of broadcasting, establishment of an Independent Broadcasting Authority (IBA), and the enacting of a Freedom of Information (FOI) Act.

Progress indicators from this advocacy initiative point to success having been attained in as far as the three focus areas are concerned. The subject of media law reform attracted widespread public attention because of sustained public awareness campaign that has been successfully implemented.

### **Public Awareness Campaign**

From July 2002, ZIMA had mounted an 8 month long publicity and public awareness campaign aimed at sensitizing the general public, and members of parliament and stimulate debate for media law reform. Strategies used included radio and television discussion phone in programmes, "Media and the Public", TV spot announcements and newspaper advertisements.

This effort brought tremendous pressure on the government to respond to queries and serious agitation for reform.

On August 6, 2002, Information Minister Newstead Zimba asked ZIMA to stop proceeding along with the private members' motion as planned because the government had similar intentions. This letter, copied to leader of government business in Parliament, Vice-President Enoch Kavindele appeared intended to

influence non-consideration of the private members' bills that ZIMA drafted, one month before Parliament resumed sitting.

In September 2002, Vice President Kavindele convened a meeting attended by Deputy Clerk Mr. Chibomba, Minister of Legal Affairs and Attorney General George Kunda, his Permanent Secretary Ngosa Simbyakula, Chief Parliamentary Draughts person Doris Mwiinga, Minister of Information Newsteadimba and three movers of respective bills including Hon. Patel (IBA), Robert Sichinga (FOI) and Charles Banda (Broadcasting), aimed at persuading withdrawal of the private members' bills. It was difficult for private members to consider a withdrawal since they had legitimate rights to do so and that they had invested heavily in the process from the start. On the other hand, the government claimed having traditional responsibility and mandate to make laws for the country.

ZIMA did not mind who ultimately presented the bills in Parliament - content was the main concern. ZIMA's concern was to ensure the contents of the bills reflected the views of all stakeholders, arising from the wide consultative process that had already taken place. This was undertaken through the radio and television programme, "Media and the Public."

#### **Gazetting of Private Member's bills**

On October 18, 2002, three private media bills namely; Independent Broadcasting Authority (2002), Freedom of Information (2002) and Broadcasting (2002) bills were gazetted in the *Government Gazette* number 5134 and publicized in the national dailies for public input and consensus building by ZIMA and its partners.

This exerted more pressure on the government such that on November 5, 2002, Parliament rejected the three private bills by evoking article 81 of the Zambian Constitution and Section 76 of the Standing orders requiring bills with financial implications to be consented to by the President, through the Vice President or the Minister of Finance, before they can be brought to Parliament. This took place just before the government gazetted and published their bills; namely the Freedom of Information bill, the Independent Broadcasting Authority (IBA) bill and the Zambia National Broadcasting Corporation (Amendment) bill, 2002.

#### **Government Media Bills**

On November 22, 2002, Minister of Information and Broadcasting Services Newsteadimba presented government media bills namely Zambia National Broadcasting Corporation (Amendment) bill, Freedom of Information (FOI) bill and Independent Broadcasting Authority (IBA) bill for first reading.

No major differences existed between the private and government versions of the Freedom of Information and IBA Bills. In fact, 90 per cent of all provisions in the

government versions have been lifted extensively from the private bills, drafted by ZIMA and its partners, with assistance from Lusaka Lawyer Patrick Matibini, a move that media associations welcomed.

### **“Give and Take” situation**

The major contention however had been with the Government’s ZNBC (Amendment) Bill, 2002. The government vehemently refused to transform ZNBC from a state controlled broadcaster to a public service, independent and professionally run institution. Instead of a repeal as proposed by the media fraternity in the “Broadcasting bill”, the government only amended the current ZNBC Act to remove regulatory functions from the minister and transfer them to the IBA. This amendment does not in any way change the lack of editorial independence that continues to impact on the output of the ZNBC as long as the Board is appointed by the Minister of Information and Broadcasting Services. It is an indisputable fact that the institution operates and will continue to operate as propaganda machinery for the ruling MMD as long as government continues to control the institution.

### **TV Licenses for ZNBC**

Another provision in the ZNBC (Amendment bill) is the introduction of television licenses for the corporation, whereby viewers will be required to pay a monthly fee of K 3000 (USD 0.60). This, as suggested by the media associations in their proposed “Broadcasting bill”, was upheld although it can effectively work where ZNBC operates as a true public service broadcaster because viewers may be reluctant to pay licenses for a channel that has heavy political machinations from a ruling political party.

### **Appointments Process of Boards**

No major differences existed on the FOI and IBA bills when the government presented theirs. The only other difference was that the government in its three bills proposed that the appointment process for board members of the ZNBC, the IBA and the Public Information Commission be appointed by the Minister. Their argument was that unless the republican constitution is amended, all public appointments are vested in the executive arm of government.

Section 8 of the private member’s Independent Broadcasting Authority Bill, 2002 provided for an appointments committee, comprising members of the national assembly responsible for public appointments, appointed by the speaker of the national assembly proportional to the strength of political parties in the national assembly.

It further stated that the appointments committee should have to nominate board members in a way that public participation and transparency in the nomination process is guaranteed.

The Government bill on the other hand provides in Sections 7 and 8 that the Minister shall constitute an ad hoc appointments committee that will nominate board members. In reality, the minister will appoint an appointments committee and public representation will only be assured through the various entities reflected in the government bill. The only other safeguard here is that this process will be ratified by Parliament, thereby providing a check.

This is the same with regard to the Public Information Commission (PIC) of the FOI as well as board of the ZNBC.

The board members of the IBA will be appointed by the Minister on recommendation from the appointments committee, subject to ratification by the national assembly. The difference is that in the private (ZIMA) bill, it was suggested that appointments to the board should be made directly by the national assembly on the recommendation of the appointments committee. This was lost.

It means also that the appointment of the Director - General of ZNBC for instance will have to be approved by the minister. For the ZNBC bill, government opted for an amendment and not complete overhaul of the ZNBC Act of 1987. The major surgery was to remove licensing and regulatory authority from the Minister and ZNBC itself, to the IBA.

ZIMA and its cooperating partners originally initiated the IBA bill and is one of the bills that were earlier rejected by Parliament as a private member's motion. The government had earlier stated in its 1996 Information and Media Policy, its intention to establish an independent Broadcasting Authority (IBA) without giving a time frame.

Parliament however rejected a clause providing for equal coverage of all political players during elections in the private bill, saying it was already provided for in the electoral act. This provision was intended to ensure all political players received equal coverage.

### **Presidential Consent**

Both the IBA and ZNBC (Amendment) bill have since received Presidential consent.

The government who published it in 2001 for stakeholder input first initiated the Freedom of Information (FOI) bill. The initiative by ZIMA and its partners merely coerced the government to take it to Parliament. Originally, much of what they came up with in the private FOI bill was taken from the published government bill of 2001, and was an improvement of it. This is the same document that the government finally presented to the house after consultations with the backbenchers and the media associations. Most of the amendments, part of which have been incorporated, had to do with exemptions on the Police, Zambia

State Intelligence Services, Zambia National Service and Interpol. These provided for blanket exemptions on accessing public information by members of the public.

### **FOI Deferment**

On December 18, 2002, the Government deferred the Freedom of Information from Parliament, which, together with the Zambia National Broadcasting Corporation (Amendment) and IBA bills had passed through committee stage and have been signed by the President, to facilitate further amendments. It is not clear when the bill will be brought back to Parliament.

### **Successful Effort**

The most important lesson is that there has been considerable success in this effort, having been advocating for the last 10 years. Political will has also contributed, without which little would have been achieved, not to forget financial assistance from various cooperating partners. The role of the media in enhancing citizen awareness and participation in the process cannot also be overstated. Maintaining unity of purpose and vision within the media coalition is another cause for success. Ultimate success however, awaits the re- introduction of the FOI bill, attaining editorial and operational independence of the ZNBC, IBA and PIC boards once in place.

### **The Way Forward**

The major focus now is advocacy for constitutional changes to specifically provide for media freedom in Zambia's Constitution, a provision that is non-existent. ZIMA and its partners are now taking advantage of the constitutional reform process in the country to ensure the constitution guarantees media freedom. Currently, plans are underway to commission a research paper for submission to the Zambia Law Development Commission, and the Constitutional Review Commission. Particular focus will now be on repealing various sections of the Penal Code that contain draconian laws that impinge on media freedom and democracy. Reviewing laws that impede media freedom is a commitment the government made in its 1996 Media and Information policy.

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